

# Statute Eclipses Sunset Clauses: Conveyancing Amendment (Sunset Clauses) Act 2015

On 24 November 2015, the Conveyancing Amendment (Sunset Clauses) Act 2015 ("the Act") was assented to by NSW Parliament and came into force. The preamble states that it is an Act "to prevent a developer from unreasonably rescinding an off the plan contract for a residential lot under a sunset clause." The Act has arisen in response to matters recently reported in the media where developers have used the sunset clause provision to rescind contracts, often ones exchanged many years prior, and then resell those lots for a much higher price.

A 'sunset clause' is a clause permitting rescission of a residential off-the-plan contract if the deposited plan or strata plan creating the lot the subject of the contract has not been registered by a certain date. It is common for off-the-plan contracts to contain a provision allowing either party to rescind if the relevant plan has not been registered by a certain future date, the 'sunset date'.

The Act now provides that if a developer/vendor wishes to rescind a contract using the sunset clause provision, they must:

- give the purchaser 28 days notice of their intention to rescind and provide reasons for the delay in plan registration; and
- either obtain the purchaser's consent to rescission of the contract or if the purchaser will not provide consent, obtain a Supreme Court order permitting the vendor to rescind the contract.

If a vendor is applying for a Supreme Court order to rescind, the Act states that the matters the court must take into account include the reason for the delay in creating the subject lot, whether the lot has increased in value and the effect of the rescission on the purchaser.

The Act also has some retrospective application, applying to all off-the-plan contracts entered into from 2 November 2015.

**By Bannermans Lawyers**

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