

Buying a Property "Off the Plans"

Unlocking the benefits and risks of buying off the plans properties

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You've read the horror stories in the paper, you've seen the reports on the news and you've heard from friends of friends who have done it, but do you know the ins and outs of "Buying off the plans"?

In recent years buying off the plans (BOTP) has become an increasingly popular way to purchase residential property. In an ever-evolving property market BOTP can be an effective way to secure a new build home (or investment property) without having to deal with the complexities and liability that comes with negotiating building contracts direct with construction companies.

WHAT IS "BUYING OFF THE PLANS"?

BOTP is where you enter into a sale and purchase agreement for a property that has not yet been built - in most cases the developer will not have broken ground on the build at the time the agreement is signed. With BOTP transactions, a developer will typically purchase a large section of land, subdivide that land into smaller, individual lots and build properties on those lots (or complete a unit title development and construct apartment blocks). A Developer will secure development funding from its financier on the strength of the various sale and purchase agreements they have signed up with their buyers.

The sale and purchase agreement will typically include plans and specifications detailing what the dwelling on the property will look like and contain when completed, so you have some idea of the end product you can expect to receive. Timeframes in BOTP agreements are never set in concrete - the period from the date the agreement is signed, to the eventual settlement date can be anywhere between 3 months to 4 years or more depending on what stage the development is at when you sign up.

POSITIVES OF BOTP

BOTP brings several positives for purchasers as opposed to the traditional residential property purchase:

- **Best prices:** Given the volatile nature of the housing market and ever-increasing house prices, with BOTP, a buyer locks in today's prices for a property they won't have to pay for, for some time. This means that when the property is completed (barring a major collapse in the housing market) buyers can often find themselves in a position of having secured a brand-new property at below market value. Developers usually want to sell as many properties in the early stages as possible, so buyers can sometimes take advantage of 'early bird' discounts, especially in the pre-construction phase.
- **Brand new home:** A brand new home obviously comes with many benefits such as excellent

insulation and optimal building systems as well as modern fixtures and fittings. All things going to plan, a buyer should also enjoy a reasonable period of maintenance-free home ownership.

- **Brightline Rule advantages:** As all BOTP are classified as "new build" properties they are subject to shorter bright-line taxation periods. Under recent law changes, "new build" properties are subject to a 5 year bright-line period, as opposed to other residential properties purchased after 27 March 2021 which are subject to a 10 year bright-line period. This makes BOTP purchases attractive for owner-occupiers and residential property investors alike.

RISKS OF BOTP:

Any purchase of residential property inherently carries some risk. However BOTP does create increased risk for the purchaser:

- **Developer-friendly agreements:** BOTP agreements are usually heavily weighted in favour of the Vendor and often remove a number of rights that purchasers have under a standard sale and purchase agreement. BOTP agreements are by their very nature, complex, and it is therefore important that you obtain comprehensive legal advice on their terms. There is often room for negotiation on certain provisions in BOTP agreements and it pays to have an expert steer you through that process.
- **Final product might not match the initial plans:** As there is no physical property to inspect at the time a buyer contracts to buy, it is crucial to carefully negotiate as much as possible, the parameters in which the developer may adjust the plans and specifications throughout the build.
- **Timeline for completion / potential delays:** While developers will usually provide an estimated completion date, there can be delays due to weather, construction and procurement issues and other factors. Most BOTP agreements will include a 'sunset clause' which provides purchasers (and sometimes vendors) the ability to cancel an agreement if settlement has not been triggered by a particular date. Sunset clauses which enable a developer vendor to cancel an agreement can sometimes be problematic and there have been media reports of developers misusing that mechanism to cancel agreements and reselling for

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higher prices, leaving purchasers with a lost opportunity to buy another property while waiting for construction to be completed – so care needs to be taken in reviewing these arrangements.

KEY CONSIDERATIONS WHEN BOTP:

When considering whether to proceed with a BOTP purchase there are a number of key factors to think about, including:

- Does the agreement have a due diligence condition? (You should always ensure a BOTP agreement has one of these before signing).
- Who is the Vendor/Developer? Are they a reputable organisation with a history of successful builds/developments?
- Who is responsible for holding your deposit?
- What are the timeframes for settlement? Can you wait that long?
- Will your finance still be available when it comes to settlement?
- Is there a sunset date clause and which party can invoke it?
- Has the Vendor provided detailed plans of what the property will look like and contain at settlement?
- Is the Vendor passing on warranties and guarantees to you?

CONCLUSION:

BOTP creates an avenue for purchasers to access new build properties without having to deal with the complexities of a building contract, and often at a more accessible price point. However these transactions come with an increased risk profile than a standard residential purchase. Obtaining comprehensive legal advice before proceeding with BOTP will help to reduce that level of risk so you can proceed with your new home or investment property transaction with peace of mind.

Our Property Team is happy to help you through all stages of a BOTP transaction - please contact us for more details.

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