

Purchasing an Apartment “Off the Plans” – Potential Pitfalls



The demand for apartments in recent years has seen purchasers signing sale and purchase contracts on the basis of plans for apartments not yet constructed. Such contracts will not necessarily include all of the clauses found in the standard form ADLS/REINZ contract usually used for purchasing a property.

Some of the issues to watch out for when buying an apartment are:

- **Deposit Payment** – how much is it (5 to 10% should be the maximum for an apartment not yet constructed); when is it payable and who to; and when can the developer get access to the deposit?
- **Sunset Clause** – it is common for the contract to be conditional upon the developer fulfilling a number of conditions, for example obtaining a building consent by a certain date. Sometimes the satisfaction date can be some time off. If so, a purchaser should include a sunset clause in the contract, which allows them to cancel the contract if the developer has not satisfied its conditions within a reasonable period of time. Purchasers are however also protected by Section 225 of the Resource Management Act, which enables them to get out of the contract if that is what they choose within the first two weeks, and secondly, it can get them out if the developer has not made reasonable progress in getting a title for the apartment.
- **Settlement Date** – Most problems in an “off the plans” transaction are associated with the settlement date. Purchasers tend to believe that settlement will take place on the specified date, when in fact this is highly unlikely. Also, prior to settlement the developer should allow the purchaser a pre-settlement inspection of the apartment, and is also required to provide a copy of the final Code Compliance Certificate for the complex.
- **Communal Facilities** – Purchasers should look at the communal facilities to be provided within the complex, such as swimming pools and gyms. Make sure that the contract actually requires the developer

to provide these facilities or allows you to reduce the price or cancel the contract if they do not.

- **Changes to the Plans and Specifications** – it is important that the developer actually builds what is shown on the plans. However, if the developer wishes to make significant material changes to the plans, then the purchaser should be able to reduce the price or cancel the contract and have their deposit returned.
- **Maintenance Period following Settlement** – the contract should provide for a maintenance period. This is a period after settlement when the developer has to fix any faults in construction that may arise, at no cost to you.
- **Future Development** – find out if there are any pending Resource Consents for adjoining sites that may affect your apartment block, potentially resulting in loss of light, outlook or view.
- **Unit Title Issues** – most apartment developments are developments under the Unit Titles Act. The Act provides for owners of unit title properties to pay a levy (called a body corporate levy) to cover costs such as insuring the structure of the development and maintaining common areas. In some cases, body corporate levies can be considerable, especially when there are items such as lifts to maintain within larger apartment complexes. This is highly likely to be your biggest expense after borrowings. It is a good idea to ask the developer for an estimate of the body corporate levies.

There are a number of issues to be considered when purchasing an apartment, whether off the plans or already constructed.

We can help!



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Important: This information is provided as a guide only and is not intended to be legal advice. You are strongly recommended to consult the services of an experienced property lawyer if you are considering purchasing an apartment.

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