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Q&S DEVELOPER UPDATE

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LAND SALES ACT ISSUES

Developers of either broad acre land or strata title developments who intend to enter into off the plan contracts need to be mindful of the Land Sales Act 1984.

Most developers will be aware that there are a variety of disclosure requirements set out in the Land Sales Act which must be adhered to (unless certain exemptions are applied for or exist without further application).

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However, developers also need to be mindful of the time limits imposed by the Land Sales Act that require developers to be able to settle the sale of off the plan contracts. For non-strata title land sales a seller must be able to settle not later than eighteen months after the contract date and for strata title developments the seller must be able to settle three and a half years after the contract date. Should the seller be unable to settle within such time frames then the buyer is able to avoid the contract by giving written notice to the seller.

Developers are permitted to seek ministerial approval to extend the statutory three and a half year period for a specific development but only up to a maximum of five and a half years. Ministerial approval is only applicable for significant developments (examples would include the Vision development in Brisbane and the Soul development on the Gold Coast) and can be a time consuming process.

It is not possible to contract out of these provisions and so developers must be mindful of these dates in the context of obtaining approvals, obtaining construction finance, carrying out operational or construction works and arranging for the registration of survey plans. If the time limits are not adhered to then buyers may use this as an opportunity to get out of the contract.

The State Government has considered (by means of a discussion paper) doing away with the requirement for obtaining ministerial approval by letting the parties agree in the contract what the settlement date will be while still retaining the statutory right for a buyer to terminate the contract should the seller be unable to settle by the agreed settlement date.

The discussion paper has not been taken any further at the time of writing and so developers needs to be mindful of the time limits that currently apply. Failure to do so could leave a developer with buyers finding a method of exiting the purchase on a statutory technicality.

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This update is for your information and interest only. It is not intended to be comprehensive, and it **does not constitute and must not be relied on as legal advice**. You must seek specific advice tailored to your circumstances.

