



UPDATE: Increased Protection for Off-the-Plan Purchasers in NSW

Changes to the *Conveyancing Act 1919 (NSW)* apply retrospectively from 2 November 2015

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We recently informed you of the NSW government's intention to tighten its grip on property development regulations, specifically in relation to sunset clauses.

On 17 November 2015 the *Conveyancing Amendment (Sunset Clauses) Act 2015 (NSW)* was passed in Parliament to provide increased protection to purchasers by preventing developers from unreasonably rescinding off-the-plan contracts for residential property under a sunset clause.

These changes are effective retrospectively from 2 November 2015 (the date Victor Dominello introduced the reforms to Parliament) to prevent a rush of rescissions prior to the formal commencement of the legislation. In accordance with the new provisions, a vendor must give a purchaser notice in writing at least 28 days prior to rescission under a sunset clause. The notice must state why the vendor is proposing to rescind and give reasons for the delay in completion.

So long as the off-the-plan lot has not been created before the sunset date, a vendor can rescind under a sunset clause only if:

- the purchasers give written consent to the vendor's proposed rescission; or
- the vendor obtains an order from the Supreme Court permitting the rescission; or
- the reason for rescission comes within a category prescribed by the regulations (no regulations have yet been made).

In considering an application from a vendor to rescind under a sunset clause, the Supreme Court will consider:

- the terms of the contract;
- whether the vendor has acted unreasonably or in bad faith;
- the reason for the delay;
- whether the subject lot has increased in value; and
- any other matter the court considers relevant.

By forcing the vendor to obtain an order from the Supreme Court, purchasers are no longer burdened with the cost of commencing proceedings if they feel their contract was unjustly terminated. In fact, the vendor will be liable for the purchaser's costs unless the vendor can demonstrate the purchaser's refusal to consent was unreasonable.

If you require any further information on these changes, or specific advice if you are a developer or purchaser, please feel free to contact us.

A copy of our previous article is available here: <http://www.clarkekann.com.au/newsroom/increased-protection-for-off-the-plan-purchasers-in-nsw>.

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