



New South Wales

Conveyancing (Sale of Land) Amendment Regulation 2019

under the

Conveyancing Act 1919

[*The following enacting formula will be included if the Regulation is made:*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Conveyancing Act 1919*.

Minister for Customer Service

Explanatory note

The object of this Regulation is to make further provision in relation to off the plan contracts for the sale of residential land as a consequence of the amendments made by the *Conveyancing Legislation Amendment Act 2018*.

The Regulation also makes minor amendments of a law revision nature consequent on the *Environmental Planning And Assessment Amendment Act 2017*.

This Regulation is made under the *Conveyancing Act 1919*, including sections 52A, 66X, 66ZL (1) (the definition of *material particular*), 66ZM (2) and 202 (the general regulation-making power) and clause 1 (1) of Schedule 9.

Conveyancing (Sale of Land) Amendment Regulation 2019 [NSW]

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Conveyancing Act 1919

1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Amendment Regulation 2019*.

2 Commencement

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by this clause.
- (2) Schedule 1 [1]–[6] and [9] commence on 1 September 2019.

Schedule 1 Amendment of Conveyancing (Sale of Land) Regulation 2017

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

disclosure statement has the same meaning as in Division 10 of Part 4 of the Act.

off the plan contract has the same meaning as in Division 10 of Part 4 of the Act.

[2] Clause 4A

Insert after clause 4:

4A Documents to be attached to off the plan contract and disclosure statement

- (1) For the purposes of section 66ZM (2) (a) of the Act, the following information must be included in a draft plan included in a disclosure statement attached to an off the plan contract:
 - (a) the proposed lot number of the subject lot,
 - (b) sufficient information to identify the location of the subject lot,
 - (c) the area of the subject lot,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft floor plan and draft location plan,
 - (e) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft location diagram, draft detail plan and draft community, precinct or neighbourhood property plan,
 - (f) the site of any proposed easement, profit à prendre, restriction on the use of the land or positive covenant affecting the subject lot.
- (2) If the contract relates to land that comprises or includes a lot in a proposed strata scheme, it is sufficient if the draft plan includes the approximate location and area of the parking and storage area.
- (3) For the purposes of section 66ZM (2) (b) of the Act, the following documents must be included in a disclosure statement attached to an off the plan contract:
 - (a) any proposed schedule of finishes,
 - (b) any instrument under section 88B of the Act that is proposed to be lodged with the draft plan,
 - (c) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft by-laws,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft management statement and the draft of any proposed development contract,
 - (e) if the contract relates to land that comprises or includes a lot in a proposed development scheme—the draft strata development contract,
 - (f) if the contract relates to land that comprises or includes a lot in a proposed strata scheme that relates to a part strata parcel and a strata management statement will be required under section 99 of the *Strata Schemes Development Act 2015* for the registration of the strata plan—the draft strata management statement,

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- (g) if the contract relates to land that will be subject to a building management statement under Division 3B of Part 23 of the *Conveyancing Act 1919*—the draft building management statement.
- (4) A draft strata management statement or draft building management statement required to be included in a disclosure statement under this clause is not required to include a provision for the allocation of the costs of shared expenses (as required under clause 2 (1) (e) of Schedule 4 to the *Strata Schemes Development Act 2015* or clause 2 (1) (e1) of Schedule 8A to the *Conveyancing Act 1919*).
- (5) It is not necessary for the draft plan, or any document included in a disclosure statement, to strictly comply with any applicable lodgment rules or regulations under the *Real Property Act 1900* or any other Act, but substantial compliance is sufficient.
- (6) In this clause:
 - community property plan, community scheme, detail plan, development contract, location diagram, management statement, neighbourhood property plan, neighbourhood scheme, precinct property plan* and *precinct scheme* have the same meaning as in the *Community Land Development Act 1989*.
 - development scheme, floor plan, location plan, part strata parcel, strata development contract* and *strata management statement* have the same meaning as in the *Strata Schemes Development Act 2015*.
 - parking and storage area*, in relation to a contract that relates to land that comprises or includes a lot in a proposed strata scheme, means the part of the subject lot that is to be used primarily for storage or parking (and not for residential purposes) and that is not contiguous to the main part of the subject lot.
 - strata scheme* has the same meaning as in the *Strata Schemes Management Act 2015*.

[3] Clause 17 Purchaser may rescind contract or option

Insert after the note to clause 17 (1) (a):

- (a1) for the vendor's failure to attach a disclosure statement to an off the plan contract in accordance with section 66ZM of the Act and clause 4A, or
Note. The documents required to be included in the disclosure statement and the information required to be included in the draft plan (which is to be included in the disclosure statement) are specified in clause 4A.

[4] Clauses 19A and 19B

Insert after clause 19:

19A Purchaser may claim compensation instead of rescission

- (1) A purchaser under an off the plan contract for the sale of land who has a right to rescind the contract under section 66ZO or 66ZP of the Act, may, instead of rescinding the contract, make a claim for compensation from the vendor of up to 2% of the purchase price of the property.
- (2) A claim for compensation must be made before completion of the contract and no later than:
 - (a) in the case of a right to rescind under section 66ZO of the Act—14 days after the purchaser receives the notice of changes in accordance with section 66ZN, or

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- (b) in the case of a right to rescind under section 66ZP of the Act—14 days after the purchaser receives the registered plan in accordance with that section.
- (3) A claim for compensation must be made by serving on the vendor a written notice that specifies the amount of compensation claimed by the purchaser (a **claim notice**).
- (4) A claim notice must be signed by:
 - (a) the purchaser or the purchaser's solicitor, or
 - (b) if there is more than one purchaser, each of the purchasers or their respective solicitors.
- (5) A claim notice must be served on:
 - (a) the vendor or the vendor's solicitor, or
 - (b) if there is more than one vendor, any one of the vendors or the solicitor of any of the vendors.
- (6) Service of a claim notice may be effected in accordance with section 170 of the Act or at the address of the vendor shown in the contract or in accordance with the service provisions in the contract.
- (7) Service of a claim notice under this clause does not prevent completion of the contract.

