

Understanding the latest changes in Australia's Foreign Ownership Laws

The Australian federal government has made some drastic changes to the Foreign Ownership Laws in the hope that increased foreign investment will help support property prices. Geri Forsaith, founder of Sydney Property Conveyancing, explains what they mean

that foreign investments are screened and those deemed not to be in the national interest can be blocked by the government.

The current foreign investment screening regime was introduced back in 1989.

Who does Foreign Ownership Law apply to?

A 'foreign person' as defined under the Foreign Acquisitions and Takeover Act 1975, needs to get FIRB consent before buying a property.

A foreign person is someone not ordinarily resident in Australia. This includes overseas investors, businesses and student visa holders, a corporation (with specific requirements) and the trustee of a trust estate.

Australian citizens living overseas, foreign persons who hold permanent visas or a 'special category' visa – New Zealand citizens, for example – are exempt from FIRB approval requirements. Foreign persons who purchase residential property under co-ownership as joint tenants with their Australian citizen spouse are also exempt.

What's changed?

On 18 December 2008, the Australian federal government announced policy and administrative changes to screening arrangements for foreign investors in Australian real estate, meaning it will be easier for overseas purchasers to buy property here in 2009.

The policy changes were effective from 18 December 2008 with administrative changes introduced progressively since February this year. The intention is to simplify the process and in doing so, streamline it, while reducing costs for foreign residents and foreign businesses.

is to encourage increased housing supply through foreign investment and not increase house prices because of over-demand for established housing stock.

Increased demand for established housing stock drives prices up for Australian residents – locking some out of the housing market altogether. The overarching aim of the whole regime – real estate and business investment – is to protect the national interest so



The Australian federal government's Foreign Ownership legislation requires purchasers classified as 'foreign persons' who want to buy real estate in Australia to seek approval from the government through the Foreign Investment Review Board (FIRB). The FIRB examines the applications and makes recommendations to the government under its foreign investment policy. The aim of the residential real estate aspect

The main changes to Australia's Foreign Ownership Laws are:

New dwellings

- The existing requirement allows only 50% of new dwellings to be sold to foreign persons in an 'off-the-plan' situation. This was lifted, provided developers market locally as well as overseas
- Previously, a 'new dwelling' was defined as never previously occupied or sold. This now includes dwellings that were not sold by the developer but were rented out for no more than 12 months

Second-hand dwellings

- Student visa holders residing in Australia are no longer subject to a \$300,000 limit on the value of an established dwelling purchased as their principal place of residence
- Temporary residents won't be required to notify the FIRB of proposed acquisitions of an established dwelling for their own residence, any new dwellings and single blocks of vacant residential land
- Foreign-owned companies can now purchase established dwellings for the use of their Australian-based staff provided that they sell or rent them if they're expected to remain vacant for more than six months

Vacant residential land

- Foreign-owned companies, trust estates and non-resident foreign persons who purchase single blocks of vacant residential land must build a dwelling within a period of 24 months (previously, within 12 months)
- The conditions previously relating to acquisitions by temporary residents of single blocks of vacant residential land no longer apply

Accommodation facilities

- Accommodation facilities such as resorts and hotels are to be treated as commercial real estate rather than residential real estate. As a result, notification is now only required

the current administrative system which takes up to 30 days for approval."

Why were the changes made?

The government's viewpoint is that it doesn't expect the changes to have any

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when the value of the property exceeds the commercial property thresholds (\$50m, or \$5m for heritage-listed properties)

Where's the red tape?

On its website (www.firb.gov.au), the FIRB states the following:

"Streamlined administrative procedures will be set up for foreign-owned companies, trust estates and non-resident foreign persons to notify and receive approval for proposed acquisitions of vacant residential land and newly constructed dwellings.

"New application forms will streamline procedures. Developers will no longer be issued advance approval for sales of new dwellings to foreign persons – all non-resident foreign purchasers must submit individual applications (although developers may submit these on behalf of the purchaser/s). Temporary residents will be exempt and not required to notify.

"Streamlined administrative procedures will be established to facilitate non-resident foreign persons notifying and receiving approval for acquisitions of vacant residential land and new dwellings. Streamlined notification arrangements will replace

upward effect on house prices. But they may assist somewhat in the sale of new unit developments by reducing the compliance burden on developers to get pre-approval and lifting restrictions on the sale of new units to non-residents – such as the 50% quota and considering units rented for 12 months as 'new' and therefore available for sale to foreigners.

What effect might this have on Australia's property market?

The recent changes to Australia's Foreign Ownership Laws may well allow for an increase in the number of foreigners buying property in Australia.

In the current world economic climate, however, this may not be an automatic outcome and it's difficult to forecast whether the changes will, in fact, lead to an increase in the number of foreign purchasers. ■

Geri Forsaith is the founder of Sydney Property Conveyancing. Established in 2003, the company is an award-winning conveyancing practice dedicated to providing service excellence to NSW property purchasers and vendors. Visit www.sydneypropertyconveyancing.com.au

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