



Legal Update

Issues for Foreign Buyers of Residential Real Estate

Federal and State Governments have been very busy in recent months enacting new laws concerning foreign buyers of residential property in Australia. It can all be quite daunting. The two main questions we get asked about foreign buyers is whether they:

1. are liable for the Additional Foreign Acquirer Duty (AFAD), and
2. need to apply for Foreign Investment Review Board (FIRB) approval.

AFAD

AFAD is an additional amount of duty that applies when a foreign person purchases residential property in Queensland. The additional duty is 7% of the purchase price, and it is payable in addition to the normal stamp duty that would otherwise be payable.

So, on a \$600,000 purchase, the additional duty payable by foreign persons is \$42,000.00, a considerable amount.

FIRB

Under Australia's foreign investment framework, foreign persons generally need to apply for FIRB approval before purchasing residential real estate in Australia.

The FIRB's policy is to channel foreign investment into new dwellings as this creates additional jobs in the construction industry and helps support economic growth.

FIRB applications are therefore generally considered in light of the overarching principal that the proposed investment should increase Australia's housing stock by facilitating the creation of at least one new additional dwelling. For this reason, foreign persons generally cannot purchase established homes.

It is important that foreign investors understand and comply with Australia's foreign investment framework as strict criminal and civil penalties may apply for breaches of the law, including orders to dispose of assets. In addition, foreign persons who purchase residential real estate will be subject to an annual vacancy fee where the property is not residentially occupied or rented out for more than six (6) months in a year.

To assist you in determining how the above issue applies to different individuals, we have developed the following table as a quick reference guide to determine whether a person needs to apply for FIRB approval and whether AFAD will apply.

Buyer is:	FIRB Approval required	AFAD 7%
<input type="checkbox"/> an Australian citizen	No	No
<input type="checkbox"/> an Australian permanent resident	No	No
<input type="checkbox"/> *a NZ citizen in Australia when contract signed	No	No
<input type="checkbox"/> a NZ citizen abroad when contract signed	No	Yes
<input type="checkbox"/> None of the above	Yes	Yes

* Note: if the NZ citizen buyer entered Australia for the purpose of avoiding the additional 7% AFAD, then AFAD is still payable.

Please note the above table only applies to individuals. Different rules apply to companies and trusts and it is beyond the scope of this legal update to include the laws that apply to companies and trusts. If the buyer is a company or a trust the buyer should seek legal advice.

If the buyer is an individual who requires FIRB approval to purchase the property, then the following table indicates what types of property will generally be approved or not.

Type of property being purchased	Will FIRB application be approved
New dwellings	Usually approved without conditions
Vacant residential land for development	Normally approved subject to construction being completed within 4 years
Land with an established dwelling purchased for re-development	Normally approved on the condition that at least 2 dwellings are built for the 1 demolished. These applications will not be approved if a foreign buyer is simply renovating an existing dwelling or replacing 1 existing dwelling with 1 new dwelling.
Temporary resident purchasing established dwelling to live in	Normally approved subject to the condition that the foreign buyer use the property as their principal place of residence in Australia, not rent any part of the property and sell the property within 3 months once it ceases to be their principal place of residence. Temporary residents are not permitted to purchase established dwellings as investment properties to rent out or as holiday homes.
Established dwellings	Application for approval for a foreign buyer to purchase an established dwellings (including dwellings that have been refurbished or renovated) are NOT approved, except for the example above (temporary resident purchasing established dwelling to reside in)

Foreign persons are required to pay a fee for each application made, which depends on the purchase price.

As a general guide the fees payable range as follows:

Purchase Price	Fee Payable
\$0 - \$1,000,000	\$5,600
\$1,000,001 - \$1,999,999	\$11,300
\$2,000,000 - \$2,999,999	\$22,700
\$3,000,000 - \$9,999,999	\$34,000 - \$102,300

If a buyer requires FIRB approval, then the contract should be made subject to obtaining FIRB approval and we would suggest allowing a period of 45 days from the contract date to obtain the approval.

If you require any further information, please contact Paul McHugh on 07 5443 1566 or mail@tml.com.au

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