

Domain Chinese Community Briefing
Property Development Legislation Update
19 August 2018
Ryde Eastwood Leagues Club

Thank you James, and Michael, for having me this afternoon.

Thank you Minister Dominello. While I don't live in Ryde, I commute from the Central Coast to Central each day, and I'd like to say the section through Ryde is my favourite bit of the train trip.

I too would like to acknowledge this meeting is being held on Aboriginal land and I'd like to pay respects to the current and past Aboriginal people from this area.

It is a great honour to have a chance to talk to you all on the important topic of consumer protection when purchasing properties.

Today I will talk briefly about upcoming off-the-plan reforms, some recent reforms to the way we manage and develop strata, and the move from paper to electronic conveyancing in NSW.

To start with, you're probably wondering what a Registrar General is, and what the Office of Registrar General does.

My title, the Registrar General, sounds almost military—and powerful. I assure you though, when I say to my kids the Registrar General is telling you to go to bed now, it has no effect whatsoever! I have asked Minister Dominello if I could change my title to just 'the General', but I'm not sure if the Minister agrees!

My job—as the Registrar General—is to provide a secure framework for the safe and efficient development of, and trade, in real property in NSW.

And my team, the Office of the Registrar General, is responsible for the laws that directly affect how you as purchasers of residential property are protected.

This includes looking after the laws that cover strata schemes and off the plan purchases, and the transition from paper to electronic conveyancing.

In my team we have lawyers, and surveyors. But my training is in economics. Which is why I love my job. Property rights are the foundation of modern economies. Without a formal property system, a modern market economy is impossible.

Of course, it is often said that buying a house is considered the biggest and by most accounts the best investment anyone can make. Therefore, it is vital then purchasers are protected when they buy a property.

This is increasingly important when it comes to off the plan purchases.

I'd now like to talk about the Government's plans to provide further protection for these buyers.

Off the plan purchases allow the sale a strata unit that does not have its own title when the contract is exchanged.

This means settlement cannot occur until the development has been completed.

High density living and an increase in strata development has led to a dramatic rise in the number of properties sold off-the-plan.

Indeed, off-the-plan sales now make up around 12 per cent of residential sales. In 2007, there were around 2,150 contracts, now we have about 30,000 in NSW.

As the Minister said, in 2015, the Government introduced emergency legislation to remove the incentive for developers to deliberately delay settlement in hope of securing a financial gain.

These reforms were widely applauded by the community. However, there is an expectation for further change to protect consumers as off-the-plan sales continue to increase in popularity.

The Government is now again introducing stronger protections for off the plan contracts.

These new reforms will also give purchasers greater certainty and transparency about what they are buying.

And this is really important.

Purchasers who buy off the plan are particularly vulnerable to the actions of the developer.

That is, off-the-plan buyers are not able to physically inspect the property before purchase and do not have access to registered documents, like by-laws, that may restrict the way land can be used.

There is also no statutory right for developers to notify purchasers of changes made during development.

And developers usually don't communicate to buyers of any changes until the end of the development process, just before the purchaser is expected to complete the sale. This leaves very little time for the purchaser to discover changes and negotiate effectively with the developer.

The only document that the law requires the developer to serve now is an occupation certificate, which must be given at least 14 days before the purchaser can be required to complete the contract.

As the Minister said, the upcoming reforms bring much stronger protections to manage this all. This includes:

- Introducing a new vendor disclosure regime for off-the-plan contracts that will give purchasers more certainty about what they are buying. Vendors will be required to:
 - Disclose key features of the development transaction—like completion dates and whether development approval has been given
 - Attach certain standard information to the contract, like proposed plans, by-laws, and schedules of finishes where building work forms part of the contract; and
 - Notify purchasers of changes made during the development.
- The reforms include new statutory remedies that allow buyers to terminate the contract, or claim compensation if they are materially impacted by changes made from what was disclosed.
 - A purchaser is ‘materially impacted’ if they would not have entered the contract had they been aware of the matter.
- As an alternative to termination, the new laws also allow a materially impacted purchaser to complete the contract but make a claim for compensation that will effectively amount to a reduction in purchase price.
- The Minister also mentioned that existing sunset clause protections will be strengthened through widening of the definition of ‘sunset clause’:
 - It has been reported that a small number of developers are looking for loopholes in the legislation (by drafting sunset clauses with different triggers points) to avoid the effect of the clause.
 - The reforms will tighten the definition of ‘sunset clause’ so that it cannot be avoided by using provision of an occupation certificate as a trigger point.
 - It will also clarify that the Supreme Court can award damages if it would be just to do so.
- Finally, new safeguards also protect deposits which must now be held by a stakeholder in a controlled money account.

We anticipate the Bill to be introduced in parliament in Spring and the legislation in place soon after.

I can take questions on the detail, with Leanne Hughes in my team, who is the expert on this topic. Of course, please contact my office any time.

Let me turn briefly to the Government’s strata reforms.

While the off the plan reforms protect purchasers, the Government’s strata reforms in 2016 introduced a comprehensive set of new laws to guide and encourage the good governance of strata schemes through the whole lifecycle of a strata building.

This covers the development and design of strata, through to when you living or working in a strata, and then to the end of the cycle, when the building may need to be renewed or remodelled.

It is important to note that strata isn't only reserved for standalone, residential apartment towers.

Developments now are becoming much more exciting. These days it is almost standard to see residential units above cafes and shops below.

And hotels or community spaces, like libraries or even schools can be combined to create a fabulous lifestyle for the residents.

