

Property Law

Off the Plan Development

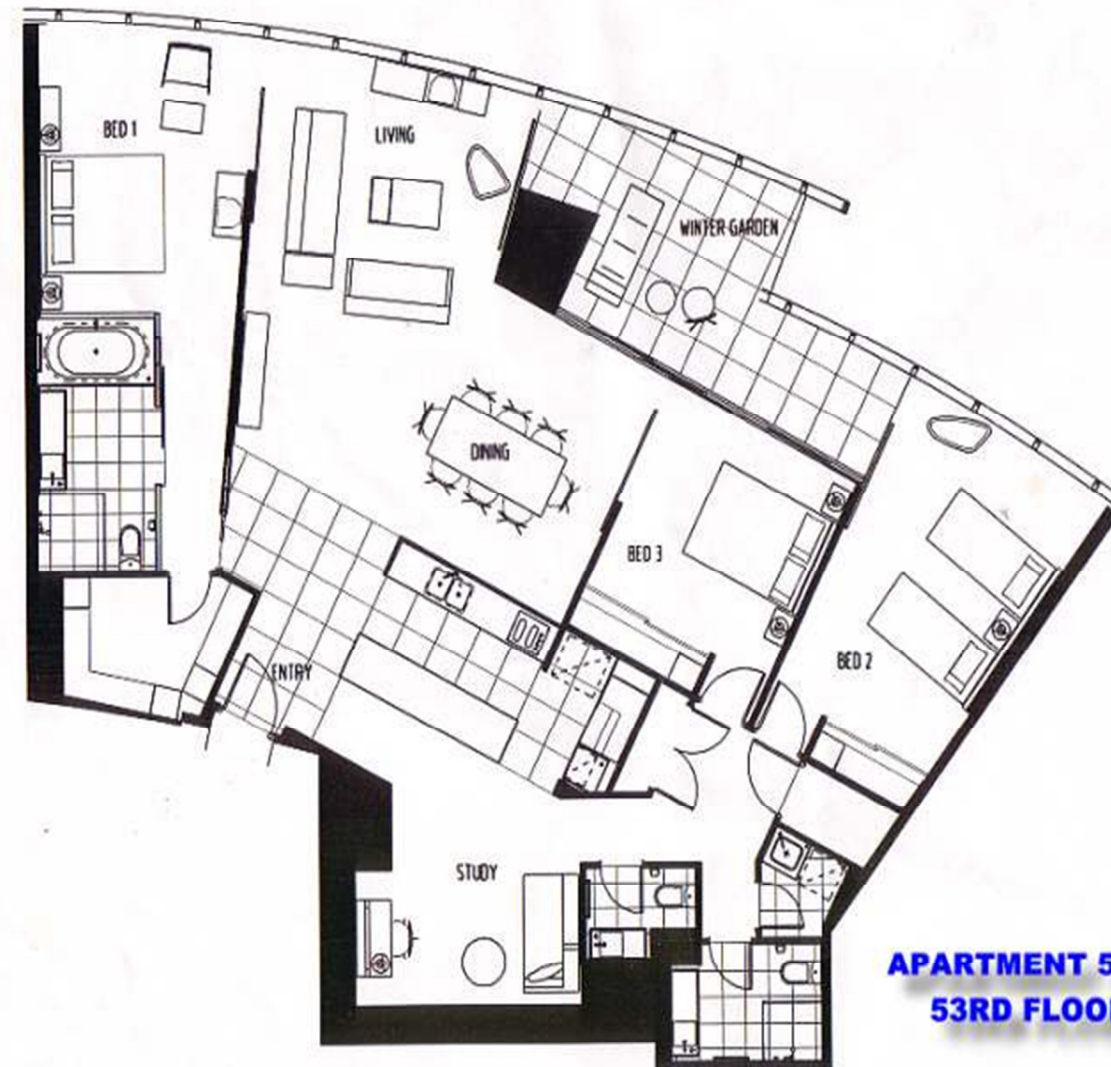
Purchase and Sales

Business Law

Joint Ventures

Commercial Law

Estate Planning



Want to purchase property in Australia?

FOREIGN ACQUISITIONS

Pursuant to the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* "foreign persons" are required to obtain approval from the Foreign Investment Review Board when wanting to acquire real estate in Australia. Recent changes to the *Foreign Acquisitions and Takeovers Regulations 1989* have streamlined the process for approval and in some cases have eliminated the need for notification and approvals. One of the changes noted is the exemption provided to "temporary residents" (*explained below*).

This guide details some of the main stream the exemptions below, in particular who may be included as a "temporary resident".

If a purchase of real estate is not exempt, foreign persons must notify the Government before purchasing the property.

