

Buying Residential Property In Australia

Foreign Investment Review Board (FIRB) FAQs

FIRB RULES

Who needs FIRB approval to buy residential real estate in Australia?

- Foreign persons
- Temporary residents

Who does not need FIRB approval to buy residential real estate in Australia?

- Australian citizens
- New Zealand citizens
- Foreign nationals who hold an Australian permanent visa
- Foreign nationals buying a property as joint tenants with their Australian citizen spouse.
- Foreign persons who buy new dwellings bought from a developer that has pre-approval to sell them to foreign persons

What is a foreign person?

A foreign person means:

- a natural person not ordinarily resident in Australia
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest (i.e. 15% or more of issued shares)
- a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest (i.e. 40% or more

of issued shares)

- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest (i.e. 15% or more of the beneficial interest in the trust)
- the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest (i.e. 40% or more of the beneficial interest in the trust)

What residential real estate can foreign persons usually buy?

Foreign persons can apply to buy:

- A new dwelling (i.e. a dwelling purchased from a developer that has not been previously occupied for more than 12 months). These applications are usually approved without conditions
- A vacant block of land to build a new dwelling or multiple dwellings on (if continuous construction starts within 24 months of approval)
- Existing dwellings for the purpose of redevelopment (i.e. to demolish an existing habitable dwelling and replace it with multiple dwellings)

Note: Foreign persons must still apply to obtain approval to buy the above real estate. Foreign persons are not permitted to buy existing dwellings.

What is a temporary resident?

A temporary resident is a person who resides in Australia and:

- holds a temporary residency visa which permits them to stay in Australia for a continuous period of more than 12 months or
- has submitted an application for permanent residency and holds a bridging visa which permits them to stay in Australia until that application has been finalised

What residential real estate can temporary residents buy?

Temporary residents can apply to buy:

- one established dwelling only to live in as their residence (i.e. not for investment)
- A new dwelling (i.e. a dwelling purchased from a developer that has not been previously occupied for more than 12 months)
- A vacant block of land to build a new dwelling or multiple dwellings on (if continuous construction starts within 24 months of approval)

Note: Temporary residents must still apply to obtain approval to buy the above real estate.

What is residential real estate?

Residential real estate means all land and housing that can be used for residential purposes. It does not include commercial real estate or rural land.

FIRB APPLICATIONS

How does a foreign person or a temporary resident apply to obtain approval to buy real estate?

Foreign persons can apply online at www.firb.gov.au if they have all the relevant information for the application. Alternatively they can engage **lawlab** or another service professional to submit the application on their behalf. The FIRB usually responds to applications within a 30 day timeframe.

How much does it cost to apply for a FIRB approval?

From 1 December 2015 an application fee is payable for FIRB approval as follows:

Residential properties valued at \$1 million or less	\$5,000
Residential properties valued at greater than \$1 million	\$10,000 then \$10,000 per additional \$1 million in property value

Application fees will be used to fund the Australian Tax Office's (ATO) register of foreign buyers and better enforce the rules. The ATO will improve compliance

and enforcement through sophisticated data-matching systems and specialised staff with compliance expertise.

Is an application fee payable for each property that a foreign person intends to bid on at auction?

A foreign person can apply for a certificate that allows them to bid at multiple auctions within a specified area for up to 6 months while paying only one application fee.

Does a foreign person need to apply for individual approval if they purchase a new dwelling from a developer with a pre-approval?

A developer can obtain a pre-approval to sell new dwellings in a development of 100 or more dwellings to foreign persons subject to the development being advertised both within Australia and overseas. The foreign person does not need an individual approval unless the value of the new dwellings being purchased is in excess of \$3 million.

What are the new penalties from 1 December 2015 for breaches of FIRB rules?

- Criminal penalties will be increased to \$127,500 or three years imprisonment for individuals and to \$637,500 for companies.
- Civil penalties will be up to the greater of either the capital gain or 25% of the sale price or value of the property.

- Owner forced to sell the property.
- These penalties will also be extended to third parties (such as accountants, brokers, lawyers and real estate agents) who knowingly assist breaches. Penalties for third parties include criminal penalties and civil penalties of \$42,500 for individuals and \$212,500 for companies.

When should a FIRB application be made?

If time permits, an application should be made before signing a contract or alternatively the contract should be made conditional on FIRB approval within 30 days. **lawlab** can assist foreign persons with reviewing contracts before they sign.

For more information on FIRB approvals please contact **lawlab**.

Lawlab has more than 100 years of experience, we can offer you practical, efficient and expert legal advice on your purchase. Please call 1800 529 522 or email: conveyancing@lawlab.com.au.

Disclaimer: this information is general in nature only and does not constitute legal advice. Lawlab accepts no liability for the content of this information sheet. You should obtain legal advice specific to your individual circumstances.

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