

Sunset Clause changes for NSW off the plan contracts

New laws were passed in the NSW Parliament recently in response to unethical behaviour by some rogue property developers.

Those developers were using a loophole in the laws to delay completion of their developments so they could rescind off the plan contracts after the sunset date had expired and resell at a much higher price in a market that had risen substantially since the off the plan contracts were signed.

In one case, a two-bedroom apartment that had originally been bought for \$915,000 was put back on the market shortly afterwards for more than 50 per cent more, for \$1.39 million.

It is common for off the plan contracts to allow either party to exercise a right to rescind the contract if the lot has not been created by the sunset date.

Under the new laws, developers will now only be allowed to rescind residential contracts under a sunset clause in limited circumstances.

If a developer wants to rescind a contract then they must:

- Give the buyer 28 days' notice of the proposed rescission and specify the reasons for the delay in creating the lot; and either
- Obtain the buyer's written consent to the rescission; or
- Obtain a court order permitting the rescission (the court must consider whether the rescission is just and equitable).

Developers are bound by the new laws from 2 November 2015 regardless of when the contract was entered into.

The new laws will protect buyers and reputable industry operators.

