

1990 - No. 617

CONVEYANCING ACT 1919 - REGULATION

(Relating to sales of and options
to purchase residential property)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Conveyancing Act 1919, has been pleased to make the Regulation set forth hereunder.

GARRY WEST

Minister for Tourism, Lands and Forests.

Commencement

1. This Regulation commences on the commencement of the Conveyancing (Sale of Land) Amendment Act 1990.

Amendments - Conveyancing (Sale of Land) Regulation 1988

2. The Conveyancing (Sale of Land) Regulation 1988 is amended:

- (a) by omitting from the definition of "Crown land" in clause 3 the words "Crown Lands Consolidation Act 1913" and by inserting instead the words "Crown Lands Act 1989";
- (b) by omitting Part 2 and Schedule 1 and by inserting instead the following provisions:

PART 2 - SALE OF RESIDENTIAL PROPERTY

Statement to be contained in contract regarding cooling off period

4. (1) Form 1 in Schedule 1 is the form of the statement relating to the cooling off period required under section 66X of the Act to be included in every contract for the sale of residential property.

- (2) The statement must be legibly printed, with
 - (a) the words shown in bold face capital letters in that form printed in bold face capital letters at least 3 mm in height; and
 - (b) the rest of the statement printed in bold face figures and letters at least 1 mm in height.

Exemptions from the operation of Division 8 of Part 4 of the Act

5. (1) Division 8 (Sale of residential property) of Part 4 of the Act does not apply to any of the following contracts:

- (a) a contract between the owners of adjoining land which results solely in an adjustment of a boundary between allotments;
- (b) a contract between co-owners whereby one or more co-owner is acquiring the whole or any part of the share or interest of any other co-owner;
- (c) a contract for the sale of land to the Roads and Traffic Authority, being a contract expressed to be for the acquisition of land for the purposes of road works;
- (d) a contract for the sale, to the holder of a lease, holding or tenure under the Crown Lands (Continued Tenures) Act 1989, the Prickly-pear Act 1987 or the Western Lands Act 1901, of the fee simple in the whole or part of any land the subject of the lease, holding or tenure;
- (e) a contract for the sale of the whole or part of a closed road pursuant to section 20 (3) of the Public Roads Act 1902;
- (f) a contract for the sale of land entered into by the Minister administering the Environmental Planning and Assessment Act 1979 pursuant to section 9 of that Act;

- (g) a contract for the sale of land entered into by the Minister administering the Heritage Act 1977 pursuant to section 112 of that Act;
 - (h) a contract arising from the exercise of an option to purchase land where the option is contained in a will;
 - (i) a contract arising from the exercise of an option to purchase land where the option is contained in a lease.
- (2) Division 8 of Part 4 of the Act does not apply to the land described in Schedule 2, subject to subclause (3).
- (3) Item 1 of Schedule 2 (relating to the estate or interest created by or subsisting by virtue of a mortgage) does not operate to exclude from the application of Division 8 of Part 4 of the Act:
- (a) a contract for the sale of residential property by a mortgagee exercising a power of sale; or
 - (b) a contract for the sale of the equity of redemption in residential property.

PART 3 - OPTIONS FOR PURCHASE OF RESIDENTIAL PROPERTY

Implied warranty

6. (1) For the purposes of section 66ZA (1) of the Act, a vendor under an option to purchase residential property is to be deemed to have included in the option the following warranty:

The vendor warrants that, except as specifically disclosed in the option, the land to which the option relates is not affected at the date the option is granted by any of the matters specified in the warranty prescribed by clause 5 (1) of the Conveyancing (Vendor Disclosure and Warranty) Regulation 1986.

(2) If an option to purchase residential property relates to land that comprises or includes a lease of a lot as defined in the Strata Titles (Leasehold) Act 1986, the vendor under the option is to be deemed to have included in the option the following warranty (in addition to the warranty implied by subclause (1)):

The vendor warrants that, except as specifically disclosed in the option, the land to which the option relates is not

affected at the date the option is granted by any dispute with, notice to or claim upon the vendor by the lessor, evidenced in writing, in relation to a breach or alleged breach of a term or condition of the lease of the lot concerned.

