

2021

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Peter Cain)

Civil Law (Sale of Residential Property) Amendment Bill 2021

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Civil Law (Sale of Residential Property) Amendment Bill 2021

A Bill for

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 **1 Name of Act**
- 2 This Act is the *Civil Law (Sale of Residential Property) Amendment*
- 3 *Act 2021*.
- 4 **2 Commencement**
- 5 This Act commences on the day after its notification day.
- 6 *Note* The naming and commencement provisions automatically commence on
- 7 the notification day (see [Legislation Act](#), s 75 (1)).
- 8 **3 Legislation amended**
- 9 This Act amends the *Civil Law (Sale of Residential Property)*
- 10 *Act 2003*.
- 11 **4 New division 2.1 etc**
- 12 *insert*
- 13 **Division 2.1 Definitions—pt 2**
- 14 **5A Definitions—pt 2**
- 15 In this part:
- 16 *class A unit*—see the [Unit Titles Act 2001](#), section 10.
- 17 *class B unit*—see the [Unit Titles Act 2001](#), section 11.
- 18 *seller*, of residential property, means a person who—
- 19 (a) has a legal or equitable interest in the property that the person is
- 20 entitled to sell; and
- 21 (b) offers to sell, or invites an offer to buy, the interest.

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1 ***lease conveyancing inquiry documents***, for a property, means the
2 documents prescribed under the regulations for this definition.

3 ***prospective buyer***, of residential property, includes a prospective
4 grantee of an option to buy the property.

5 ***rescission notice*** means a notice given under section 14 (Right to
6 rescind during cooling-off period).

7 ***residence*** means a building (or part of a building) used, or intended
8 for use, as a single dwelling, and includes any outbuildings or other
9 structures used in conjunction with the building or part.

10 ***sublease***—see the [Planning and Development Act 2007](#), section 234.

11 ***unapproved structure*** means—

12 (a) a structure—

13 (i) the building of which contravened the [Building Act 2004](#),
14 or other territory law regulating building work, at the time
15 it was built; or

16 (ii) the use or occupancy of which contravenes the [Building](#)
17 [Act 2004](#); or

18 (b) a structure—

19 (i) the building of which required development approval
20 under the [Planning and Development Act 2007](#), or other
21 territory law regulating development, at the time it was
22 built; and

23 (ii) that had no approval or, when built, did not comply with
24 the approval.

1	8	Meaning of <i>required documents</i>
2		Section 9 (1)
3		<i>omit</i>
4		For this part,
5		<i>substitute</i>
6		For this division,
7	9	Section 9 (2) (a) (iii)
8		<i>omit</i>
9		(an <i>off-the-plan purchase</i>)
10	10	Section 9A heading
11		<i>substitute</i>
12	9A	Meaning of <i>eligible impacted property</i> and <i>eligible</i>
13		<i>impacted property buyback program</i>—div 2.2
14	11	Section 9A (1)
15		<i>omit</i>
16		In this part:
17		<i>substitute</i>
18		In this division:

12 New division 2.3

insert

Division 2.3 Off-the-plan contract for sale of unit

19A Application—div 2.3

This division applies to an off-the-plan contract entered into on or after the commencement of this section.

19B Definitions—div 2.3

In this division:

off-the-plan contract means a contract for the sale of residential property that is a unit in a units plan before the plan is registered.

registered means registered with the registrar-general under the [Land Titles \(Unit Titles\) Act 1970](#).

sunset date means the latest date by which the sunset event for an off-the-plan contract must happen.

sunset event, for an off-the-plan contract, means—

- (a) the registration of the units plan showing the unit the subject of the contract; or
- (b) an event prescribed by regulation.

sunset provision, in an off-the-plan contract, means a provision that allows the contract to be rescinded if the sunset event does not happen by the sunset date.

unit includes a proposed unit.

units plan includes a proposed units plan.

1 **19C Effect of sunset provision**

- 2 (1) A sunset provision in an off-the-plan contract—
- 3 (a) does not automatically rescind the contract on the sunset date;
- 4 and
- 5 (b) is taken to allow the contract to be rescinded on or after the
- 6 sunset date in accordance with this division.
- 7 (2) This section does not affect any right that a buyer may have to rescind
- 8 an off-the-plan contract under a sunset provision.

9 **19D Rescission under sunset provision**

10 A seller must not rescind an off-the-plan contract under a sunset

11 provision on the grounds that the sunset event has not happened by

12 the sunset date, unless—

- 13 (a) each buyer under the contract, at any time after being given a
- 14 notice under section 19E, consents in writing to the rescission;
- 15 or
- 16 (b) the Supreme Court has made an order under section 19F
- 17 allowing the seller to rescind the contract under the sunset
- 18 provision; or
- 19 (c) a circumstance prescribed by regulation applies.

20 **19E Notice of intention to rescind under sunset provision**

- 21 (1) A seller proposing to rescind an off-the-plan contract under a sunset
- 22 provision must, at least 28 days before the date of the proposed
- 23 rescission, serve each buyer under the contract with a written notice
- 24 stating the reasons—
- 25 (a) for the seller's proposed rescission of the contract; and
- 26 (b) why the sunset event has not happened by the sunset date.

