



New South Wales

Conveyancing (Sale of Land) Amendment Regulation 2019

under the

Conveyancing Act 1919

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Conveyancing Act 1919*.

VICTOR DOMINELLO, MP
Minister for Customer Service

Explanatory note

The object of this Regulation is to make further provision in relation to off the plan contracts for the sale of residential land as a consequence of the amendments made by the *Conveyancing Legislation Amendment Act 2018*.

The Regulation also makes minor amendments of a law revision nature consequent on the *Environmental Planning And Assessment Amendment Act 2017*.

This Regulation is made under the *Conveyancing Act 1919*, including sections 52A, 66X, 66ZL(1) (the definition of *material particular*), 66ZM(2) and 202 (the general regulation-making power) and clause 1(1) of Schedule 9.

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1 Name of Regulation

This Regulation is the *Conveyancing (Sale of Land) Amendment Regulation 2019*.

2 Commencement

- (1) This Regulation commences on 1 December 2019, except as provided by this clause.
- (2) Schedule 1[9], [10] and [13]–[15] commence on the day on which this Regulation is published on the NSW legislation website.

Schedule 1 **Amendment of Conveyancing (Sale of Land) Regulation 2017**

[1] **Clause 3 Definitions**

Insert in alphabetical order in clause 3(1)—

disclosure statement has the same meaning as in Division 10 of Part 4 of the Act.

off the plan contract has the same meaning as in Division 10 of Part 4 of the Act.

[2] **Clause 4A**

Insert after clause 4—

4A Documents to be attached to off the plan contract and disclosure statement

- (1) For the purposes of section 66ZM(2)(a) of the Act, the following information must be included in a draft plan included in a disclosure statement attached to an off the plan contract—
 - (a) the proposed lot number of the subject lot,
 - (b) sufficient information to identify the location of the subject lot,
 - (c) the area of the subject lot,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft floor plan and draft location plan,
 - (e) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft location diagram, draft detail plan and draft community, precinct or neighbourhood property plan,
 - (f) the site of any proposed easement or profit à prendre affecting the subject lot,
 - (g) the site of any proposed restriction on the use of land or positive covenant affecting only part of the subject lot.
- (2) If the contract relates to land that comprises or includes a lot in a proposed strata scheme, it is not necessary for the draft plan to include the location or area of any parking or storage area.
- (3) For the purposes of section 66ZM(2)(b) of the Act, the following documents must be included in a disclosure statement attached to an off the plan contract—
 - (a) any proposed schedule of finishes,
 - (b) any instrument under section 88B of the Act that is proposed to be lodged with the draft plan,
 - (c) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—the draft by-laws,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed community, precinct or neighbourhood scheme—the draft management statement and the draft of any proposed development contract,
 - (e) if the contract relates to land that comprises or includes a lot in a proposed development scheme—the draft strata development contract,

- (f) if the contract relates to land that comprises or includes a lot in a proposed strata scheme that relates to a part strata parcel and a strata management statement will be required under section 99 of the *Strata Schemes Development Act 2015* for the registration of the strata plan—the draft strata management statement,
 - (g) if the contract relates to land that will be subject to a building management statement under Division 3B of Part 23 of the *Conveyancing Act 1919*—the draft building management statement.
- (4) A document specified in subclause (3) is taken to be included in a disclosure statement if it is attached to the contract.
- (5) A draft strata management statement or draft building management statement required to be included in a disclosure statement under this clause is not required to include a provision for the allocation of the costs of shared expenses (as required under clause 2(1)(e) of Schedule 4 to the *Strata Schemes Development Act 2015* or clause 2(1)(e1) of Schedule 8A to the *Conveyancing Act 1919*).
- (6) It is not necessary for the draft plan, or any document included in a disclosure statement, to strictly comply with any applicable lodgment rules or regulations under the *Real Property Act 1900* or any other Act, but substantial compliance is sufficient.
- (7) In this clause—
community property plan, community scheme, detail plan, development contract, location diagram, management statement, neighbourhood property plan, neighbourhood scheme, precinct property plan and *precinct scheme* have the same meaning as in the *Community Land Development Act 1989*.
development scheme, floor plan, location plan, part strata parcel, strata development contract and *strata management statement* have the same meaning as in the *Strata Schemes Development Act 2015*.
parking or storage area, in relation to a contract that relates to land that comprises or includes a lot in a proposed strata scheme, means the part of the subject lot that is to be used primarily for storage or parking (and not for residential purposes) and that is not contiguous to the main part of the subject lot.
strata scheme has the same meaning as in the *Strata Schemes Management Act 2015*.

[3] Clauses 6A–6D

Insert after clause 6—

6A Implied terms for all off the plan contracts

For the purposes of section 52A (2) (b) of the Act, the terms set out in clauses 6B–6D are prescribed for all off the plan contracts for the sale of land.

