

Act No. 192

CONVEYANCING (SALE OF LAND) AMENDMENT BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Auctioneers and Agents (Sale of Land) Amendment Bill 1987;

Stamp Duties (Sale of Land) Amendment Bill 1987;

Land Sales (Amendment) Bill 1987.

The object of this Bill is to insert in Part IV of the Conveyancing Act 1919 a new Division 8 dealing with the practice commonly known as gazumping, in so far as it affects sales of residential property.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 amends the Conveyancing Act 1919 by inserting in Part IV a new Division 8 containing proposed sections 66P-66Y of which:

Section 66P provides for the interpretation of the new Division.

Section 66Q requires a vendor of residential property, before entering into a contract for its sale, to enter into a prescribed form of preliminary agreement (to which a draft of the contract is annexed) with a prospective purchaser on payment of a limited deposit.

Section 66R gives a purchaser under a contract for the sale of residential property—

- (a) if the contract was entered into without being preceded by a preliminary agreement—a right to rescind the contract at any time before completion and recover any deposit paid; or
- (b) if the contract was entered into before 2 business days have elapsed after entering into a preliminary agreement—a right to rescind the contract before the end of the period of 5 business days that commenced when the preliminary agreement was entered into.

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Section 66s confers on a purchaser, if the vendor breaches the preliminary agreement, the same rights of action for specific performance or damages as would have been available if the vendor had entered into the annexed draft contract and failed to complete it.

Section 66t provides that, if a vendor accepts more than a prescribed limited deposit—

- (a) on or before entering into a preliminary agreement; or
- (b) before 2 business days have elapsed after entering into a preliminary agreement, the deposit is not liable to forfeiture.

Section 66u renders void any option to purchase residential property that is exercisable within 30 days after being granted.

Section 66v—

- (a) provides that, except for the purposes of enforcement after a breach by the vendor, a preliminary agreement and its annexed draft contract do not constitute a contract for the sale of the property;
- (b) applies to a preliminary agreement the principles of section 54A of the Conveyancing Act 1919 preventing one party to the agreement from bringing an action on it without holding a copy signed by the other party; and
- (c) enables the parties to a preliminary agreement to agree upon changes to the form of the annexed draft contract.

Section 66w makes provision for the terms of the prescribed form of preliminary agreement, the general effect of which would be—

- (a) to require the vendor, within 5 business days after entering into the agreement, to serve on the purchaser a copy of the proposed contract of sale in the form annexed to the agreement;
- (b) to require the vendor to withhold the property from sale to another purchaser for at least 5 more business days to allow the purchaser to make financial and other arrangements;
- (c) to require the vendor to enter into a contract in the form annexed to the preliminary agreement, if the purchaser offers to do so within that later period of 5 days; and
- (d) to forfeit the limited preliminary deposit to the vendor if the purchaser fails to enter into the contract after having entered into the preliminary agreement.

Section 66x excludes from the operation of the proposed Division sales under lawful options, avoids the necessity to have a preliminary agreement if property is sold by auction or tender and makes other provision for the general operation of the Division.

Section 66y makes it an offence for a vendor of residential property to advertise the property for sale without having a draft contract of sale available for inspection by a prospective purchaser.