- 1 (2) The seller may serve the notice on the buyer by serving it to a person
2 who is authorised under the off-the-plan contract as a representative
3 of the buyer.

4 *Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

5 **19F Supreme Court may allow rescission**

- 6 (1) The Supreme Court may, on the application of a seller under an
7 off-the-plan contract, make an order allowing the seller to rescind the
8 contract under a sunset provision, but only if the seller satisfies the
9 court that making the order is just and equitable in all the
10 circumstances.

- 11 (2) In deciding whether it is just and equitable in all the circumstances to
12 make the order, the court must take into account the following
13 considerations:

- 14 (a) the terms of the off-the-plan contract;
15 (b) whether the seller has acted unreasonably or in bad faith;
16 (c) the reason for the delay in the sunset event happening;
17 (d) the likely date on which the sunset event would happen;
18 (e) whether the unit the subject of the contract has increased in
19 value;
20 (f) the effect of the rescission on each buyer;
21 (g) any other matter that the court considers relevant;
22 (h) any other matter prescribed by regulation.

- 23 (3) The seller must pay the costs of a buyer in relation to a proceeding
24 for an order under this section unless the court is satisfied that the
25 buyer unreasonably withheld consent to the rescission of the
26 off-the-plan contract under the sunset provision.

13 Energy efficiency rating statement
Section 23 (5)

omit

(Application of pt 2)

substitute

(Application—div 2.2)

14 Definitions for pt 4
Section 24, definition of *seller*

substitute

seller, of residential property—see section 5A.

15 Dictionary, definitions of *building conveyancing inquiry documents* etc

substitute

building conveyancing inquiry documents, for a residence, for division 2.2 (Contract for sale of residential property)—see section 7.

class A unit, for part 2 (Sale of residential property)—see section 5A.

class B unit, for part 2 (Sale of residential property)—see section 5A.

eligible impacted property, for division 2.2 (Contract for sale of residential property)—see section 9A (1).

eligible impacted property buyback program, for division 2.2 (Contract for sale of residential property)—see section 9A (1).

encumbrance, in relation to residential property proposed to be sold, for division 2.2 (Contract for sale of residential property)—see section 7.

lease conveyancing inquiry documents, for a property, for division 2.2 (Contract for sale of residential property)—see section 7.

- 1 **16 Dictionary, new definition of *off-the-plan contract***
- 2 *insert*
- 3 *off-the-plan contract*, for division 2.3 (Off-the-plan contract for sale
- 4 of unit)—see section 19B.
- 5 **17 Dictionary, definition of *prospective buyer***
- 6 *substitute*
- 7 *prospective buyer*, of residential property, for division 2.2 (Contract
- 8 for sale of residential property)—see section 7.
- 9 **18 Dictionary, new definition of *registered***
- 10 *insert*
- 11 *registered*, for division 2.3 (Off-the-plan contract for sale of unit)—
- 12 see section 19B.
- 13 **19 Dictionary, definitions of *required documents etc***
- 14 *substitute*
- 15 *required documents*, for division 2.2 (Contract for sale of residential
- 16 property)—see section 9.
- 17 *rescission notice*, for division 2.2 (Contract for sale of residential
- 18 property)—see section 7.
- 19 *residence*, for division 2.2 (Contract for sale of residential
- 20 property)—see section 7.

- 1 **20 Dictionary, definition of *seller***
- 2 *omit*
- 3 section 7
- 4 *substitute*
- 5 section 5A
- 6 **21 Dictionary, definition of *sublease***
- 7 *substitute*
- 8 *sublease*, for division 2.2 (Contract for sale of residential property)—
- 9 see the [Planning and Development Act 2007](#), section 234.
- 10 **22 Dictionary, new definitions**
- 11 *insert*
- 12 *sunset date*, for division 2.3 (Off-the-plan contract for sale of unit)—
- 13 see section 19B.
- 14 *sunset event*, for an off-the-plan contract, for division 2.3
- 15 (Off-the-plan contract for sale of unit)—see section 19B.
- 16 *sunset provision*, in an off-the-plan contract, for division 2.3
- 17 (Off-the-plan contract for sale of unit)—see section 19B.
- 18 **23 Dictionary, definitions of *unapproved structure* and *unit***
- 19 *substitute*
- 20 *unapproved structure*, for division 2.2 (Contract for sale of
- 21 residential property)—see section 7.

- 1 ***unit***—
2 (a) for part 2 (Sale of residential property)—see section 5A; and
3 (b) for division 2.3 (Off-the-plan contract for sale of unit)—see
4 section 19B.

5 **24 Dictionary, new definition of *units plan***

6 *insert*

7 ***units plan***—

- 8 (a) for part 2 (Sale of residential property)—see section 5A; and
9 (b) for division 2.3 (Off-the-plan contract for sale of unit)—see
10 section 19B.

Endnotes

1 Presentation speech

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

2 Notification

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

3 Republications of amended laws

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