(3) For the purposes of the warranty prescribed by subclause (1):

- (a) land is affected by a proposal of an authority or body if the authority or body has issued a statement in writing, the substance of which is inconsistent with there being no proposal of that authority or body affecting the land; and
- (b) the effect on any land of a proposal of an authority or body, or the fact that land is affected by a matter prescribed by Schedule 2 to the Environmental Planning and Assessment Regulation 1980, is specifically disclosed in an option if:
 - (i) in the case of land affected by a proposal of an authority or body, there is annexed to the option a statement issued by the authority or body, whether in answer to an inquiry or otherwise, stating the effect; or
 - (ii) in the case of land affected by a matter prescribed by Schedule 2 to the Environmental Planning and Assessment Regulation 1980, there is annexed to the option a certificate under section 149 (2) of the Environmental Planning and Assessment Act 1979 stating the effect,

or if, in either case, the effect is otherwise specifically disclosed in the option.

Rescission

7. (1) In the event of a breach of a warranty prescribed by clause 6, the purchaser may rescind the option by notice in writing served on the vendor at any time before the option is exercised or ceases to be exercisable, whichever is the earlier.

(2) A notice of rescission under this clause rescinds the option as from the time the option was granted.

- (3) If an option is rescinded under this clause:
 - (a) any consideration paid in relation to the option and any deposit paid in relation to the purchase of the property is to be refunded; and
 - (b) except to the extent that the option, as referred to in subclause (4), otherwise provides, neither the vendor nor the purchaser is liable to pay any other sum for damages, costs or expenses.
- (4) Nothing in this clause is to be taken to prohibit provision being made in an option for or in relation to:
 - (a) an adjustment between the vendor and purchaser where the purchaser has received the benefit of possession of the land; or
 - (b) the payment of damages, costs or expenses arising out of a breach of any term or condition, or any warranty (other than a warranty prescribed by clause 6) contained in the option.

Statement to be contained in option regarding cooling off period

8. (1) Form 2 in Schedule 1 is the form of statement relating to the cooling off period required under 66ZH of the Act to be included in every option to purchase residential property.
- (2) The statement must be legibly printed, with:
 - (a) the words shown in bold face capital letters in that form printed in bold face capital letters at least 3 mm in height; and
 - (b) the rest of the statement printed in bold face figures and letters at least 1 mm in height.

Exemptions from the operation of Division 9 of Part 4 of the Act

9. (1) Division 9 of Part 4 of the Act does not apply to any of the following options:
- (a) an option to purchase granted by an owner of land to the owner of adjoining land which will result solely in an adjustment of a boundary between allotments;

- (b) an option to purchase whereby one or more co-owners of land has an option to acquire the whole or any part of the share or interest of any other co-owner;
 - (c) an option to purchase granted to the Roads and Traffic Authority and expressed to be for the acquisition of land for the purposes of road works;
 - (d) an option granted to the holder of a lease, holding or tenure under the Crown Lands (Continued Tenures) Act 1989, the Prickly-pear Act 1987 or the Western Lands Act 1901, to purchase the fee simple in the whole or part of any land the subject of the lease, holding or tenure;
 - (e) an option to purchase the whole or part of a closed road pursuant to section 20 (3) of the Public Roads Act 1902;
 - (f) an option granted to the Minister administering the Environmental Planning and Assessment Act 1979 to purchase land pursuant to section 9 of that Act;
 - (g) an option granted to the Minister administering the Heritage Act 1977 to purchase land pursuant to section 112 of that Act;
 - (h) an option to purchase contained in a will;
 - (i) an option to purchase contained in a lease.
- (2) Division 9 of Part 4 of the Act does not apply to the land described in Schedule 2, subject to subclause (3).
- (3) Item 1 of Schedule 2 (relating to the estate or interest created by or subsisting by virtue of a mortgage) does not operate to exclude from the application of Division 9 of Part 4 of the Act:
- (a) an option to purchase residential property granted by a mortgagee exercising a power of sale; or
 - (b) an option to purchase the equity of redemption in residential property.

SCHEDULE 1 - FORMS

(Cll. 4, 8)

FORM 1

COOLING OFF PERIOD

(PURCHASER'S RIGHTS)

1. This is the statement required by section 66X of the Conveyancing Act 1919 and applies to a contract for the sale of residential property.

2. The purchaser may rescind the contract at any time before 5p.m. on the fifth business day after the day on which the contract was made, **EXCEPT** in the circumstances listed in paragraph 3.

3. There is **NO COOLING OFF PERIOD:**

- (a) if, at or before the time the contract is made, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66W of the Act; or
- (b) if the property is sold by public auction; or
- (c) if the contract is made on the same day as the property was offered for sale by public auction but passed in; or
- (d) if the contract is made in consequence of the exercise of an option to purchase the property, other than an option that is void under section 66ZG of the Act.

