

Property Law

Off the Plan Development

Purchase and Sales

Business Law

Joint Ventures

Commercial Law

Estate Planning





Why buy off the plan?

BUYING "OFF THE PLAN" CAN LOCK IN YOUR PURCHASE PRICE EARLY

Buying "off the plan" has become quite popular in recent years, both for investors and owner occupiers.

There are advantages both for the developer and the purchaser. From a purchaser's point of view a property can be purchased early in the development with the purchase price locked in for when settlement is to occur (which sometimes can be up to 2 or 3 years from when a contract is signed).

From a developer's point of view, sales "off the plan" mean that they have commitment from purchasers to buy at an agreed price today.

This provides a certain level of comfort and security to the developer and its financiers for the life of the project and beyond.

DEPOSIT

- UP TO 10% OF PURCHASE PRICE PAYABLE
- DEPOSIT HELD IN LEGISLATED TRUST ACCOUNT AND INVESTED UNTIL SETTLEMENT
- SOMETIMES YOU ARE ENTITLED TO SHARE IN INTEREST ACCRUED WITH DEVELOPER
- TAX FILE NUMBER IS REQUIRED, EVEN IF FOREIGN BUYER (SEE WWW.ATO.GOV.AU)



FINANCE

If you require funding from a bank or other lending institution to complete your purchase, you need to have the contract subject to you obtaining suitable finance within a certain time frame from when you sign the contract. Usually, developers will agree to give buyers 14, 21 or sometimes up to 30 days from when the contract is signed to obtain finance approval. You will need to check with your financier that finance approval can be obtained early whilst the project is being completed. You also need to ensure you are adequately protected under the contract if you cannot obtain adequate funding and need to cancel the contract and obtain a refund of your deposit.

DEFECTS

Normally, "off the plan" contracts provide that the developer is to remedy any defects identified by you as the buyer prior to you settling on your purchase. Prior to settling, as the buyer you are given a right to pre-inspect the property and identify any defects to the developer. It is important to check the terms of the contract to ensure this is adequately provided.

STAMP DUTY

Stamp duty must be paid on all purchase contracts. There are strict time periods involved and certain concessions and exemptions available to buyers of residential property. There are certain conditions that must be met in order to gain these exemptions or concessions. You need to obtain appropriate legal advice early as to your stamp duty liabilities for your contract.

What are you buying?

COOLING OFF PERIOD

A 5 day cooling off period applies to your contract. This means you can change your mind about purchasing the property during this time. If you did not receive legal advice prior to entering into the contract, you can use this time to obtain legal and/or financial advice. However, if you decide to withdraw during this time you may be charged with a termination penalty by the developer (0.25% of Purchase Price). Once this period ends, you are legally bound to buy the property. You need to make sure you are satisfied with all of the terms before you sign and before the cooling off period ends.

PROPERTY NOT YET CONSTRUCTED

"Off the plan" means a property yet to be constructed and completed. You are not able to view what you are buying like you would if you were purchasing a house or unit already existing. Instead, in an "off the plan" contract you are provided with plans and specifications of what the developer intends to build and construct as the finished product.

Usually, you will be given proposed plans yet to be approved by local council of the entire project, in addition to proposed floor plans of the particular property you have chosen plus a schedule of finishes for the property (sometimes identifying a particular standard the developer has decided to use).

It is very important you read and understand these plans before signing the contract to make sure you are satisfied with the level of disclosure the developer has provided to you and the detail and standard of the finishes. In the contract of sale, developers almost always retain the right to alter these plans if required to complete the project

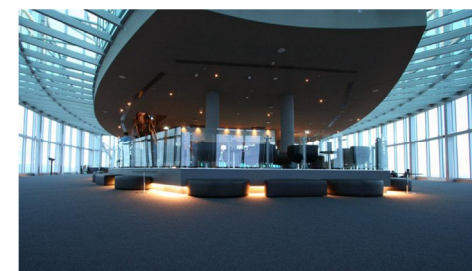
TAXATION IMPLICATIONS

It is very important you seek independent financial advice concerning your individual taxation and financial obligations and possible benefits. We strongly recommend you obtain this prior to you signing the contract.

INCLUSIONS AND VARIATIONS

The contract usually provides that the property will be constructed *substantially* in accordance with the finishes and chattels described in the contract. However, the contract usually also provides the developer with the sole right to alter the finishes and chattels in certain circumstances, provided the alternative materials selected are of no less quality than those described in the contract. From start to finish, the developer is given a lot of flexibility in how the project is to be completed. Provided these changes will not materially prejudice you as the buyer the changes can be made by the developer. If the changes are prejudicial to you as the buyer, you *may* have rights to withdraw and obtain your deposit back. It is critical your contract is reviewed prior to signing to ensure you are protected.

Sometimes, "off-the-plan" contracts also provide an opportunity for you to customise the design (within the structural constraints of the building) to suit your individual needs. You can also select from a range of various fittings, fixtures, appliances, internal colour schemes and latest designer finishes. The extent of this "customising" should be explored with the developer before you sign the contract.



FOREIGN BUYERS

- CAN PURCHASE WITH FIRB APPROVAL UNLESS DEVELOPER HAS OBTAINED AN ADVANCE APPROVAL FOR PROJECT
- CONTRACT NEEDS TO BE CHECKED TO ASCERTAIN WHETHER OR NOT YOU NEED TO APPLY
- MORE INFORMATION IS AVAILABLE AT WWW.FIRB.GOV.AU

WHEN DO YOU NEED TO COMPLETE?

The contract will usually provide buyers with an estimated time of when the developer intends to complete the project. The developer is usually provided with flexibility to extend or alter these time frames whilst taking all reasonable steps to complete the project as quickly as possible. If the developer cannot complete the project within this time frame, then both the developer and the buyer can terminate the contract. In those circumstances, the deposit is refunded to the buyer. Again, legal advice should be obtained prior to signing the contract to ensure the buyer's rights are fully protected.

