

New mandatory requirements for developers – are you prepared?

By Murray Colvin, Special Counsel (February 2017)

Amendments to Sale of Land Act

Significant changes to the *Sale of Land Act 1970* (WA) (**Act**) apply from **3 April 2017**. The amendments have broad implications for both sellers/developers and purchasers of proposed subdivision or strata title lots. Amongst other things, they:

- introduce greater protections for consumers when signing sales contracts for land that is not yet owned by the developer;
- provide certainty to developers as to their obligations and the procedure to be followed when bringing new lots on to the market; and
- impose significant penalties for failing to comply with the new regime (fines are up from \$750 to \$100,000).

Effect of the new legislation

The new provisions contained in the *Sale of Land Amendment Act 2016*:

- 1 Apply to **all** subdivisions – from backyard subdivisions to large strata developments.
- 2 Make it mandatory for sellers to warn purchasers in writing that the developer does not own the land. If there is no warning, the sales contract becomes illegal and void.
- 3 Require all future lot contracts to be conditional on the vendor becoming the registered owner of the sale lot within six months or an agreed period.
- 4 Require the developer to make all reasonable endeavours to satisfy the vendor's condition, provide information to the purchaser about action taken to complete the sub-division (if requested) and then notify the purchaser within 10 days of completion of the proposed sub-division.
- 5 Require sales deposits to be held in an Australian trust account operated by a third party (eg real estate agent, settlement agent or solicitor).
- 6 Give rights to the parties to terminate the contract if the conditions are not met or relevant notices are not given within strict time limits.

Action required

- The new provisions contained in the Act must be addressed for any strata development or land subdivision contracts signed after 3 April 2017.
- Pro-forma contracts for existing developments should be reviewed to ensure compliance with the new requirements.
- Complying documentation is required for a subdivision whether or not the contracts are executed by the current registered owner of the land being subdivided. This is because the requirement to be the proprietor of the relevant lot cannot be met until the subdivided lots are fully recognised by the Registrar of Titles.

How can I find out more?

At IRDI Legal, our experienced and specialised **Property team** can assist you with any contractual and property questions. Please contact us to find out more.