

2021

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Civil Law (Sale of Residential Property) Amendment Bill 2021

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Civil Law (Sale of Residential Property) Amendment Bill 2021

A Bill for

An Act to amend the *Civil Law (Sale of Residential Property) Act 2003*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

- 1 **1 Name of Act**
- 2 This Act is the *Civil Law (Sale of Residential Property) Amendment*
3 *Act 2021*.
- 4 **2 Commencement**
- 5 This Act is taken to have commenced on the day the bill for this Act
6 was presented to the Legislative Assembly.
- 7 **3 Legislation amended**
- 8 This Act amends the *Civil Law (Sale of Residential Property)*
9 *Act 2003*.
- 10 **4 Definitions for pt 2**
11 **Section 7, definitions of *unit* and *units plan***
- 12 *omit*
- 13 **5 Meaning of *required documents***
14 **Section 9 (2) (a) (iii)**
- 15 *omit*
- 16 (*an off-the-plan purchase*)
- 17 **6 Section 9 (2) (b)**
- 18 *omit*
- 19 an off-the-plan purchase
- 20 *substitute*
- 21 a residence mentioned in paragraph (a) (iii)

1 **7 New part 2A**

2 *insert*

3 **Part 2A Off-the-plan contracts**

4 **19A Definitions—pt 2A**

5 (1) In this part:

6 *delay event*, in relation to an off-the-plan contract—

7 (a) means any event delaying or preventing completion of the
8 contract including—

9 (i) an event delaying or preventing the construction of a
10 building or other related works; and

11 (ii) a delay in obtaining any approval, registration, permission,
12 exemption, insurance or any other thing necessary for
13 completion of the contract; but

14 (b) does not include—

15 (i) an event delaying or preventing completion of the contract
16 that the buyer has caused or substantially contributed to;
17 and

18 (ii) an event prescribed by regulation.

19 *off-the-plan contract* means a contract for the sale of—

20 (a) a unit for residential use before the units plan for the unit is
21 registered; or

22 (b) a residence (other than a unit) on land identified in the contract
23 before the certificate of occupancy for the residence is issued; or

24 (c) vacant land for residential use identified in the contract before
25 the Crown lease for the land is registered.

1 **rescission provision**, in an off-the-plan contract, means a provision
2 that allows the contract to be rescinded—

3 (a) if a sunset event stated in the contract does not happen before
4 the sunset date for the event; or

5 (b) if a delay event stated in the contract happens; or

6 (c) for any other reason prescribed by regulation.

7 **sunset date**, in relation to a sunset event in an off-the-plan contract,
8 means a date, or period in which, the sunset event must happen.

9 **sunset event**, in relation to an off-the-plan contract, means—

10 (a) for the sale of a unit for residential use—the registration of the
11 units plan for the unit; or

12 (b) for the sale of a residence—the issue of a certificate of
13 occupancy for the residence; or

14 (c) for the sale of vacant land for residential use—the registration
15 of the Crown lease for the land; or

16 (d) the issue of a certificate of occupancy in relation to the unit; or

17 (e) the issue of a certificate of compliance for the Crown lease for
18 the unit or land; or

19 (f) an event prescribed by regulation.

20 (2) In this section:

21 **certificate of compliance**—see the *Planning and Development*
22 *Act 2007*, dictionary.

23 **certificate of occupancy**—see the *Building Act 2004*, dictionary.

24 **registered** means registered with the registrar-general under the—

25 (a) *Land Titles Act 1925*; or

26 (b) *Land Titles (Unit Titles) Act 1970*.

1 **19B Rescission under rescission provision**

2 A seller under an off-the-plan contract containing a rescission
3 provision may only rescind the contract under the provision if—

- 4 (a) each buyer under the contract, after being given a notice under
5 section 19C, consents in writing to the rescission; or
- 6 (b) the Supreme Court has made an order under section 19D
7 allowing the seller to rescind the contract under the provision;
8 or
- 9 (c) a circumstance prescribed by regulation applies.

10 **19C Notice of intention to rescind under rescission provision**

- 11 (1) A seller under an off-the-plan contract proposing to rescind the
12 contract under a rescission provision must give each buyer under the
13 contract written notice at least 28 days before the day of the proposed
14 rescission.
- 15 (2) The written notice must state the following:
- 16 (a) the reason for the seller's proposed rescission of the contract;
- 17 (b) a statement to the effect that the buyer may, but need not,
18 consent to the proposed rescission;
- 19 (c) a statement explaining the effect of section 19B and
20 section 19D (4).

21 **19D Supreme Court may allow rescission**

- 22 (1) A seller under an off-the-plan contract containing a rescission
23 provision may apply to the Supreme Court for an order allowing the
24 seller to rescind the contract under the provision.
- 25 (2) The Supreme Court must not make the order unless the seller satisfies
26 the court that it is just and equitable to make the order.

