

Australian Bureau of Statistics figures show there were 28,527 units completed over the December 2016 quarter, compared to 28,102 houses in the same period. This is 5901 more than the number of units built during the September 2016 quarter.

In Melbourne, we continue to see new developments enter the market and potential buyers are really spoilt for choice. These apartment purchases usually come with a daunting 200 (approx.) page contract which the agents advise is a “standard” off the plan contract.



WHAT ARE THE “STANDARD” CONDITIONS AND HOW THEY AFFECT YOU?

Subdivision plan yet to be registered

As construction hasn't started with the development, the subdivision plan which carves out your apartment from the title of the whole block is not registered when you sign the contract.

A proposed Plan is included in the contract to give you some idea as to the location of your apartment within the development but you will not have any right to claim compensation from the developer if the Plan as registered is not exactly the same as the proposed Plan in the contract unless the amendment "materially affects" your apartment. The developer also has ample rights to terminate the contract for a variety of reasons.

Covenants to be registered on title

Usually, when land is being developed and various planning and building permits are obtained from Council, agreements will be made between the

developer and Council/or other relevant authorities regarding the land and such agreements (known as S.173 Agreements) will be registered on title which will affect all future owners of the land.

You will be bound by all these obligations whatever they are. Most of these obligations apply to the developer during the construction period and do not have any ongoing effect on the purchaser. However, there can be maintenance provisions or restrictions which will bind all future apartment owners.

Construction of the Building and the Works

The building is usually constructed pursuant to a building contract between the developer and the builder where you do not have any contractual relationship with the builder.

Usually the Works are not detailed in any architectural drawings with only a list of fixtures and fittings for your information and selection. The developer may approve variations to the Works and the substitution of the standard finishes and fittings with other finishes and fittings of the same nature and similar quality without your consent.

There is also a defects and faults liability period which will run from the date of issue of the occupancy permit ("Defects Liability Period"). You are required to advise the developer of any defects within a stipulated time period after settlement if you require those defects rectified. Please note that as you do not have any "agreement" with the builder, you will need to rely on the developer to arrange for the defects to be fixed during the Defects Liability Period.

Changes to fixtures and fittings

Essentially, what is stated in the Plans and Specifications can change as well as the proposed configuration of the apartment.

Limitation of rights as owner

You must comply with the Owners Corporation Rules which govern and regulate how common property is to be used by all. Usually until the developer has sold all of the units in the development, you are not allowed to exercise your voting rights as owner at Owners Corporation meetings which may hinder the completion of the development, delay the approval required for the development, be contrary to the reasonable directions of the developer.

Restrictions on re-sale

You are not allowed to sell, transfer or enter into an agreement to sell the apartment until after settlement.

Utilities connection

The purchase price does not normally include connection to utilities and if some utilities are not available to the apartment at settlement, you will not have the right to delay settlement. It is your responsibility to connect the utilities to your apartment or pay the developer additional fees for such connections.

Car Park and Storage

The final location of the car park and storage units can change from the locations indicated on the Plan attached to the contract as the developer has full rights to rearrange such locations.

Staged Development

If your apartment is part of a staged development, the developer has the right to decide when and how the next stages of the development will take shape. You must also be prepared for any inconvenience or disruption that may affect your enjoyment of your apartment arising from future construction works.

IN ESSENCE

Given the right on the part of the developer to make changes to the Plans and the finishes and fittings, you may find the end product very different from what you may expect.

With off the plan contracts, you are buying a property without seeing what it is like and when the plans that you are shown can be changed by the developer, there is no guarantee that what you will get will meet your expectations.

Note: The information contained in this article and on www.laulegal.consulting website is general information only and does not constitute legal advice.

DO NOT SIGN ANY CONTRACT UNTIL YOU HAVE OBTAINED LEGAL ADVICE

CONTACT US FOR A CONSULTATION TODAY.