



Australian Capital Territory

Civil Law (Sale of Residential Property) Amendment Act 2021

A2021-32

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Legislation amended	2
4 Definitions for pt 2	
Section 7, definitions of <i>unit</i> and <i>units plan</i>	2
5 Meaning of <i>required documents</i>	
Section 9 (2) (a) (iii)	2
6 Section 9 (2) (b)	2
7 New part 2A	3
8 New part 9	8

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

		Page
9	Dictionary, new definitions	9
10	Dictionary, definition of <i>unit</i>	9
11	Dictionary, new definition of <i>units plan</i>	9



Australian Capital Territory

Civil Law (Sale of Residential Property) Amendment Act 2021

A2021-32

An Act to amend the *Civil Law (Sale of Residential Property) Act 2003*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Civil Law (Sale of Residential Property) Amendment Act 2021*.

2 Commencement

This Act is taken to have commenced on the day the bill for this Act was presented to the Legislative Assembly.

3 Legislation amended

This Act amends the *Civil Law (Sale of Residential Property) Act 2003*.

**4 Definitions for pt 2
Section 7, definitions of *unit* and *units plan***

omit

**5 Meaning of *required documents*
Section 9 (2) (a) (iii)**

omit

(an *off-the-plan purchase*)

6 Section 9 (2) (b)

omit

an off-the-plan purchase

substitute

a residence mentioned in paragraph (a) (iii)

7 New part 2A*insert***Part 2A Off-the-plan contracts****19A Definitions—pt 2A**

(1) In this part:

delay event, in relation to an off-the-plan contract—

- (a) means any event delaying or preventing completion of the contract including—
 - (i) an event delaying or preventing the construction of a building or other related works; and
 - (ii) a delay in obtaining any approval, registration, permission, exemption, insurance or any other thing necessary for completion of the contract; but
- (b) does not include—
 - (i) an event delaying or preventing completion of the contract that the buyer has caused or substantially contributed to; and
 - (ii) an event prescribed by regulation.

off-the-plan contract means a contract for the sale of—

- (a) a unit for residential use before the units plan for the unit is registered; or
- (b) a residence (other than a unit) on land identified in the contract before the certificate of occupancy for the residence is issued; or
- (c) vacant land for residential use identified in the contract before the Crown lease for the land is registered.

rescission provision, in an off-the-plan contract, means a provision that allows the contract to be rescinded—

- (a) if a sunset event stated in the contract does not happen before the sunset date for the event; or
- (b) if a delay event stated in the contract happens; or
- (c) for any other reason prescribed by regulation.

sunset date, in relation to a sunset event in an off-the-plan contract, means a date, or period in which, the sunset event must happen.

sunset event, in relation to an off-the-plan contract, means—

- (a) for the sale of a unit for residential use—the registration of the units plan for the unit; or
- (b) for the sale of a residence—the issue of a certificate of occupancy for the residence; or
- (c) for the sale of vacant land for residential use—the registration of the Crown lease for the land; or
- (d) the issue of a certificate of occupancy in relation to the unit; or
- (e) the issue of a certificate of compliance for the Crown lease for the unit or land; or
- (f) an event prescribed by regulation.

- (2) In this section:

certificate of compliance—see the [Planning and Development Act 2007](#), dictionary.

certificate of occupancy—see the [Building Act 2004](#), dictionary.

registered means registered with the registrar-general under the—

- (a) [Land Titles Act 1925](#); or
- (b) [Land Titles \(Unit Titles\) Act 1970](#).

19B Rescission under rescission provision

A seller under an off-the-plan contract containing a rescission provision may only rescind the contract under the provision if—

- (a) each buyer under the contract, after being given a notice under section 19C, consents in writing to the rescission; or
- (b) the Supreme Court has made an order under section 19D allowing the seller to rescind the contract under the provision; or
- (c) a circumstance prescribed by regulation applies.

19C Notice of intention to rescind under rescission provision

- (1) A seller under an off-the-plan contract proposing to rescind the contract under a rescission provision must give each buyer under the contract written notice at least 28 days before the day of the proposed rescission.
- (2) The written notice must state the following:
 - (a) the reason for the seller's proposed rescission of the contract;
 - (b) a statement to the effect that the buyer may, but need not, consent to the proposed rescission;
 - (c) a statement explaining the effect of section 19B and section 19D (4).

