

# Property developers welcome Land Sales Act and Body Corporate and Community Management Act changes

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16 October 2014

The *Land Sales and Other Legislation Amendment Bill 2014* ("Act") was passed by the Queensland Parliament and received Royal Assent on 26 September, 2014. The commencement date is tied to the commencement of the *Property Occupations Act 2014*. The commencement date of that Act is to be determined by proclamation which as at the date of writing has not yet been made. This article will discuss the effect of the amendments to the *Land Sales Act 1984 (Qld)* ("LSA") and the *Body Corporate and Community Management Act 1997 (Qld)* ("BCCMA") brought about by the Act.

## Effect of the amendments on the sale of proposed lots in community titles schemes (units, townhouses etc)

The previous version of the LSA dealt with both sales of proposed lots in a community titles scheme and ordinary land subdivision sales. The sale of proposed lots in a community titles scheme has now been moved entirely to the BCCMA.

A summary of changes is as follows:

- Maximum sunset date for provision of a property transfer form to the buyer is now five and a half years (if stipulated in the contract) which is an increase from three and a half years previously.
- A deposit of 20% may be taken which could previously have had adverse consequences for the developer.
- A disclosure plan must be provided showing enough detail to identify the lot sold. A draft building format plan prepared by a surveyor would meet these requirements.
- If there are changes to the development which would have to be disclosed to the buyers in what is termed a "further statement", that statement now needs to be provided at least 21 days prior to settlement. This provides the potential to advise of all changes to the development in only one further statement, rather than having to advise of each change within 14 days after it occurs. The prior provisions that allowed a buyer to terminate a contract if they were materially prejudiced by changes will continue to apply, and the termination rights must be exercised within 21 days.
- Developers will not be allowed to pay expression of interest monies into their own accounts. They must be paid directly to solicitors or agent's trust accounts.

## Effect of the amendments on the sale of lots in ordinary land subdivisions (non community titles scheme)

A summary of the changes to the LSA is as follows:

- The LSA will now no longer apply at all to small subdivisions of up to five lots. Previously an exemption had to be applied for to the minister.
- A development permit is now no longer required prior to selling land lots off the plan. However if one has been obtained that fact must be disclosed.
- A deposit of 20% may be taken which could previously have had adverse consequences for the developer.
- Options to purchase proposed lots are now specifically dealt with.
- If there are changes to the development which would have to be disclosed to the buyers in what is termed a “rectification statement”, that statement now needs to be provided at least 21 days prior to settlement. This avoids the scenario of having to wait until the changed plan has registered before advising the buyer then having to wait the mandatory 30 days before the buyer is required to settle.
- The material prejudice approach used since the inception of the BCCMA will now be used in respect of variations to the proposed lots in a land subdivision. Again, if the buyer is materially prejudiced by the changes the termination rights must be exercised within 21 days.
- Developers will not be allowed to pay expression of interest monies into their own accounts. They must be paid directly to solicitors or agent’s trust accounts.

### Comment

Developers will be encouraged by the changes which now create a more commercial approach than previously existed. The harmonisation between the land subdivision rules and the community title lot rules will make compliance simpler for developers and their solicitors. We believe this has been achieved without negatively impacting general consumer protection.

It will be interesting to see if developers begin to ask for 20% deposits to further “de-risk” their projects or if the fear of losing buyers will cause the current 10% deposit to remain the norm. It will also be interesting to see if financiers begin requiring 20% deposits for contracts to qualify as valid pre-sale contracts for their purposes.

Until the new Act is proclaimed the current regime will continue to apply.

Please contact **Peter Zdanowicz** of our office should you have any further queries.