4. A purchaser exercising the right to cool off by rescinding the contract will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser as a deposit under the contract and the purchaser is entitled to a refund of any balance.

FORM 2

COOLING OFF PERIOD

(PURCHASER'S RIGHTS)

1. This is the statement required by section 66ZH of the Conveyancing Act 1919 and applies to an option to purchase residential property.

2. The purchaser may rescind the option at any time before 5p.m. on the fifth business day after the day on which the option was granted, **EXCEPT** in the circumstances listed in paragraph 3.

3. There is **NO COOLING OFF PERIOD:**

- (a) if, at or before the time the option is granted, the purchaser gives to the vendor (or the vendor's solicitor or agent) a certificate that complies with section 66ZF of the Act; or
- (b) if the option is granted on the same day as the property was offered for sale by public auction but passed in.

4. A purchaser exercising the right to cool off by rescinding the option will forfeit to the vendor 0.25% of the purchase price of the property. The vendor is entitled to recover the amount forfeited from any amount paid by the purchaser in relation to the option or from any deposit paid in relation to the purchase of the property and the purchaser is entitled to a refund of any balance.

**SCHEDULE 2 - LAND TO WHICH DIVISIONS 8 AND 9
OF PART 4 OF THE ACT DO NOT APPLY**

(Cl. 5, 9)

1. The estate or interest created by or subsisting by virtue of a mortgage, easement, permissive occupancy or profit-a-prendre.

2. An interest under a lease, other than:

- (a) a lease having an unexpired term (including any term for which the lease may be renewed at the option of the lessee) of more than 25 years; or

- (b) a lease of Crown land having an unexpired term of more than 5 years; or
- (c) a perpetual lease or other lease from the Crown having an unexpired term of more than 5 years; or
- (d) a lease of a lot as defined in the Strata Titles (Leasehold) Act 1986.

Amendments - Conveyancing (Vendor Disclosure and Warranty) Regulation 1986

3. The Conveyancing (Vendor Disclosure and Warranty) Regulation 1986 is amended:

- (a) by omitting clause 6 (2) (e) and by inserting instead the following paragraph:
 - (e) a contract for the sale, to the holder of a lease, holding or tenure under the Crown Lands (Continued Tenures) Act 1989, the Prickly-pear Act 1987 or the Western Lands Act 1901, of the fee simple in the whole or part of any land the subject of the lease, holding or tenure;
- (b) by inserting after clause 6 (3) the following subclause:
 - (3A) Subclause (3) (relating to the estate or interest created by or subsisting by virtue of a mortgage) does not operate to exclude from the operation of section 52A (2) of the Act:
 - (a) a contract for the sale of residential property by a mortgagee exercising a power of sale; or
 - (b) a contract for the sale of the equity of redemption in residential property.
- (c) by inserting after clause 6 the following clause:

Exemption for contracts arising from options to purchase

6A Section 52A (2) (a) of the Act (requirement to attach certain documents to contract) and clause 5 (implied warranty) do not apply to or in respect of a contract arising from an option to purchase:

- (a) which is not void under section 66ZG of the Act; and
- (b) to which is attached a copy of the proposed contract and the documents or copies of the documents prescribed for the purposes of section 52A (2) (a) of the Act.

EXPLANATORY NOTE

The object of this Regulation is to amend the Conveyancing (Sale of Land) Regulation 1988 and the Conveyancing (Vendor Disclosure and Warranty) Regulation 1986 in connection with the amendments made to the Conveyancing Act 1919 by the Conveyancing (Sale of Land) Amendment Act 1990.

This Regulation:

- (a) prescribes the form of notice that is to be included in contracts and options for the sale of residential property (the notice relates to a purchaser's right to rescind the contract or option during the cooling off period which is to apply under the amendments made to the Act); and
 - (b) lists the various contracts, options and land that are to be exempt from the amendments made to the Act; and
 - (c) applies to options to purchase residential land an implied warranty and rights of rescission that currently apply to contracts (under the Conveyancing (Vendor Disclosure and Warranty) Regulation 1986); and
 - (d) exempts a contract arising from the exercise of an option to purchase from the requirement to have certain relevant documents (e.g. a zoning certificate) attached to it and from the implied warranty (because a similar requirement and implied warranty will now apply to the option); and
 - (e) makes consequential changes.
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