19D Supreme Court may allow rescission

- (1) A seller under an off-the-plan contract containing a rescission provision may apply to the Supreme Court for an order allowing the seller to rescind the contract under the provision.
- (2) The Supreme Court must not make the order unless the seller satisfies the court that it is just and equitable to make the order.

- (3) In deciding whether it is just and equitable to make the order, the Supreme Court must take into account the following:
- (a) the terms of the off-the-plan contract, including whether a term is intended to avoid the operation of this part;
 - (b) whether the seller has acted unreasonably or in bad faith;
 - (c) whether factors beyond the seller's reasonable control have affected the seller's ability to complete the contract or the viability of the seller's business;
 - (d) what reasonable actions the seller has taken to—
 - (i) avoid a rescission event; or
 - (ii) if a rescission event has happened—minimise the effect of the event on the seller's ability to complete the contract;
 - (e) whether there is a reasonable prospect of the seller completing the contract;
 - (f) whether the unit or land the subject of the contract has increased in value;
 - (g) the effect of the rescission on the buyer;
 - (h) whether the buyer has been performing their obligations under the contract;
 - (i) the effect of completing the contract on the seller;
 - (j) any other matter that the court considers relevant;
 - (k) any other matter prescribed by regulation.

Examples—par (c)

- 1 disruption to supply of building materials
- 2 significant increase in cost of goods and services
- 3 inability to obtain or retain finance for the development

- 4 changes in the law affecting the development, building standards etc
- 5 imposition of conditions on development approval that require major changes to the development

Example—par (e)

the extent to which a development has been completed

Example—par (g)

the ability of the buyer to enter the housing market after rescission of the contract

- (4) The seller must pay the costs of the buyer in relation to a proceeding for the order unless the seller satisfies the Supreme Court that the buyer unreasonably withheld consent to the rescission of the off-the-plan contract under the rescission provision.
- (5) The Supreme Court may, in dealing with an application made under this section, make any other order, including an order for damages, that the court thinks fit.
- (6) In this section:
 - rescission event* means—
 - (a) a delay event; or
 - (b) an event prescribed by regulation under section 19A (1), definition of *rescission provision*, paragraph (c).

19E No automatic rescission of off-the-plan contracts

- (1) A rescission provision in an off-the-plan contract—
 - (a) does not automatically rescind the contract on an event allowing the contract to be rescinded happening; and
 - (b) only operates to allow the contract to be rescinded by the seller under the contract in accordance with this part.
- (2) This section does not affect any right that a buyer under an off-the-plan contract may have to rescind the contract.

19F Review—pt 2A

- (1) The Minister must review the operation of this part as soon as practicable after the end of its 2nd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 5 years after the day this part commences.

8 New part 9

insert

Part 9 Transitional—Civil Law (Sale of Residential Property) Amendment Act 2021

50 Existing off-the-plan contracts

- (1) Part 2A applies to an off-the-plan contract in force immediately before the day part 2A commences.
- (2) In this section:

off-the-plan contract—see section 19A (1).

51 Expiry—pt 9

This part expires 5 years after the day it commences.

Note A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

9 Dictionary, new definitions

insert

delay event, in relation to an off-the-plan contract, for part 2A (Off-the-plan contracts)—see section 19A (1).

off-the-plan contract, for part 2A (Off-the-plan contracts)—see section 19A (1).

rescission provision, in an off-the-plan contract, for part 2A (Off-the-plan contracts)—see section 19A (1).

sunset date, in relation to a sunset event in an off-the-plan contract, for part 2A (Off-the-plan contracts)—see section 19A (1).

sunset event, in relation to an off-the-plan contract, for part 2A (Off-the-plan contracts)—see section 19A (1).

10 Dictionary, definition of *unit*

substitute

unit—see the [Unit Titles Act 2001](#), section 9.

11 Dictionary, new definition of *units plan*

insert

units plan—see the [Unit Titles Act 2001](#), section 7.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 November 2021.

2 Notification

Notified under the [Legislation Act](#) on 10 December 2021.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Civil Law (Sale of Residential Property) Amendment Bill 2021, which was passed by the Legislative Assembly on 1 December 2021.

Clerk of the Legislative Assembly

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