6B Purchaser may claim compensation instead of rescission

- (1) A purchaser under an off the plan contract for the sale of land who has a right to rescind the contract under section 66ZO or 66ZP of the Act, may, instead of rescinding the contract, make a claim for compensation from the vendor of up to 2% of the purchase price of the property.
- (2) A claim for compensation must be made before completion of the contract and no later than—

- (a) in the case of a right to rescind under section 66ZO of the Act—14 days after the purchaser receives the notice of changes in accordance with section 66ZN, or
 - (b) in the case of a right to rescind under section 66ZP of the Act—14 days after the purchaser receives the registered plan in accordance with that section.
- (3) A claim for compensation must be made by serving on the vendor a written notice (a **claim notice**) that specifies the following—
 - (a) the amount of compensation claimed by the purchaser,
 - (b) the change or inaccuracy that gives rise to the right to rescind,
 - (c) why the purchaser would not have entered into the contract had the purchaser been aware of the change or inaccuracy,
 - (d) how the purchaser would be materially prejudiced by the change or inaccuracy.
- (4) A claim notice must be signed by—
 - (a) the purchaser or the purchaser’s solicitor, or
 - (b) if there is more than one purchaser, each of the purchasers or their respective solicitors.
- (5) A claim notice must be served on—
 - (a) the vendor or the vendor’s solicitor, or
 - (b) if there is more than one vendor, any one of the vendors or the solicitor of any of the vendors.
- (6) Service of a claim notice may be effected in accordance with section 170 of the Act or at the address of the vendor shown in the contract or in accordance with the service provisions in the contract.
- (7) Service of a claim notice under this clause does not prevent completion of the contract.

6C Determination of compensation claims

- (1) A claim for compensation is finalised if—
 - (a) the vendor rectifies (to the satisfaction of the purchaser) the change or inaccuracy that gave rise to the right to rescind, or
 - (b) the vendor agrees to pay to the purchaser the amount of compensation claimed by the purchaser in the claim notice (the **claim amount**) or a lesser amount agreed by the purchaser, or
 - (c) an arbitrator determines the claim under this clause.
- (2) The parties are to appoint an arbitrator to determine a claim for compensation if the claim has not been finalised by agreement between the parties within 1 month of service of a claim notice or by completion of the contract, whichever occurs first.
- (3) If the parties do not appoint an arbitrator in accordance with subclause (2) within 2 months of the service of a claim notice or 1 month of completion (whichever occurs first), an arbitrator is to be appointed by, or in a manner approved by, the Secretary of the Department of Customer Service at the request of a party.
- (4) The amount that an arbitrator may determine the purchaser is entitled to in respect of a claim for compensation is not to exceed the claim amount.

- (5) If an arbitrator determines the claim, that decision is final and the purchaser is no longer able to rescind the contract under section 66ZO or 66ZP of the Act.
- (6) An arbitrator may also make an award of costs and the amount of compensation determined by the arbitrator is to be adjusted accordingly.
- (7) A claim for compensation is taken to be withdrawn if an arbitrator has not been appointed to determine a claim for compensation within 4 months of the service of the claim notice or 3 months of completion, whichever occurs first.

6D Settlement of compensation claim

- (1) If a claim for compensation is finalised before completion, the *compensation amount* (being the amount of compensation agreed between the vendor and purchaser or determined by an arbitrator) is to be paid to the purchaser as an adjustment on completion.
- (2) If a claim for compensation is not finalised before completion, the following applies—
 - (a) the claim amount is not to be paid to the vendor on completion,
 - (b) the holder of any deposit payable under the contract is to hold the claim amount until the claim is finalised or taken to be withdrawn, whichever occurs first,
 - (c) if the contract provides for the investment of any deposit payable under the contract—
 - (i) the holder of the claim amount may invest the amount in accordance with the relevant provisions of the contract, and
 - (ii) any interest earned on the claim amount is to be paid to the purchaser and vendor in the manner specified in the contract, or as otherwise determined by the arbitrator,
 - (d) when the claim for compensation is finalised—the holder of the claim amount is to pay—
 - (i) the compensation amount to the purchaser, and
 - (ii) any amount remaining from the claim amount to the vendor,
 - (e) if the claim is taken to be withdrawn after completion—the claim amount is to be paid to the vendor.
- (3) In this clause—
claim amount has the same meaning as in clause 6C.

[4] Clause 12 Form of statement relating to cooling off period

Omit clause 12(2). Insert instead—

- (2) The statement must be clearly legible and prominently located.

[5] Clause 15 Form of statement relating to cooling off period

Omit clause 15(2). Insert instead—

- (2) The statement must be clearly legible and prominently located.

