



SELLERS OF STRATA-TITLE PROPERTIES FAILING TO MEET NEW DISCLOSURE OBLIGATIONS

Background

The new disclosure obligations imposed on sellers of strata-title properties as a result of the *Strata Titles Amendment Act 2018 (WA)* came into effect on 1 May 2020. These changes, designed to ensure that the process of purchasing strata-title property is more transparent for buyers, were part of a broader range of reforms to the law on strata-title properties in Western Australia.

Many sellers have been slow on the uptake - likely because they are unaware of or unfamiliar with the new rules. We have seen a number of instances in recent months (while acting for potential buyers) where sellers have made disclosure in accordance with the old rules in place before 1 May 2020. The old regime does not take into account a number of the now mandatory disclosure requirements.

Consequences of Late/Absent Disclosure

As the vast majority of the required disclosure needs to be provided *before* the prospective buyer signs a contract to purchase the property, failure to make correct or adequate disclosure can lead to significant (and entirely avoidable) delays to a sale being completed.

If a seller is late in making full disclosure and does not comply until after a contract of sale has been signed, the buyer has the option under section 157 of the *Strata Titles Act 1985 (WA)* (“**Act**”) to delay settlement by up to 15 working days after the date on which the seller complies in full with their disclosure obligations.

Buyers may even be able to walk away from a potential deal if the disclosure provided by the seller is inadequate. If the seller fails to disclose some or all of the necessary information and the buyer would, if the seller were then to comply with these requirements, receive information or a document which would disclose “*material prejudice*” to the buyer, section 159 of the Act allows the buyer to avoid the contract of sale at any time before the scheduled settlement date.



However, if the seller then gives the buyer a notice which substantially complies with their disclosure obligations under section 156 of the Act before the buyer avoids the contract, the buyer may only then avoid the contract within 15 working days of receiving the seller's notice

The question of "*material prejudice*" is one that is considered on a case-by-case basis, based on the particular circumstances of the buyer. The buyer is responsible for showing that they have suffered material prejudice by demonstrating that they have been adversely affected by the seller's non-disclosure to a substantial degree.

Looking Forward

The fact that many sellers are continuing to conduct disclosure in accordance with the old rules, a number of months after the new regime took effect, suggests that there may be a lengthy period of adjustment before compliance with the new rules becomes commonplace. However, the potential financial ramifications for a seller in a buyer avoiding a contract of sale (or even delaying the settlement of the sale) are obvious.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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