Changes To "Off The Plan" Sales In Queensland

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Recent changes to the *Queensland Land Sales Act* should be considered by all developers of land subdivisions and strata/community title lots. While it is now possible to sell land at an earlier stage of its development, these consessions have come at a cost to developers. Purchasers that sign up early have been given extensive rights to avoid their contracts if the project is not completed either within strict time limits or according to the plans given to the purchaser with the contract.

The *Land Sales Act* was originally passed in 1984 to regulate how land could be sold before development work had been carried out and plans registered. This made developers of land subject to controls that did not apply to strata/community title developers in similar circumstances. Developers of land said this placed them at an unnecessary disadvantage. The government has responded to those concerns by allowing pre-sales of undeveloped land as well as uncompleted strata/ community projects but, in the process, has tightened the requirements that developers must meet on both types of projects.

Of particular interest to those involved in the building process are the provisions entitling purchasers to avoid sale contracts because of construction delays or mis-description of lots and the penalties that developers expose themselves to if they fail to give all of the notices about these two issues required by this new legislation. Developers will want to pass these risks on to builders because time and quality issues are going to be within their control. Builders will, therefore, need to know the consequences to them for taking that risk on board.

The quality issues for land development are quite strict. With the ability now to sell a block of freehold land immediately after the local government gives subdivision approval comes the obligation to deliver a prospective purchaser a disclosure plan of the lot setting out its proposed shape, size, natural surface contours, final surface contours and fill levels. When it comes time for settlement of the sale the vendor must then disclose any "*significant variations*" between the disclosure plan and the lot as finally prepared. "*Significant variations*" of more than 2% in area, 1% in linear dimensions or more than 500mm of surface contours or fill levels will allow the purchaser to avoid the contract and obtain a refund of the purchase price. Vendors who do not give these disclosure notices face fines of up to $7,500.00 or 6 months imprisonment.

It is, therefore, important that developers make stringent checks of builder's work before releasing any security under the building contract to ensure that the completed work is very close to that set out in the disclosure plan given to the purchaser. To avoid prosecution for an offence under the *Act,* any discrepancies must be disclosed to purchasers within 14 days of of the developer getting the plan of survey that it proposes to register. Obviously with this disclosure comes the possibility that the purchaser may avoid the contract which in a falling market will expose the developer to a loss.

For both land and unit sales, time limits have been imposed for the completion of the development work. For land, the developer must give the purchaser a registrable transfer of the land together with the registered plan and other development documentation within 18 months after the purchaser enters the contract to buy the lot. For unit developments that time period is 3-1/2 years. There is no provision for those time limits to be extended and purchasers are entitled to avoid the purchase contracts once those times pass.

Delays by builders whether for reasons allowed under the building contract or otherwise can have serious consequences to developers. If these time limits are not met, purchasers may seek to get out of their contracts which could have a disasterous effect on precommitment levels that the developer was relying on to build the project in the first place.

With the loss of such sales, and the developer having to face the prospect of reselling into a falling market, the liquidated damages provisions fixing the level of compensation to the developer for delay (which are commonly calculated only by reference to financing and other holding costs) may go nowhere near compensating the developer for the losses incurred because of late completion. In some cases where the building programme is already tight the building contract may even entitle the builder to extensions of time past the 3-1/2 year time period when contracts may start to fall away so that the liquidated damages will not operate to provide compensation.

Particularly in high rise construction building contracts where the 3-1/2 year time may be tight, developers may want to think about excluding the application of liquidated damages from the damages calculation in the event that the builder's delay pushes the construction date past the 3-1/2 year deadline with the result that purchasers avoid their purchase contracts. In land development contracts attention will need to be given to the levels of accuracy expected of builders to ensure compliance with this new legislation can be enforced.