



Developers Beware - Extensions of Dates for Registration of Plans in Contracts Invalid.

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Under the *Sale of Land Act 1962*, when land is sold 'off the plan' (i.e. the plan is not registered at the day of sale), if the plan is not registered within 18 months of the day of sale, or if the contract specifies another period, before the end of that period, the contract can be terminated by the purchaser at any time between that date and the date upon which the plan is registered. Many developers have sought in their contracts of sale to give themselves some leeway in this regard by specifying a date or time frame by which the relevant plan must be registered, and also including special conditions which allow them to extend that date or time frame. A Supreme Court decision (*Clifford & Anor v Solid Investments Australia Pty Ltd* [2009] VSC 223) (upheld on Appeal) has made it clear that this practice is not valid under the *Sale of Land Act 1962*. The Court found that there must be a definite period specified in the contract itself.

Therefore, vendors may not be able to rely on the extension provisions in these contracts, and if their plans are not registered by the original date or time frame specified in their contracts, then their purchasers may be entitled to terminate their contracts at any time between the specified date and the date upon which the plan actually registers. Purchasers who are entitled to terminate their contracts pursuant to this right will be also entitled to a refund of their deposit.

It should be noted that the legislation does not have any similar requirements regarding occupancy permits. Therefore if a contract relates to a house and land package and requires an occupancy permit to be obtained before settlement, the occupancy permit is not required to be issued by any particular time frame, unless the contract specifically states this. Therefore, if the developer obtained registration of the plan by the specified date, but there was delay in obtaining the occupancy permit, the purchaser would not have a right to terminate unless the contract specifically gives him/her that right.

The decision in *Clifford* is likely to lead to vendors including longer time frames in their contracts to begin with. If you are a developer and have current contracts which provide that you can extend the registration date, or are preparing to enter into new contracts, we recommend you contact us to discuss the implications of this decision.

Elizabeth is contactable on 9613 6555 should you or your clients have any queries in relation to this decision.

Warning

The above article is a general summary only. It does not constitute legal advice, and should not be relied upon. Septimus Jones & Lee strongly recommends that any person who is affected by the above decision immediately obtain legal advice that will deal with their specific situation and needs.