



Increased Protection for Off-the-Plan Purchasers in NSW

Proposed reforms to the Conveyancing Act 1919 (NSW)

AUTHOR // SOPHIE CLARK

NOVEMBER 2015

On 23 September 2015, Victor Dominello, the NSW Minister for Innovation and Better Regulation announced a public consultation on the use of sunset clauses to terminate off the plan property contracts.

NSW has seen an increase in litigation from disgruntled purchasers who claim their off the plan contracts were unfairly terminated by developers looking to obtain a higher sales price for the apartments by taking advantage of sunset clauses in contracts.

Sunset clauses are usually contained in contracts for the purchase of land or strata units off the plan. They allow the purchaser or the developer to rescind a contract after a certain date, usually in the event that construction is not finished on time.

In a campaign promoted by Domain and the Department of Fair Trading, it was

drawn to the NSW Minister's attention that purchasers have had their contracts rescinded by developers using the sunset clause, only for the land or apartment to be re-sold on the same day for a higher price.

It is believed that Mr Dominello will propose reforms to the *Conveyancing Act 1919* (NSW) at the next available session in Parliament. The new legislation will require a developer to seek consent from purchasers to rescind a

contract after the sunset date. If the purchaser does not agree, the developer will need to justify any termination and, if necessary, apply to the NSW Supreme Court for permission to allow it to take effect.

At present, the onus is on the purchaser to commence proceedings if they feel their contract was unjustly terminated and they must do this out of their own pocket.

The purpose of these reforms is to give purchasers statutory rights where developers seek to terminate an existing contract and re-sell at a higher price. The proposed legislation will require a vendor who unjustly terminates under a sunset clause to pay damages to the purchaser equal to the difference on the sale price should the vendor re-sell the property.

Mr Dominello has stated:

"The NSW government is putting developers on notice that from this day forward if they use a sunset clause for no other reason than to reap a windfall profit at the expense of the purchaser, then they do so at their own peril".

Both developers and purchasers need to be aware of these upcoming changes as NSW tightens its grip on property development regulations.

FOR MORE INFORMATION, PLEASE CONTACT:



BERNARD TAN //
Partner

T // 61 2 8235 1207

E // b.tan@clarkekann.com.au



SOPHIE CLARK //
Lawyer

T // 61 2 8235 1239

E // s.clark@clarkekann.com.au

ClarkeKann is a commercial law firm with offices in Brisbane and Sydney. Our expertise covers commercial & corporate transactions, employment & IR, financial services, litigation, risk management and insolvency, property transactions and resources projects, across a range of industries. For a full list of our legal services, please visit our website at www.clarkekann.com.au. To update your contact details or unsubscribe to any of our publications, email us at publications@clarkekann.com.au.

This bulletin is produced as general information in summary for clients and subscribers and should not be relied upon as a substitute for detailed legal advice or as a basis for formulating business or other decisions. ClarkeKann asserts copyright over the contents of this document. This bulletin is produced by ClarkeKann. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under professional standards legislation. [Privacy Policy](#)