

How can I ensure my deposit is safe when buying a ‘Section and Build’?



A common scenario when purchasing a section and build package is that the purchaser is required to pay a deposit up front but does not take title to the property until the CCC (Code of Compliance Certificate) is issued (i.e. the home is complete and ready for occupation). That can often be several months down the track.

How can you as a purchaser ensure that your deposit is safe until you are able to take title to the property? For example, what if you were to pay your deposit to the vendor (the development company which owns the land and is building the house on it) only to find that the vendor goes bust before your home is completed. In this unhappy situation, you would not yet have title to the property and the deposit would be lost to you with no realistic possibility of getting it back.

You could potentially be left without your deposit and without title to the property.

How can you, the purchaser in this situation, best protect your deposit for the period between payment of the deposit and the final completion of your house, at which point the title is able to be transferred to your name?

One possibility is to ensure that the deposit remains with a stakeholder (preferably an independent third party who holds the money, such as a real estate agent or lawyer) until either settlement day or at least until the code of compliance certificate for the building is issued. Check the agreement provides for this. It may require a simple amending clause (if the REINZ sale and purchase agreement is being used as the basis for the agreement) such as:

“The deposit shall be held in the vendor solicitor’s trust account as stakeholder until the issue of the code of compliance certificate for the dwelling on the property, at which time the deposit may be released to the vendor.”

That is the best solution by far. However, especially in the case of smaller privately-owned, development companies, it is possible that you may get some push back from the vendor who might (quite understandably) say that they need access to the deposit money to fund the build of the house in the interim.

In such a situation, we would recommend negotiating a deed of guarantee and indemnity personally from the owner(s)/director(s) of the developer company (do a company search to understand who the owner of the company is, especially if it is different entity from the company director). If the director (or majority shareholder) of the vendor company is confident of their financial stability and ability to deliver on the end result of the contract, they should be willing to step up and put their name to such a guarantee.

The guarantor (typically, the director of the vendor company in their personal capacity) guarantees to repay to the purchaser the deposit sum in the event of the vendor company being unable to meet their obligations under the agreement for sale and purchase to deliver a completed house to the purchaser. They also agree to indemnify the purchaser for any and all costs associated with securing the repayment of the deposit sum. The deed need not be complicated and shouldn't be any longer than a couple of pages.

If you are in the situation of wanting to purchase a section and build make sure you see us in advance of signing the sale and purchase agreement. It is important to know that your deposit is as safe as possible and will be returned to you if the vendor is unable to deliver on the end result of the contract. You should also make sure you understand the implications of the sunset clause (the clause which provides that if a certain event has not occurred by the specified date (e.g. the completion of the house build), either party can cancel the contract) and that the sunset clause is set realistically.

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