The NSW strata laws are flexible enough to accommodate our changing expectations about how we want to live.

But even the best designed buildings need common sense management rules to allow communities to develop within them.

The best rules are the ones we decide for ourselves, rather than those that are imposed upon us.

The new strata management laws recognise that each strata unit is someone's home or office. Owners should be free to do what they want within their homes, with the owners corporation coming together to make decisions collectively about how the shared parts of the building should be used.

Good strata buildings need relevant, modern by-laws. The new strata management laws encouraged all schemes to look at their by-laws and decide if they were right for the building.

Together the owners should decide things like the types of pets that are allowed or whether smoking should be restricted from certain areas.

The new laws have made it easier to enforce the by-laws.

That is, if a resident continues to ignore a by-law, the owners corporation can issue them with a notice to comply. If this doesn't work and the behaviour continues, the owners corporation can apply to The NSW Civil and Administrative Tribunal (NCAT) for a penalty order.

The Government also reformed the Strata Development Act to modernise and make the process for renewing or redeveloping a strata unit fairer.

This reform was in the context of NSW's ageing stock of strata buildings.

Over 30 per cent of strata schemes are now over 30 years old. Some of the buildings themselves are nearing 100 years.

Many do not meet current building standards or energy efficient standards.

The problem was the renewal processes was inadequate—which was why there are so many old, sub-standard buildings in Sydney.

Of the approximately 72,000 strata schemes in NSW, there have only been about 850 strata terminations.

The fact is, it was just too hard to modernise these buildings. And that was mostly because of the difficult process required to terminate a strata scheme. You needed every title holder in the building to agree to upgrade or redevelop a strata.

So, how do you renew these if not everyone in the building wants to

The reform changed this to 75 per cent.

The key point is if there is not unanimous agreement to upgrade a strata from all owners, the reform has built-in safeguards and protections for lot owners to ensure they are treated and compensated fairly. Key principles include:

- A step by step transparent process to make sure everyone in the strata gets a say. And then 75 per cent have to agree to renewal
- Then all owners have to receive at least the compensation value of the lot, which is calculated based on the principles used to determine compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.
- And strata Renewal Plan to be approved by the Land and Environment Court.

So far there hasn't been any scheme that has gone through the whole process of a strata renewal. We understand though a number of schemes have come to a mutual decision, without needing to go to Court.

What we can say is that the legislation has allowed owners to have the conversation among themselves about the best future for their schemes. The strata renewal process is designed to be collaborative, allowing owners to come to a mutual decision about redevelopment, sale or renovation.

We will continue to monitor this area. Again, like off the plan, please contact my office with any questions if this reform is something you want more information on.

Let me finish with a quick overview of the Government's eConveyancing reform.

This is the conveyancing industry's version of the digital revolution.

At my local cafe I pay for a coffee by waving my iPhone, which is directly linked to my bank. While I drink my coffee, I can book a plane, and even invest in a some shares, all using the same phone.

These are examples of the digital world involving secure data and personal identity.

eConveyancing allows conveyancers and lawyers to lodge documents and complete financial settlements electronically.

People ask what does the Government want with this reform. What's the strategic picture here?

It is this. They want to make land title system meet a rapidly changing world.

The world never stands still. However, new technology is driving more rapid change than ever before. Change at a hyperbolic rate. That is, change is accelerating each year. People now expect to organise themselves around digital—greater efficiency, more transparency, fewer errors. This is what eConveyancing brings.

This reform is designed with the customer in mind. For example:

- For example, no more fees for bank cheques.
- For buyers and sellers, it also means less visits to your lawyer or conveyancer's office. And it removes the three-day wait for settlement funds to clear.
- They say 1 in 10 up to 1 in 30 transactions go wrong. These are the ones when someone can't move into their home. The removalist truck parked outside. And this is because someone has misplaced or incorrectly signed a document.
- eConveyancing this risk, and other risks associated with human error. This is because all parties can review documents online and easily correct them.

eConveyancing is also a safer more secure system than paper conveyancing.

Since eConveyancing began in NSW in 2013 there have been no fraud cases, but during that time the NSW Government has paid over \$7 million for fraud cases involving paper conveyancing transactions.

The reform also delivers substantial time savings for conveyancers and lawyers of up to 2.5 hours for vendor and 3.5 hours for purchasers for each dealing.

eConveyancing also allows you to lodge and settle remotely.

One conveyancers was particularly happy with this, telling me the other day he was able to settle in the pub. Another said she signed off in Hawaii. This might be a reflection of lawyers and conveyancers disposition towards a nice glass of wine and a good holiday!

Nevertheless, time is precious and this reform gives lawyers and conveyancers time back—time they can use for important legal and technical advice.

And this change is happening very quickly now. In July around half of all property dealings in NSW were lodged and settled to the land title registry electronically. We expect in about 12 months almost all lodgments will be done via eConveyancing.

To finish where I started—and to emphasise what the Minister said about the Government leading reforms that increase confidence in the property system—my role and my team's role is to make sure there is confidence in the land title system.

Confidence for you to purchase a property, confidence that if you live in a strata you have a say on its direction, and confidence that the conveyancing system underpinning land transactions is modern, secure and ultimately benefits the end user of the system, the purchaser and sellers of property in NSW.

The Government has introduced and is rolling out reforms to achieve this, with the customer at the heart of these reforms. Me and my office are available to answer any further questions and support you with these important changes.

Thanks again for the opportunity to talk to you today.

Happy to take questions.

Jeremy Cox
Registrar General

