

# MACROSSAN & AMIET

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Conveyancing  
- Buying a Unit  
"Off the Plan"  
Information Brochure

### Information Sheet for Purchasers Buying a Unit "Off The Plan"

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In Queensland it is possible for a developer to sell a unit in a complex that is yet to be developed. This is commonly referred to as purchasing a unit "off the plan" and has become a common real estate investment.

The Contract to purchase an "off the plan" unit can be signed months or even years before the development is complete and many investors hope to take advantage of any increase in value of the property given the length of time between when the contract is signed and when settlement actually occurs.

While the illustrations of the proposed development promise it will be nothing but a success, if you are considering purchasing an off the plan unit you should still exercise the usual caution and make the necessary enquires to satisfy yourself regarding the proposed investment.

#### Stories of Success

There are many stories about people making money on the resale of off the plan units before settlement. For example, Ian the investor enters into a contract with Dan the developer to purchase an off the plan unit before construction has even begun for an amount of \$100,000. As the development progresses Ian finds Ken, another keen buyer who is prepared to enter into a contract so Ian can "on-sell" his interest in the property to Ken for a sum of \$150,000. When the development is complete and settlement is effected, Ken pays to the developer the original sale-price of \$100,000 (which completes the contract between Ian and Dan) and pays the \$50,000 difference to Ian in exchange for the property. Ian makes \$50,000 (less expenses) out of the deal.

Success stories such as these create excitement and encouragement for investors to enter into off the plan unit

contracts, however success stories do not go into detail as to what enquiries the investor made to ensure his position was protected if things went wrong. In our example, if Ian could not find another buyer to purchase the unit or for whatever reason, Ken could not come up with the full \$150,000 on the day of settlement, Ian would still have to honour his obligations to Dan under the original contract and could not simply rely on the money coming from Ken.

#### On-Sales for Profit

You should never enter into an off the plan contract relying on the fact that you will be able to on-sell the property for a profit. When considering purchasing a unit off the plan you should consider if you are in a position to afford to keep the unit if it cannot be on-sold. Further, it is important to remember that the property market goes both up and down. You should make the necessary enquiries and satisfy yourself that in the event that you cannot on-sell the property, you will be able to keep the property,

even if the property market decreases between the time of signing and settlement.

It is also necessary to obtain the appropriate legal and accounting advice before you consider purchasing a unit off the plan, especially if you intend to on-sell the property before settlement as the costs involved in the transaction may mean the investment cannot fulfil your expectations. For example, to make a profit, the costs on the transaction such as stamp duty on the initial transfer and Capital Gains Tax implications may require the unit to be on-sold for an unrealistic price that may not be able to be achieved by the property market.

Macrossan & Amiet Leading the Way

Other influences such as the world economy, tourism, terrorism, interest rates and local issues can all impact on the property market and prices that may be able to be achieved. You need to consider and how these things will effect you, your financial position and your investment in the future. It is recommended that you make the necessary enquiries and satisfy yourself regarding your position in a number of different scenarios and not simply rely on the fact that you should be able to on-sell the property before settlement.

## Who is the Seller?

When considering an off the plan contract you should consider from whom it is you will be purchasing the property. Are you already purchasing a property that is being on-sold or are you buying direct from the developer? Regardless of who the seller is, the developer of the property will determine if the development is completed and what sort of development it will be.

A buyer of an off the plan unit should make enquires as to the history of the developer and what their track record is. In a buoyant market place many people try their hands at developments and some are unsuccessful. If you pay a deposit for the purchase of an off the plan unit and the development is not completed you may lose the opportunity to have invested elsewhere.

You would not have a builder build your house without knowing they are a reputable builder, why would you purchase a unit to be constructed by an unknown developer without first satisfying yourself as to their ability to complete the project? If at all possible you should ask to view other units constructed by the same developer to see the style, materials and finishes used and the workmanship that you can expect on the completed development.

## Increase Your Investment

Off the plan unit contracts will usual-

ly provide for one or two standard floor plans to choose from with perhaps a few choices regarding furniture packages and finishes. Often the contracts are very broad in their descriptions of the furniture and furnishings to allow for the developer to make changes if supplies are not available at the time of construction. While the contract may say "European Style" the final development may have the "El Cheapo" version yet never-the-less be European in style. You should ask for details of the finishes and ask if it is possible to see samples so you can be satisfied with the quality and style of the final product rather than relying on a broad description of what to expect.

You may want small changes to the standard choices being offered and some small changes and additions can add significant value to your property. For example additional storage space or an upgrade in tiles and carpets, provision for a home theatre system, are all small changes that are relatively cheap to make during the construction phase that will make your unit just that little bit more appealing and comfortable than all the others when the time comes to sell or move in.

Special attention should be given to the floor plans as ultimately this is what you will be purchasing. You should consider the layout of the unit and the purpose for which you intend to use it. If you are going to be living in the property yourself, you should ensure the design is suitable for this purpose as many units are designed for short term rental or holiday accommodation where the size of the rooms maybe much smaller than you would otherwise expect.

## Units in a Body Corporate Scheme

A Body Corporate (a separate legal entity similar to a company) will be established to own the Common Property such as gardens, pathways, swimming pools, driveways etc. The Body Corporate is gov-

erned by legislation and by-laws. The proposed by-laws for a development will be contained in the proposed Community Management Statement which forms part of the disclosure documents. As an individual lot owner you will become an automatic member of the Body Corporate (similar to a shareholder in a company).

The Body Corporate is required to establish two funds known as the Administration Fund and the Sinking Fund. Both of these funds will issue levies against the individual unit owners. The Administration Fund is for the regular maintenance of the Common Property, payment of insurance premiums and the day to day running of the Body Corporate. The Sinking Fund is for making substantial improvements and the replacement of the Common Property such as repainting the buildings, changing staircases etc.

The Body Corporate can appoint a manager and caretaker for the purposes of managing the Body Corporate and maintaining the Common Property. You should carefully consider the disclosed documents that set out the by-laws, proposed budgets for the Administration Fund and Sinking Fund and proposed Managers and Caretakers Agreements (if any) to satisfy yourself that the ongoing costs of your investment once it has been established are reasonable and the terms of the by-laws are acceptable in your personal circumstances. For example if you intend to live in the property and the by-laws do not permit pets to come onto the Common Property this may not be a suitable investment for you.

Some complexes may allocate part of the common property as exclusive use areas for things such as carports or storage areas or private yards or courtyards. Sometimes these areas will be included as part of the lot that is being sold and other times these areas will be dealt with as an exclusive use area. If the areas are exclusive use areas then the use of these areas will be governed by the By-Laws as they

will form part of the Common Property owned by the Body Corporate.

You should have a complete understanding of what it is you are purchasing prior to entering into the Contract and whether any of the areas that you purchasing are exclusive use areas which will be governed by the Body Corporate By-Laws.

## Disclosure Statement

You should have been provided with a Disclosure Statement as a separate document from the Contract of Sale. The statement should clearly identify the lot that you intend to purchase and state the names and addresses of the seller and buyer. Details of any representation or promise that has been made by the seller or the seller's agent to you regarding the Certificate of Title that is to be issued in relation to the Lot being purchased is also required to be disclosed.

The expected annual contributions that you will have to make to the Body Corporate, details of any proposed engagements for a Body Corporate Manager or Service Contractors and Letting Agents and details of all the Body Corporate Assets proposed to be purchased by the Body Corporate that is to be established should also be disclosed in the statement.

When considering purchasing an "off the plan" unit you should carefully consider the Disclosure Statement and ensure that you can clearly identify the unit that you intend to purchase. If the Disclosure Document does not contain sufficient information you should seek out further information from the seller's agent before you sign the Contract.

## Proxy and Power of Attorney

The Disclosure Document will also disclose circumstances in which the seller may exercise a Power of Attorney which will usually be provided for under the Contract. The Contract will generally include a

condition that you will give the seller a limited Power of Attorney and proxy to vote at meetings of the Body Corporate for twelve (12) months from the date of settlement or establishment of the Body Corporate Scheme.

Effectively you will be unable to vote at Body Corporate meetings for the first year and upon request you must execute a proxy form allowing the seller to cast votes on your behalf. If you on-sell the lot within the twelve (12) months, you will also be required to have the new buyer of the Lot enter into a Deed to be bound by the same conditions. Consequently in the event of you listing the property for sale within the first twelve (12) months it will be necessary for you to advise the real estate of the existence of such requirement and have the agent include a provision in the Contract whereby the new buyer will agree to be bound by the Power of Attorney and the Proxy requirements to the same extent as you. If you fail to do this then you may be liable to the original seller for damages resulting from the failure.

## Parties to the Contract

As there may be a lengthy period of time between signing the Contract and when settlement takes place you will need to carefully consider how you intend to purchase the property, that is whether you intend to purchase the property in your own name, in a company name or as an individual or trustee for a trust. You should seek financial advice from an Accountant or Financial Adviser if you are unsure how the property is to be held. Once the Contract is entered into there may be additional stamp duty costs if you later wish to transfer the property to a different legal entity.

In some circumstances, the seller may agree to a Special Condition being inserted into the Contract to allow for the situation where you are unsure at the time of signing the Contract how you would like to hold the property. The special condition

will facilitate the cancellation and re-entry into a new Contract with the correct purchasing entity. These negotiations to have a special condition should take place before you enter into the Contract of Sale.

## Deposit

Contracts for "off the plan" units will usually provide that the deposit can be paid in cash or by way of bank deposit or guarantee. As the deposit will be required to be paid upon signing the Contract or relatively shortly thereafter and settlement will not be effected for some time, the deposit can be invested and the interest will be paid in accordance with the terms of the Contract. You should consider the terms of the Contract to determine who will receive the interest if the deposit monies are invested.

If the deposit is to be paid by way of bank guarantee or deposit bond the Contract will usually provide a date by which the bond or guarantee must be provided to the seller. The Contract will also require that the Bond or Guarantee must be acceptable to the seller and will generally provide the minimum requirements for such a Bond or Guarantee.

If you are intending to pay the deposit by way of Bank Guarantee you should ensure that your bank will be in a position to provide a satisfactory guarantee by the required date under the Contract.

## Finance

Off the plan contracts that state that they are conditional upon the buyer obtaining finance within a relatively short period of time from the date of Contract should be approached cautiously. As the transaction will not be settling for a considerable period of time any finance approval given by a bank will be conditional upon certain circumstances remaining the same. Effectively, the contract cannot be conditional upon finance as your circumstances may change before the construction of

the development is complete. If finance is not available at the time of settlement you will not be able to terminate the Contract at that time simply because the Contract contained a finance clause. You will only be able to terminate the contract if you are unable to obtain finance approval within the time specified by the Contract.

#### **Settlement Date**

The Date of completion of the Contract will generally be fourteen (14) days after notice is received from the seller that the plan creating the proposed lot has been registered and the Body Corporate Scheme has been established. You should ensure that you will be in a position to be able to access sufficient funds to complete the Contract on the settlement date even though this date may not be known for some time.

Enquiries as to the progress of the development should be progressively made so you have as much notice as possible and will be in a position to access sufficient funds to complete the Contract as the development is nearing completion. If settlement cannot be effected on the completion date or any other monies payable under the Contract are not paid on the due date the Contract will usually provide for default interest to be paid to the seller or the seller may elect to terminate the Contract. It is therefore important that monies payable under the contract are paid on the due date and that finance is placed in order to enable settlement to be effected on the due date.

#### **Sunset Date**

The seller is required under the Land Sales Act to ensure that the plan is registered and a separate Certificate of Title has been created for the proposed lot within three and a half (3 ½) years after the date of the contract. The date that the seller must have the plan registered by is commonly referred to as "the Sunset Date". The seller may apply for an extension under the Legisla-

tion for a further year on certain circumstances, however, many off the plan contracts provide for a Sunset Date that is less than the 3 ½ years allowed for by the legislation.

These Contracts will generally contain conditions that the seller is entitled to extend the Sunset Date if the Contract is delayed for reasons that are outside the control of the seller such as bad weather, unavailability of materials or contractors, etc. You should be aware of the Sunset Date as after this date either party will be entitled to terminate the Contract.

#### **Inspection of the Constructed Complex**

Off the plan contracts will usually provide some mechanism for the rectification of structural building defects and you should consider whether you will have sufficient opportunity to inspect the completed complex and notify the seller of any defects. If you are not in the are you may need to arrange for an agent to conduct an inspection on your behalf.

Generally you will not be able to make any objection to minor discrepancies or immaterial changes that have occurred during the construction process and will not be able to postpone settlement unless there has been a significant variation from what was contracted to be purchased. Building costs can increase from the time the Contract was signed and the time when the seller commences construction. Purchasers should try to monitor the progress of the construction to ensure that what was contracted to be built is actually built and address any issues as they arise.

#### **From Here**

Generally purchasing an off the plan unit can be a worthwhile investment but at the end of the day a you need to avoid making emotional decisions and make sure that you clearly understand the documents before signing the Contract.

We would recommend that if you are considering purchasing a unit off the plan, you should read through these notes together with the Contract and Disclosure Statement and then obtain any further information and details that you may require from the real estate agent or seller. You should then obtain any further advice including financial and legal advice in relation to the specific contract you are considering so you have a very clear understanding of the transaction and its effect on your personal circumstances before signing the Contract.