



New South Wales

# Conveyancing Amendment (Sunset Clauses) Bill 2015

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to prevent developers from unreasonably rescinding off the plan contracts for residential lots under sunset clauses.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1 Amendment of Conveyancing Act 1919 No 6

**Schedule 1 [2]** inserts proposed Division 10 (containing proposed section 66ZL) into Part 4 of the *Conveyancing Act 1919* (the **Principal Act**) which sets out the circumstances in which a vendor may rescind, under a sunset clause, an off the plan contract for a residential lot. An **off the plan contract** is a contract for the sale of a residential lot (the **subject lot**) that has not been created at the time that the contract is entered into. A lot is created when the plan creating the lot becomes a registered plan. A **sunset clause** is a provision of an off the plan contract that provides for the contract to be rescinded if the subject lot is not created by the **sunset date** (being the date set out in the off the plan contract as the latest date by which the subject lot must be created).

A vendor who wishes to rescind an off the plan contract under a sunset clause must give each purchaser under the contract at least 28 days notice in writing of the proposed rescission. The vendor is then permitted to rescind under the clause only if each purchaser under the contract

consents to the rescission, the Supreme Court permits the rescission or the rescission is otherwise permitted by regulations made under the Principal Act. A sunset clause cannot automatically rescind an off the plan contract. The Supreme Court can make an order permitting a vendor to rescind an off the plan contract only if the vendor satisfies the Court that making the order is just and equitable in all the circumstances. In determining whether it is just and equitable the Court must take a number of matters into account, including whether the vendor has acted unreasonably or in bad faith, whether the subject lot has increased in value and the effect of the rescission on each purchaser. The vendor is liable to pay the costs of a purchaser in relation to the proceedings for an order unless the vendor satisfies the Court that the purchaser unreasonably withheld consent to the rescission. The proposed section does not limit any right that a purchaser may have to rescind an off the plan contract under a sunset clause. **Schedule 1 [1]** makes a consequential amendment.

**Schedule 1 [3]** provides that proposed section 66ZL applies to off the plan contracts regardless of whether they were entered into before, on or after the commencement of that section and it also provides for proposed section 66ZL to have retrospective effect from 2 November 2015 (being the day on which the Minister for Innovation and Better Regulation announced that this Bill would be put before Parliament). The proposed provision provides that the rescission of an off the plan contract under a sunset clause by a vendor on or after 2 November 2015 is taken not to have been done in accordance with the contract unless the required notice was given, and the rescission occurred, in accordance with proposed section 66ZL.



New South Wales

# Conveyancing Amendment (Sunset Clauses) Bill 2015

## Contents

---

	Page
1 Name of Act	2
2 Commencement	2
<b>Schedule 1</b> <b>Amendment of Conveyancing Act 1919 No 6</b>	<b>3</b>



New South Wales

# Conveyancing Amendment (Sunset Clauses) Bill 2015

No. , 2015

---

## A Bill for

An Act to amend the *Conveyancing Act 1919* to prevent a developer from unreasonably rescinding an off the plan contract for a residential lot under a sunset clause.

