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Australia

# Sale of Land Act Reforms

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## Background

The *Sale of Land Amendment Bill 2016* passed through parliament on 10 November 2016.

The legislation introduces greater protections for consumers when signing sales contracts for land that is not yet owned by the developer. It also provides certainty to developers, by supporting the ongoing, timely release of affordable new lots on to the market.

The legislation will take effect from 3 April 2017.

It is common practice for developers to sell a lot in a subdivision before they are the registered owner (1). This can expose the purchaser to risk, for example, if the finance for the development falls through or if an unscrupulous developer absconds with the deposit monies.

In 2014, the Supreme Court found in *Barker v Midstyle Nominees Pty Ltd* that a sales contract for a lot in a subdivision entered into before the developer is the owner of the land leaves both the purchaser and the seller/developer in an uncertain position.

In this case, the court found that the sales contract was unenforceable by the vendor, even after the vendor became the registered owner of the land. This also cast doubt on whether the purchaser's deposit was recoverable. The effect of the Barker decision has been that purchasers and sellers/developers of lots in a proposed subdivision have been less likely to enter into these types of contract.

## Changes made by the new Legislation

The new legislation makes the obligations of developers and buyers clear by:

- Applying the new provisions of the Act to all subdivisions not just developments that are five lots and more

- Making it mandatory for sellers to warn purchasers in writing that the developer does not own the land. If there is no warning, the sales contract becomes illegal and void.
- Imposing time limits on when the developer can become the registered owner of the land. This will normally be six month period or a specific date detailed in the sales contract. Contracts will become void and illegal if these time limits are not adhered to.
- Requiring the developer to make all reasonable endeavors to satisfy the vendor's condition in the contract before the expiry of the period by which it must be satisfied. These reasonable endeavors include taking steps to obtain the necessary regulatory approvals and lodging the necessary plans for the subdivision or proposed subdivision.
- Requiring the vendor to inform the purchaser of steps taken to satisfy the vendor's condition within a reasonable timeframe, if the purchaser requests this information in writing.
- Giving rights to the parties to terminate the contract if the conditions are not met or relevant notices are not given.
- Requiring sales deposits to be held in an Australian trust account operated by a third party such as a real estate agent, settlement agent or solicitor.
- Trust accounts will be audited for compliance with the new legislation.
- Increasing the maximum penalty for breaching the *Sale of Land Act 1970* from \$750 to \$100,000.

(1) Developers often sell lots before they have obtained final approval to subdivide land that is being purchased or, in the case of a building, before the building has commenced or been completed. This is because they need the commitment of purchasers in order to cover their upfront financial requirements and ensure the project is a success. Until the Certificates of Title are issued (after all approvals are in place), the developer is not officially the owner of the land. The *Sale of Land Amendment Bill 2016* provides the necessary protections for both the consumer and the developer in these instances.

## Further information

**Proposed 'approved form' of the statutory warning** [🔗](#) [PDF 0.2MB]

**Sale of Land Amendment Act 2016 Commencement Proclamation 2017** [🔗](#) [PDF 0.6MB]

## Where can I get more Information?

View Landgate's *Sale of Land Amendment Bill 2016* presentation material [\[1.6MB\]](#).

Contact Customer Service at Landgate on +61 (0)8 9273 7373 or via email [customerservice@landgate.wa.gov.au](mailto:customerservice@landgate.wa.gov.au).

If you want to read the *Sale of Land Amendment Bill 2016* then please view the **Western Australian Parliament website** [\[1\]](#).

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