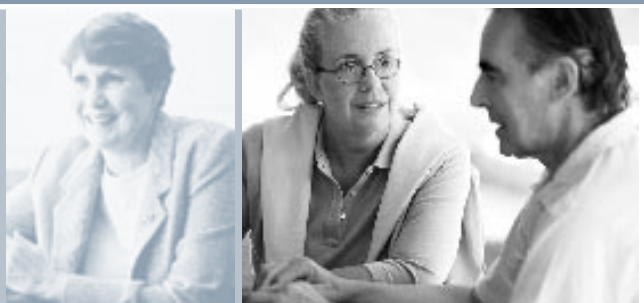


A PLAIN ENGLISH GUIDE TO



>>BUYING “OFF THE PLAN”

This Plain English Guide answers some of the more commonly asked questions about buying real estate ‘off the plan’ and should be read in conjunction with Coleman & Greig’s Plain English Guide to Buying Real Estate.

>>Why buy “off the plan”?

In recent years buying “off the plan” has become quite popular, particularly for investors but also for home buyers.

The concept has advantages both for the purchaser and the developer. From a purchaser’s point of view, property which may not be completed for some time can be purchased at today’s prices. This can be a real benefit in times of rising prices. A developer will also usually be prepared to sell more cheaply where the “final product” can’t be shown to the purchaser.

From the developer’s point of view, sales “off the plan” mean that purchases are committed at an agreed price. This will go a long way towards reducing the developer’s commercial risk and will be of great comfort to the developer’s financiers.

>>The “off the plan” contract

There is no “standard” contract for purchasing “off the plan”. Any real estate contract needs to be reviewed carefully, but this is particularly important in “off the plan” purchases. What are some of the main issues?

What are you buying?

When you buy an existing property there is no doubt what you are buying - what you see is what you get! When you are having a building constructed, the builder will usually refer to plans and specifications which describe the property in detail.

An “off the plan” contract rarely has a very detailed description of the property. Usually there is just a copy of the draft strata plan or perhaps a copy of preliminary plans which have been submitted to Council. The contract usually has brief details of the type and standard of finishes to be used in the building. It is important to make sure that you are satisfied with the level of detail in the contract. The developer will usually want the right to alter the plans if he thinks it is necessary or desirable.

Inclusions

These will usually be described briefly in the contract but there will nearly always be a clause giving the developer the right to substitute inclusions of a similar quality if the nominated products are not available.

Variations to the contract

All “off the plan” contracts give the developer a lot of flexibility in completing the development. For example, it may be necessary to make minor changes to the plans because of some council or engineering requirements or it may be necessary to grant drainage rights or create some restriction over the property as a whole to comply with council requirements. There will usually be a provision that gives the purchaser a right to pull out of the purchase if the variation significantly affects the property to the detriment of the purchaser. It is vital to review that provision in detail to make sure you have adequate protection.



>>The “off the plan” contract *continued*

Time to complete

The contract will give the developer some flexibility as to the time frame in which the project is to be completed. Usually, the contract provides that the developer must complete the development as quickly as possible, but if he cannot complete within a certain period of time then either party will have the right to cancel the contract. In those circumstances the deposit is refunded to the purchaser. Again, these provisions need to be looked at carefully to make sure you have adequate protection.

Control of the Owners’ Corporation

Most “off the plan” contracts contain provisions that are designed to give the developer control of the Owners’ Corporation for a reasonable time after completion of your purchase. These clauses are usually required because the developer may want to conduct selling activities on the common property or it may be necessary to do some further work on the development after settlement to comply with some statutory or contractual requirement.

Defects

It is important to make sure that the developer agrees to remedy any defects which appear after completion. Normally the developer will agree to a defects maintenance clause.

Finance

There is always some significant delay between the date of signing the contract and the completion date. Not all lending bodies will be prepared to give you a formal finance approval with an open ended time frame. In addition, your own financial circumstances may change between the date of contract and the completion date. Therefore, you will need to be satisfied that (one way or another) you will be able to obtain any required finance when the time for completion comes.

Stamp Duty

Normally, stamp duty must be paid within three months of the date of the contract. There is a stamp duty concession that applies to “off the plan” purchases so that stamp duty can usually be paid 15 months after the date of the contract or the completion date, whichever comes first.

Please note: This Guide should be read in conjunction with our Plain English Guide to Buying Real Estate

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For further information: