

# Sale of Land Act Reforms - Presale Contracts

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**The reform passage of the Sale of Land Amendment Bill 2016 on 10 November 2016 introduced greater protection for developers and purchasers under the Sale of Land Act 1970 (WA) when entering into land presale contracts. The changes come into effect 3 April 2017 and will apply to all land subdivisions.**

## Background

Presale land contracts operate when developers sell subdivision lots when they are not registered as the owner or have yet to receive subdivision approvals. This is generally done for the purposes of finance approval for subdivision development.

A 2014 WA Court of Appeal case [1] found such a presale contract to be unenforceable by the vendor, even after the vendor became the registered owner of the land. The decision raised questions over the validity of such contracts in general, leaving the legal position of both parties doubtful, as well as raise questions as to whether a purchaser's deposit in a presale contract dispute could be recoverable. This decision made both sellers and purchasers apprehensive about entering into presale contracts. In order to provide more certainty, the following amendments were adopted.

## The Nature of the Reforms

The mainstay of the reforms provide that:

- Sellers must warn purchasers in writing that they do not yet own the land. The lack of a warning in the approved form will render the contract null and void. The purchaser's deposit will also become recoverable.
- The developer must become the registered owner of the relevant lot within a specified timeframe. Not adhering to this will similarly render the contract null and void. This timeframe can be specifically provided for in the contract, otherwise a six month default period will apply.
- The developer must now make all reasonable endeavours to satisfy the vendor's condition in the contract, including taking steps to obtain approvals and lodging plans for the relevant project, before the requisite timeframe expires. If the purchaser requests this information, this must be given by the seller.
- Both parties now have termination rights if conditions aren't met or notices aren't given.
- Sales deposits must now be held in an Australian trust account (ADI) operated by a third party. These accounts may be audited by the Registrar of Titles to check compliance.
- Breaches of the Sale of Land Act 1970 (WA) now attract a maximum penalty of \$100,000.

For more information or discussion, please contact HopgoodGanim Lawyers' [Planning](#) team.

[1] Barker v Midstyle Nominees Pty Ltd [2014] WASCA 75.

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