[6] Clause 17 Purchaser may rescind contract or option

Insert after the note to clause 17(1)(a)—

- (a1) for the vendor's failure to attach a disclosure statement to an off the plan contract in accordance with section 66ZM of the Act and clause 4A, or

Note. The documents required to be included in the disclosure statement and the information required to be included in the draft plan (which is to be included in the disclosure statement) are specified in clause 4A.

[7] Clause 18 Method of rescinding contract or option

Insert “or a disclosure statement” after “the prescribed documents” in clause 18(1)(a).

[8] Part 5A

Insert after Part 5—

Part 5A Miscellaneous

19A Material particulars for off the plan contracts

- (1) For the purposes of the definition of *material particular* in section 66ZL (1) of the Act, a provision of any of the following documents that will, or is likely to, adversely affect the use or enjoyment of the subject lot is a material particular—
 - (a) a strata management statement,
 - (b) a building management statement under Division 3B of Part 23 of the Act,
 - (c) a management statement for a community, precinct or neighbourhood scheme,
 - (d) a strata development contract,
 - (e) a development contract.
- (2) For the purposes of the definition of *material particular* in section 66ZL (1) of the Act, the following are not material particulars—
 - (a) a change in the proposed lot number of the subject lot,
 - (b) a change in the proposed street name in which the subject lot is located,
 - (c) a change to, or the inclusion of, a provision for the allocation of the costs of shared expenses in a building management statement or strata management statement, but only if the allocation of costs complies with—
 - (i) for a building management statement—clause 2(1)(e1) of Schedule 8A to the Act, or
 - (ii) for a strata management statement—clause 2(1)(e) of Schedule 4 to the *Strata Schemes Development Act 2015*,
 - (d) if the contract relates to land that comprises or includes a lot in a proposed strata scheme—a change to, or the inclusion of the specific location or area of the parking or storage area, but only if the change or inclusion is made in accordance with the terms of the contract.
- (3) Expressions used in this clause have the same meaning as in clause 4A.

[9] Part 6, heading

Omit “Miscellaneous”. Insert instead “Savings and transitional provisions”.

[10] Clauses 21 and 22

Omit clause 21. Insert instead—

21 Conveyancing (Sale of Land) Amendment Regulation 2019

- (1) A contract for the sale of residential property entered into during the transitional period for that contract may include Form 1 in Schedule 5 as amended by the *Conveyancing (Sale of Land) Amendment Regulation 2019*, or as it was in force immediately before that amendment.
- (2) In this clause—
transitional period means—
 - (a) for an off the plan contract, from the commencement of this clause until 30 November 2019, and
 - (b) for any other contract for the sale of residential property, from the commencement of this clause until 1 June 2020.

22 Conveyancing Legislation Amendment Act 2018

Division 10 (other than section 66ZS) of Part 4 of the Act does not apply to an off the plan contract that is signed after the commencement of that Division if the contract arose from an option deed entered into before that commencement.

[11] Schedule 1 Prescribed documents

Omit “section 66ZL” from item 15 (2) (b). Insert instead “Division 10 of Part 4”.

[12] Schedule 1, item 16

Omit “legibly printed, in bold type, with the words shown in capital letters in the heading being at least 14 point, and the rest of the notice printed in letters at least 10 point”.

Insert instead “clearly legible and prominently located”.

[13] Schedule 3 Prescribed warranties

Omit item 2 (d) (i) and (ii). Insert instead—

- (i) a Demolish Works Order as referred to in item 3 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*, in circumstances in which the building was erected without a required planning approval (within the meaning of that Schedule) or a required approval under the *Local Government Act 1993* or the building was erected in contravention of the *Environmental Planning and Assessment Act 1979*,
- (ii) a Restore Works Order, Compliance Order or Repair or Remove Works Order as referred to in items 10–12 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*,

[14] Schedule 3, item 4(d)(i) and (ii)

Omit the subparagraphs. Insert instead—

- (i) a Demolish Works Order as referred to in item 3 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*, in circumstances in which the building was erected without a required planning approval (within the meaning of that Schedule) or a required approval under the *Local Government Act 1993* or the building was erected in contravention of the *Environmental Planning and Assessment Act 1979*,

- (ii) a Restore Works Order, Compliance Order or Repair or Remove Works Order as referred to in items 10–12 of Part 1 of Schedule 5 to the *Environmental Planning and Assessment Act 1979*,

[15] Schedule 5 Forms

Omit paragraph 2 in Form 1. Insert instead—

- 2** EXCEPT in the circumstances listed in paragraph 3, the purchaser may rescind the contract at any time before 5 pm on—
 - (a) the tenth business day after the day on which the contract was made—in the case of an off the plan contract, or
 - (b) the fifth business day after the day on which the contract was made—in any other case.