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PURCHASE INFORMATION BOOKLET 'OFF THE PLAN' SUPPLEMENT

WHAT IS AN 'OFF THE PLAN' PURCHASE?

The term 'off the plan' refers to the fact that the property being purchased does not currently have its own Certificate of Title on the Day of Sale. There are two types of 'off the plan' purchases:

1. **The purchase of a vacant block of land**

This is usually the purchase of a lot in a large-scale residential development (a housing estate). You purchase the land and then make your own arrangements to build a house on the land.

2. **The purchase of a dwelling which is incomplete as at the Day of Sale**

The dwelling may be nearly finished and ready to move in to in a few months, or it may just be a vacant block of land, with the whole dwelling still to be built. It may be a stand-alone house, townhouse, or an apartment.

The process of buying in any of the above examples is fairly similar, and they share the same potential risks. For that reason, the below is a discussion of 'off the plan' transactions in general.

APARTMENTS

Probably the most common type of 'off the plan' transaction is when a large-scale developer sells residential apartments prior to construction even having commenced. Given the scale of such developments, selling 'off the plan' is usually the only way to proceed, as a bank will not provide the many millions of dollars required to complete these developments until it is sure that the developer will actually make money from the project.

What this means is that, generally speaking, a significant amount of time can elapse between the date the Contract of Sale is signed, and the date settlement takes place (when the property is finished). In some cases, the timeframe can even be more than 2 years.

The particular characteristics of 'off the plan' transactions carry with them both advantages and risks for the potential purchaser. Following is a short summary of those advantages and risks.

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ADVANTAGES OF PURCHASING 'OFF THE PLAN'

Minimal Upfront Investment

When purchasing an existing dwelling most vendors require the payment of a 10% cash deposit upfront. Further, to obtain approval of a loan, you will generally need to show your bank you have a further 10% in savings. Generally speaking, developers of 'off the plan' projects will be more inclined to accept as a deposit a deposit bond or bank guarantee. these can be obtained for a fee far less than 10% of the purchase price from a provider, meaning the upfront investment on your part is significantly less. Secondly, as you will not be obtaining finance immediately (because the settlement is usually a long time away), you do not need to have saved the other 10% before you sign a Contract.

Purchaser Incentives

Sometimes a developer will offer certain incentives to purchasers in order to get a certain number of pre-sales (pre-sales are required so that the developer can obtain finance to commence the project). These incentives can include rental guarantees, free appliances and even rebates (reductions of the purchase price).

Potential for Profit

A potential benefit of having such a long delay between the Day of Sale and the settlement date is that there is a possibility that the property market will improve significantly. This means that by the time settlement falls due the property may be worth significantly more than what you contracted to pay for it.

Stamp Duty

This is the most well-advertised advantage of purchasing 'off the plan'. Where you buy a property that is partially complete, including where construction has not yet even commenced, you will only be required to pay stamp duty on a proportion of the total purchase price if the property will be your principal place of residence (provided you reside in the property within 12 months of settlement and remain there for a continuous period of 12 months). There is a complex method of calculating exactly how much duty is payable, but the general rule is that the less construction there is on the Day of Sale, the less duty will be payable.

This stamp duty concession is limited to purchasers who intend to occupy the property as their principal place of residence. If the purchase is also a first home buyer, the exemption/concession applies to dutiable values up to $750,000. If the purchaser intends to use their property as their principal place of residence but is not a first home buyer, the concession applies to properties with a dutiable value of up to $550,000. The dutiable value is calculated as the value as at the contract date, which means that the dutiable value does not include the value of construction to be undertaken after contract.

RISKS OF PURCHASING 'OFF THE PLAN'

Being locked in

When you sign a Contract to buy a property 'off the plan', it will be a condition of that Contract that the Vendor has to have the plan registered by a certain date. This date is called the Sunset Date and is often at least 2 years from the Day of Sale (but can be as far as 5 years away). A purchaser can only withdraw from the Contract if the plan is not registered by the Sunset Date, so they are 'locked in' until that date. We often find that Purchasers expect a development to be finished by a certain date and when it isn't there is significant disappointment. There will also usually be restrictions on you 'on-selling' the property during the contract period, so even if you find someone to take over your contract, the developer may not agree.

Potential for loss

In the same way the market may improve between the Day of Sale and the settlement date, so may it deteriorate. In this case, a purchase may end up with a property which is worth far less than what they contracted to pay for it.

Contractual Terms

Vendors who sell large-scale residential developments 'off the plan' ensure that the Contracts that are prepared contain numerous special conditions that operate in the Vendor's favour. These conditions can often be quite unfair for a Purchaser but are generally non-negotiable as a Vendor does not want to leave itself exposed to claims by many Purchasers.

Dissatisfaction with finished product

Often the reality of the finished product upon completion of the development is starkly different to all the glossy marketing material proffered by the selling agent at the time the Contract was signed. Sometimes (though not often) the apartment

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complex as a whole is actually not even complete, and still resembles a building site. The Contract that you sign will say that you are obliged to settle when an Occupancy Permit is issued. An Occupancy Permit can be issued when the property is fit to inhabit, and that is often a very different level of completion to what purchasers expect. Broadly, an occupancy permit can be issued when the following works (where applicable) have been completed:

- Water supply
- Sanitary and cooking facilities
- Smoking alarms
- Safety glass
- Balcony handrails
- Balustrades

You will note from the above works that they relate primarily to safety issues and services of necessity (such as running water and the ability to prepare food). Cosmetic issues and finishing touches are not required for an Occupancy Permit to be obtained.

Changes to the Building

Another condition of the Contract of Sale will be that the Vendor can make alterations to the building plans where necessary. Although there is a limit on what changes can be made, that limit still leaves scope for some significant changes to be made to what you may have originally thought you were buying. Such changes include changes to floor coverings, fixtures and fittings, external finishes and, in limited circumstances, changes to the layout of the dwelling. This can often leave purchasers dissatisfied and with no legal recourse against the Vendor.

Owners Corporation Changes

If you are buying an apartment there will be common areas, such as entry areas, lifts and perhaps a pool. All of these areas need to be serviced by an Owners Corporation that will come into existence when construction is finalised. You need to factor into your calculations the cost of being a member of the Owners Corporation after completion and having to pay Owners Corporation fees. You should also consider whether any Owners Corporation Rules that will come into effect after completion of the building might affect you – for instance, a limitation on pets.

FEES

There is more work involved in acting on an 'off the plan' transaction, and this work is usually required to be performed within very tight time constraints at the end of the transaction. Further, as has been mentioned, there is generally a significant delay between the Day of Sale and the settlement date.

For these reasons our costs in 'off the plan' matters are $2,000 plus GST plus disbursements, with $880 payable at the commencement of the transaction and the balance payable at settlement.

A pre-purchase contract review for an 'off the plan' transaction is an additional $880 including GST.

CONCLUSION

As with all property transactions, 'off the plan' purchases carry with them both risks and the potential for rewards. The main difference with 'off the plan' transactions is that the potential risks and rewards are somewhat greater than if you were to purchase an existing dwelling. Ultimately, you should give careful consideration to any property transaction into which you propose to enter, especially an 'off the plan' purchase.

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