Seller's Duties of Disclosure under WA's Strata Title Reforms

3 May 2019

The amendments proposed to the *Strata Titles Act 1985* (WA) (the Act) introduce new disclosure obligations for sellers of strata titles.

This article will look at what information the sellers of strata lots need to give to buyers.

Why the reform?

Some readers may have heard of the Latin term 'caveat emptor', which means 'buyer beware'. It is an old maxim that advises all buyers to be careful, thus reflecting much human experience in the practice of buying and selling things. It suggests that buyers should take great care to be as informed as possible about what it is that they are buying. Of course, today, much of that is assisted by consumer laws.

But in the case of strata properties, consumers and investors would be buying a somewhat more complex thing than freehold properties and indeed than most things.

This is because strata properties exist in a somewhat complex matrix of scheme rules, regulations and the management by-laws of a strata company. As a result, the buyer of a strata property will not just be acquiring the right to live in the apartment, unit or villa. He or she will be acquiring a whole range of rights and obligations as well.

In the case of off-the-plan purchases, the buyer might possibly even be getting something not quite bargained for, because the property developer might have made changes to the plans after taking the deposit, but before settlement.

All of this places buyers at risk of buying a strata property which does not match their understanding of what they thought they were buying.

The reforms aim to ensure that buyers receive enough information about the strata property to be able to form a judgment about the intended purchase. And if the information suggests that they will not be getting what they bargained for, then they will have remedies under the amendments to the law.

What information must sellers disclose pre-contract?

Under the new strata titles regime, sellers must disclose specific information to the buyer before the contract is signed, such as:

- the scheme notice, plan, and by-laws (including those not yet registered) and schedule of unit entitlements;
- the strata lease (if it is a leasehold);
- the name and address of the strata company
- information in relation to the minutes of the most recent AGM;
- information in relation to the statement of accounts of the strata company;
- any current notice of termination proposal;
- detailed lot information, such as location on scheme plan and boundaries;
- information regarding unit entitlement;
- details of contributions that will be payable by the owner;
- details of any debt owed by the owner of the lot to the strata company;
- details of any exclusive use by-laws that apply to the lot.

If the seller is a scheme developer, additional information will need to be provided.

The pre-contract information must be provided either in the approved form or by including it in the contract in the manner set out in the regulations.

'the reforms aim to provide buyers with better information … about issues which might affect a decision to buy a property are disclosed'

What notifiable variations must the seller disclose before settlement?

If a 'notifiable variation' occurs after the contract is signed but before the date of settlement, the seller must notify the buyer of this in writing. Sufficient details must be given to enable the buyer to assess whether they have been adversely affected by the change ('materially prejudiced').

If the seller becomes aware of a change less than 15 working days before the settlement date, the seller must let the buyer know as soon as practicable. In any other case, the seller must let the buyer know not more than 10 working days after becoming aware.

Under the reforms, there are two types of notifiable variations: 'type 1' and 'type 2'.

Type 1 notifiable variation

A type 1 variation includes:

- where the area or size of the lot is reduced by 5% or more;
- where the unit entitlement of the lot is increased or decreased by 5% or more; or
- anything relating to a termination proposal.

Type 2 notifiable variation

A type 2 variation includes where the following occurs:

- the scheme plan is modified in a way that affects the lot or common property;
- the schedule of unit entitlements for the strata schedule is modified in a way that affects the lot;
- the scheme by-laws are modified;
- the strata company or strata developer enters into or varies a contract in a way that is likely to affect the buyer; or
- any rights over the common property are granted or varied.

Why is this important for sellers?

The reforms will give the buyer the right to delay settlement where the seller doesn't comply with its disclosure obligations. In certain circumstances, the buyer may avoid settlement altogether.

Sellers therefore need to comply with their disclosure obligations to avoid the risk of wasted time and costs associated with a sale that falls through. This will also reduce or eliminate the risk of a disappointed buyer raising a dispute with them after settlement.

If a seller fails to comply with the disclosure provisions of the amended Act, they might find themselves liable to pay damages to the disappointed buyer, measured by the difference between what the buyer thought they bought and what they actually did buy.

When do the strata reforms come into effect?

The changes are expected to come into effect in the third quarter of 2019, however timing will depend upon the completion of the regulations.

Key points

Seller must disclose:

- specified pre-contract information
- 'notifiable variations'

Buyer may:

- delay settlement
- avoid the contract

Contact

For more information please contact:

Anthony Quahe
Managing Principal

T +61 8 9200 4900
E aquahe@civiclegal.com.au