---

**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Conveyancing Amendment (Sunset Clauses) Act 2015*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Conveyancing Act 1919 No 6</b>	1
<b>[1]</b>	<b>Section 52 Application of Part 4 to land under Real Property Act 1900</b>	2
	Omit “and 9” from section 52 (2). Insert instead “, 9 and 10”.	3
<b>[2]</b>	<b>Part 4, Division 10</b>	4
	Insert after Division 9:	5
	<b>Division 10 Off the plan contracts</b>	6
<b>66ZL</b>	<b>Rescission under sunset clauses</b>	7
(1)	In this section:	8
	<i>off the plan contract</i> means a contract for the sale of a residential lot (the <i>subject lot</i> ) that has not been created at the time that the contract is entered into.	9 10 11
	<i>residential lot</i> means a lot (whether a strata lot or otherwise) that is residential property within the meaning of section 66Q.	12 13
	<i>sunset clause</i> means a provision of an off the plan contract that provides for the contract to be rescinded if the subject lot is not created by the sunset date.	14 15
	<i>sunset date</i> means the date set out in the off the plan contract as the latest date (subject to any extension provided for in the contract) by which the subject lot must be created.	16 17 18
(2)	For the purposes of this section, a lot is created when the plan creating the lot becomes a registered plan.	19 20
(3)	A vendor may rescind an off the plan contract under a sunset clause if the subject lot has not been created by the sunset date, but only if:	21 22
	(a) each purchaser under the contract, at any time after being served with the notice under subsection (4), consents in writing to the rescission, or	23 24
	(b) the vendor has obtained an order of the Supreme Court under this section permitting the vendor to rescind the contract under the sunset clause, or	25 26 27
	(c) the regulations otherwise permit the vendor to rescind the contract under the sunset clause.	28 29
(4)	It is a term of an off the plan contract that a vendor who is proposing to rescind the contract under a sunset clause must serve each purchaser under the contract notice in writing at least 28 days before the proposed rescission that specifies why the vendor is proposing to rescind the contract and the reason for the delay in creating the subject lot.	30 31 32 33 34
(5)	A sunset clause cannot automatically rescind an off the plan contract and, if it purports to do so, it is to be read as if it instead permits the contract to be rescinded on or after the sunset date in accordance with this section.	35 36 37
(6)	The Supreme Court may on the application of a vendor under an off the plan contract make an order permitting the vendor to rescind the contract under a sunset clause but only if the vendor satisfies the Court that making the order is just and equitable in all the circumstances.	38 39 40 41
(7)	In determining whether it is just and equitable in all the circumstances the Court is to take the following into account:	42 43
	(a) the terms of the off the plan contract,	44

(b)	whether the vendor has acted unreasonably or in bad faith,	1
(c)	the reason for the delay in creating the subject lot,	2
(d)	the likely date on which the subject lot will be created,	3
(e)	whether the subject lot has increased in value,	4
(f)	the effect of the rescission on each purchaser,	5
(g)	any other matter that the Court considers to be relevant,	6
(h)	any other matter prescribed by the regulations.	7
(8)	The vendor is liable to pay the costs of a purchaser in relation to the proceedings for an order under this section unless the vendor satisfies the Court that the purchaser unreasonably withheld consent to the rescission of the off the plan contract under the sunset clause.	8 9 10 11
(9)	Nothing in this section limits any right that a purchaser may have to rescind an off the plan contract under a sunset clause.	12 13
(10)	Notice may be served on a purchaser by serving it on a person who is authorised under the off the plan contract as a representative of the purchaser.	14 15
(11)	A provision of an off the plan contract has no effect to the extent that it is inconsistent with this section.	16 17
<b>[3]</b>	<b>Schedule 9, Part 9</b>	18
	Insert after Part 8:	19
	<b>Part 9 Provisions consequent on enactment of Conveyancing Amendment (Sunset Clauses) Act 2015</b>	20 21 22
<b>15</b>	<b>Section 66ZL applies to existing contracts</b>	23
	Section 66ZL applies to an off the plan contract regardless of whether the contract was entered into before, on or after the commencement of that section.	24 25 26
<b>16</b>	<b>Retrospective application of section 66ZL</b>	27
(1)	Section 66ZL is taken to have effect on and from 2 November 2015.	28
(2)	The rescission of an off the plan contract under a sunset clause by a vendor on or after 2 November 2015 is taken not to have been done in accordance with the contract unless the required notice was given, and the rescission occurred, in accordance with section 66ZL.	29 30 31 32
(3)	Regulations made under section 66ZL within 12 months after the commencement of that section, may take effect at any time on or after 2 November 2015.	33 34 35
(4)	Expressions used in this clause have the same meaning as they have in section 66ZL.	36 37