

Buying off the plan

Sometimes strata units or retirement village homes are advertised for sale before the building has been constructed. The design of the building and sketches of its final appearance may be included in advertising material well before occupation is possible. Buying a property under these circumstances is commonly known as buying 'off the plan'.

There are a number of issues to be aware of when buying off the plan because you are entering into a contract to buy a property without having first been able to view and assess the finished product.

The contract

When buying off the plan, the date for completing the contract is usually not until the building is finished. Commonly, the buyer pays a deposit to secure the property, with the balance payable upon settlement.

The conditions of the contract should be closely checked. Legal advice should be obtained on the benefits or restrictions provided by the terms of the contract. For example, consideration should be given to whether there are any penalties for withdrawing from the contract. Other questions you might need to ask could include:

- Can I make changes to the finishes in the kitchen and bathroom?
- Can I select appliances such as stoves and dishwashers and items such as floor and wall tiles?
- Can I visit the site during construction?
- If the building is finished earlier than expected, has finance been suitably arranged?
- What are my rights if construction is delayed?
- Is my deposit secure if the building doesn't proceed?
- Can I on-sell during the construction period?

Always read your contract and obtain advice from a lawyer or licensed conveyancer.

Home warranty insurance

Home warranty insurance is required to be taken out by the builder for residential building work (including the construction of strata units) valued over \$12,000. An

exception to this requirement is for the construction of new multi-storey buildings built after 31 December 2003. A multi-storey building is a building of more than three storeys (not including the car park) and containing two or more dwellings. Exemptions also apply to certain types of retirement villages.

All other residential building work that is not exempt must have home warranty insurance cover in place and a copy of the certificate of insurance must be attached to the contract of sale. The certificate is to show that the necessary insurance has been taken out by the builder.

The insurance is required to insure the buyer against:

- the risk of non-completion of the work, and
- breach of statutory warranties relating to the work.

However, a developer who sells a non multi-storey strata unit off the plan is exempt from attaching a certificate of insurance to the sale contract, but only if the building work has not yet commenced and the contract informs the buyer that:

- the developer selling the property does not need to give a certificate of home warranty insurance if the building work has not yet started
- the law requires there to be home warranty insurance in place for the building work before commencement of the work
- the developer is required to give the buyer the certificate of home warranty insurance within 14 days of the insurance being taken out
- the buyer can cancel the contract of sale if the home warranty insurance certificate is not provided within 14 days of the insurance being taken out.

Cancellations

The legal right to cancel the contract under the *Home Building Act 1989* is limited to situations without home warranty insurance at the arranged time. In this circumstance, the prospective purchaser can only cancel before the contract has been completed (settlement).

Warning to purchasers

A contract could be completed before the building work is finished and before any insurance is taken out. Where a contract for sale is completed and settled, the legal right to cancel the contract no longer applies, even if the builder has broken the law and not provided the necessary insurance.

Things you should think about

There may be substantial demand for housing in popular areas of NSW and it is sometimes easy for developers to market such properties months before building work is complete.

Are you paying too much?

Market prices fluctuate, therefore the resale value may be different to that of your expectations or predictions. It may be difficult to know whether the selling price off the plan will reflect the actual market value at the time your property is ready for occupation.

Funding the purchase

You may need to sell your present home to raise the money needed to pay the balance owing upon settlement. Timing of this sale is critical. You do not want to sell your home too early or too late as problems could arise either way.

This may be a particular issue for those buying retirement village accommodation off the plan.

Changes to plans

Changes to the building plans often need to be made during construction. This can sometimes mean that the finished complex is not exactly the same as shown in the original plan.

Quality of finish

When signing the contract, you may not know exactly how your particular property will look when construction is finished nor the precise quality or standard of fixtures and fittings. Sometimes, the fixtures and fittings are

different from how the buyer imagined, or what they were like in a display home at the time of sale.

Management contracts in place

In a strata scheme, the developer may have signed binding management contracts between the owners corporation and caretakers/building managers.

Prospective buyers are entitled to know the details and see copies of any such contracts. Your lawyer or licensed conveyancer can arrange the necessary searches.

Exclusive use or special privilege by-laws

The developer is not permitted to register by-laws which give exclusive use of desirable parts of the common property (eg. a roof garden or parking) so that they are only accessible to owners of certain lots. This type of by-law can only be made after the initial period (ie. after one-third of the lots have been sold).

Unit entitlement

The unit entitlement of the various lots within a strata scheme (which determines voting power at meetings and the required levy contributions) may not be specified or even known at the time properties are advertised for sale.

Summary

Remember that when you buy off the plan, you are paying for a property where the finished product may be different from your expectations.

NSW Fair Trading recommends that potential 'off-the-plan' buyers think carefully before entering into a contract to buy premises which have not been built. Caution should be exercised and appropriate legal and other advice obtained before signing any documents or paying any money.