If a contract of sale is entered into to purchase property, then the contract should be conditional on the purchasing obtaining approval from the Foreign Investment Review Board (FIRB). If foreign buyers enter into a Contract of Sale that is unconditional, or that becomes unconditional before approval is granted, the foreign buyer could face significant penalties. This document serves only as a guide and advice may vary dependent upon the individual circumstances of any "foreign person" whether it be an individual, company or trust.

CATEGORIES OF PROPERTY

The types of property that are covered under the FIRB policies are as follows:

- Residential real estate
- Commercial real estate
- Rural land
- Accommodation facilities
- Urban land corporations/trusts

RESIDENTIAL REAL ESTATE

Acquisitions relating to residential real estate that require notification to FIRB, unless you are exempt, are listed below:

- Second hand (established) dwellings;
- Vacant land; and
- New dwellings (whether built or off the plan).

For off the plan dwellings if the developer has already obtained approval, foreign persons should not need to apply for individual approval. A copy of the approval letter issued to the developer should be provided to you with the contract of sale.

What is a foreign person?

A "FOREIGN PERSON"

A foreign person is defined as:

- a natural person not ordinarily resident in Australia;
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

TEMPORARY RESIDENT

Temporary residents are exempt from obtaining approval for certain acquisitions. "Temporary resident" includes all 'foreign persons' living in Australia who –

- hold a valid temporary visa which permits them to stay in Australia for a continuous period of more than 12 months (irrespective of how much time is remaining until that visa expires); or
- have submitted an application for permanent residency (PR), and hold a bridging visa which permits them to stay in Australia until their PR application has been finalised. (*See Exemptions*)

EXEMPTIONS

You do not need to submit an application for approval if you fall into one of the exemptions currently provided by the legislation. Some of the main stream categories are listed below:

- you are an [Australian citizen living overseas](#);
- your [spouse is an Australian citizen](#) (not a permanent resident) and you are purchasing residential real estate in both names as joint tenants (not tenants in common);
- you hold a [permanent resident visa](#) and you are purchasing residential property;
- you are a [temporary resident](#) and you are purchasing certain residential property listed below:
 - [SINGLE BLOCKS OF VACANT RESIDENTIAL LAND](#);
 - [NEW DWELLINGS; AND/OR](#)
 - [A SECOND HAND DWELLING TO BE USED AS YOUR PRINCIPAL PLACE OF RESIDENCE \(NOT FOR INVESTMENT PURPOSES\)](#);
- you are purchasing [new dwelling\(s\) from the developer](#), where the developer has pre-approval to sell those dwellings to foreign persons. Note, developers are no longer restricted to only selling 50% of new dwellings to foreign buyers.

OTHER EXEMPTIONS

There are other exemptions that may be available to you for non-main stream acquisitions such as, an interest in a time share scheme, provided you have a maximum of 4 weeks of use entitlement, or the purchase of certain residential real estate in an Integrated Tourism Resort. It is recommended that for any proposed purchase of real estate in Australia you seek legal advice prior to signing any contract or agreement for purchase.

SECOND HAND DWELLINGS means second hand or established residential dwellings that are not new, that is, they have been previously owned and/or occupied for more than 12 months. Foreign persons are prohibited from acquiring established dwellings for investment purposes (that is, they cannot be purchased to be used as a rental or holiday property), irrespective of whether they are [temporary residents](#).

NEW DWELLINGS referred to above not only includes new dwellings not sold, but also dwellings that have not been occupied for more than 12 months. In other words, new dwellings could include new developer stock that is 12 months old provided it has remained unoccupied.

In Australia or not; Foreign persons who are temporary residents in Australia do not require approval to acquire a second-hand dwelling for their principal place of residence.



OTHER ACQUISITIONS

If you are interested in acquiring existing Australian corporations or businesses, or wish to establish new businesses you do not need to submit an application for approval provided the transactions involved are valued below the relevant monetary thresholds. It is important for foreign persons to always seek independent legal advice before acquiring any interest in Australia.

EXEMPTION LETTERS

The Foreign Investment Review Board do not issue exemption letters to foreign persons. Therefore, it is recommended that legal advice be sought *prior* to entering into any acquisition so that you are fully informed as to your obligations of approvals and notifications to FIRB.

NEW ZEALAND CITIZENS

You do not need to submit an application for approval to acquire real estate in Australia if you are a New Zealand citizen and you are purchasing residential property in Australia.

HOW TO APPLY

The FIRB prefer all applications be submitted electronically (i.e. fax/ email).

The email address is firbapplications@treasury.gov.au and the facsimile number is 02 62632940. If you are unable to lodge by fax or email then you can lodge your application by post to the address noted below, however the applications will take longer to process:

*The Executive Member
Foreign Investment Review Board
c/- The Treasury
Langton Crescent
PARKES ACT 2600.*

There are no fees or charges payable to FIRB for applications lodged