19B Determination of compensation claims

- (1) A claim for compensation is finalised if:
 - (a) the vendor agrees to pay to the purchaser the amount of compensation claimed by the purchaser in the claim notice or a lesser amount agreed by the purchaser, or
 - (b) an arbitrator determines the claim under this clause.
- (2) The parties are to appoint an arbitrator to determine a claim for compensation if the claim has not been finalised by agreement between the parties within 1 month of service of a claim notice or by completion of the contract, whichever occurs first.
- (3) If the parties do not appoint an arbitrator in accordance with subclause (2) within 2 months of the service of a claim notice or 1 month of completion (whichever occurs first), an arbitrator is to be appointed by, or in a manner approved by, the Secretary of the Department of Customer Service at the request of a party.
- (4) The amount that an arbitrator may determine a purchaser is entitled to in respect of a claim for compensation is not to exceed the total of the amount specified by the purchaser in the claim notice and the costs to the purchaser of the claim.
- (5) If a claim for compensation is finalised before completion, the amount of compensation is to be paid to the purchaser as an adjustment on completion.
- (6) If a claim for compensation is not finalised before completion, the following applies:
 - (a) the amount of compensation claimed by the purchaser (the **claim amount**) is not to be paid to the vendor on completion,

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- (b) the holder of any deposit payable under the contract is to hold the claim amount until the claim is finalised or taken to be withdrawn under subclause (7), whichever occurs first,
 - (c) if the contract provides for the investment of any deposit payable under the contract:
 - (i) the holder of the claim amount may invest the amount in accordance with the relevant provisions of the contract, and
 - (ii) any interest earned on the claim amount is to be paid to the purchaser and vendor in the manner agreed between the purchaser and vendor or as determined by the arbitrator of the claim for compensation,
 - (d) when the claim for compensation is finalised—the holder of the claim amount is to pay:
 - (i) the amount of compensation agreed between the purchaser and vendor, or the amount determined by the arbitrator of the claim for compensation, to the purchaser, and
 - (ii) any amount remaining from the claim amount to the vendor,
 - (e) if the claim is taken to be withdrawn after completion—the claim amount is to be paid to the vendor.
- (7) A claim for compensation is taken to be withdrawn if an arbitrator has not been appointed to determine a claim for compensation within 4 months of the service of the claim notice or 3 months of completion, whichever occurs first.

[5] Clauses 21 and 22

Omit clause 21. Insert instead:

21 Material particulars for off the plan contracts

- (1) For the purposes of the definition of *material particular* in section 66ZL (1) of the Act, a provision of any of the following documents that will, or is likely to, adversely affect the use or enjoyment of the subject lot is a material particular:
 - (a) a strata management statement,
 - (b) a building management statement under Division 3B of Part 23 of the *Conveyancing Act 1919*,
 - (c) a management statement for a community, precinct or neighbourhood scheme,
 - (d) a strata development contract,
 - (e) a development contract.
- (2) For the purposes of the definition of *material particular* in section 66ZL (1) of the Act, the following are not material particulars:
 - (a) a change in the proposed lot number of the subject lot,
 - (b) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—a change in the location or area of the parking and storage area, but only if the change is made in accordance with the terms of the contract.
- (3) Expressions used in this clause have the same meaning as in clause 4A.

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22 Transitional provision for cooling off period form

- (1) A contract for the sale of residential property (other than an off the plan contract) may, until 1 March 2020, include the existing item 2 or the amended item 2 in Form 1 in Schedule 5.
- (2) In this clause:
amended item 2 means item 2 of Form 1 in Schedule 5 to this Regulation as amended by Schedule 1 [9] of the *Conveyancing (Sale of Land) Amendment Regulation 2019*.
existing item 2 means item 2 of Form 1 in Schedule 5 to this Regulation as in force immediately before the commencement of Schedule 1 [9] of the *Conveyancing (Sale of Land) Amendment Regulation 2019*.

[6] Schedule 1 Prescribed documents

Omit “section 66ZL” from item 15 (2) (b). Insert instead “Division 10 of Part 4”.

[7] Schedule 3 Prescribed warranties

Omit item 2 (d) (i) and (ii). Insert instead:

- (i) a Demolish Works Order as referred to in item 3 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*, in circumstances in which the building was erected without a required planning approval (within the meaning of that Schedule) or a required approval under the *Local Government Act 1993* or the building was erected in contravention of the *Environmental Planning and Assessment Act 1979*,
- (ii) a Restore Works Order, Compliance Order or Repair or Remove Works Order as referred to in items 10–12 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*,

[8] Schedule 3, item 4 (d) (i) and (ii)

Omit the subparagraphs. Insert instead:

- (i) a Demolish Works Order as referred to in item 3 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*, in circumstances in which the building was erected without a required planning approval (within the meaning of that Schedule) or a required approval under the *Local Government Act 1993* or the building was erected in contravention of the *Environmental Planning and Assessment Act 1979*,
- (ii) a Restore Works Order, Compliance Order or Repair or Remove Works Order as referred to in items 10–12 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*,

[9] Schedule 5 Forms

Omit item 2 in Form 1. Insert instead:

- 2 EXCEPT in the circumstances listed in paragraph 3, the purchaser may rescind the contract at any time before 5 pm on:
 - (a) the tenth business day after the day on which the contract was made—in the case of an off the plan contract, or
 - (b) the fifth business day after the day on which the contract was made—in any other case.