- 1 (3) In deciding whether it is just and equitable to make the order, the
2 Supreme Court must take into account the following:
- 3 (a) the terms of the off-the-plan contract, including whether a term
4 is intended to avoid the operation of this part;
- 5 (b) whether the seller has acted unreasonably or in bad faith;
- 6 (c) whether factors beyond the seller's reasonable control have
7 affected the seller's ability to complete the contract or the
8 viability of the seller's business;
- 9 (d) what reasonable actions the seller has taken to—
- 10 (i) avoid a rescission event; or
- 11 (ii) if a rescission event has happened—minimise the effect of
12 the event on the seller's ability to complete the contract;
- 13 (e) whether there is a reasonable prospect of the seller completing
14 the contract;
- 15 (f) whether the unit or land the subject of the contract has increased
16 in value;
- 17 (g) the effect of the rescission on the buyer;
- 18 (h) whether the buyer has been performing their obligations under
19 the contract;
- 20 (i) the effect of completing the contract on the seller;
- 21 (j) any other matter that the court considers relevant;
- 22 (k) any other matter prescribed by regulation.
- 23 **Examples—par (c)**
- 24 1 disruption to supply of building materials
- 25 2 significant increase in cost of goods and services
- 26 3 inability to obtain or retain finance for the development

- 1 4 changes in the law affecting the development, building standards etc
2 5 imposition of conditions on development approval that require major changes
3 to the development

4 **Example—par (e)**
5 the extent to which a development has been completed

6 **Example—par (g)**
7 the ability of the buyer to enter the housing market after rescission of the contract

8 (4) The seller must pay the costs of the buyer in relation to a proceeding
9 for the order unless the seller satisfies the Supreme Court that the
10 buyer unreasonably withheld consent to the rescission of the
11 off-the-plan contract under the rescission provision.

12 (5) The Supreme Court may, in dealing with an application made under
13 this section, make any other order, including an order for damages,
14 that the court thinks fit.

15 (6) In this section:

16 *rescission event* means—

17 (a) a delay event; or

18 (b) an event prescribed by regulation under section 19A (1),
19 definition of *rescission provision*, paragraph (c).

20 **19E No automatic rescission of off-the-plan contracts**

21 (1) A rescission provision in an off-the-plan contract—

22 (a) does not automatically rescind the contract on an event allowing
23 the contract to be rescinded happening; and

24 (b) only operates to allow the contract to be rescinded by the seller
25 under the contract in accordance with this part.

26 (2) This section does not affect any right that a buyer under an
27 off-the-plan contract may have to rescind the contract.

1 **19F Review—pt 2A**

- 2 (1) The Minister must review the operation of this part as soon as
3 practicable after the end of its 2nd year of operation.
- 4 (2) The Minister must present a report of the review to the Legislative
5 Assembly within 6 months after the day the review is started.
- 6 (3) This section expires 5 years after the day this part commences.

7 **8 New part 9**

8 *insert*

9 **Part 9 Transitional—Civil Law (Sale of**
10 **Residential Property)**
11 **Amendment Act 2021**

12 **50 Existing off-the-plan contracts**

- 13 (1) Part 2A applies to an off-the-plan contract in force immediately
14 before the day part 2A commences.
- 15 (2) In this section:
16 *off-the-plan contract*—see section 19A (1).

17 **51 Expiry—pt 9**

18 This part expires 5 years after the day it commences.

19 *Note* A transitional provision is repealed on its expiry but continues to have
20 effect after its repeal (see [Legislation Act](#), s 88).

1 **9 Dictionary, new definitions**

2 *insert*

3 *delay event*, in relation to an off-the-plan contract, for part 2A
4 (Off-the-plan contracts)—see section 19A (1).

5 *off-the-plan contract*, for part 2A (Off-the-plan contracts)—see
6 section 19A (1).

7 *rescission provision*, in an off-the-plan contract, for part 2A
8 (Off-the-plan contracts)—see section 19A (1).

9 *sunset date*, in relation to a sunset event in an off-the-plan contract,
10 for part 2A (Off-the-plan contracts)—see section 19A (1).

11 *sunset event*, in relation to an off-the-plan contract, for part 2A
12 (Off-the-plan contracts)—see section 19A (1).

13 **10 Dictionary, definition of *unit***

14 *substitute*

15 *unit*—see the *Unit Titles Act 2001*, section 9.

16 **11 Dictionary, new definition of *units plan***

17 *insert*

18 *units plan*—see the *Unit Titles Act 2001*, section 7.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 November 2021.

2 Notification

Notified under the [Legislation Act](#) on 2021.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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