Thinking of buying a unit or apartment off-the-plan in the ACT

What is off-the-plan

Buying off-the-plan means you are committing to purchase an apartment or unit from the planning documents. Your unit or apartment may not be built yet, so you will likely be looking at plans, artist representations, computer modelling representing a finished apartment, or a display unit.

Buying off-the-plan can give you the option to personalise your property and opt for extras and inclusions that depart from the standard offerings (e.g. upgraded fixtures and fittings like flooring or appliances). Customising inclusions may increase the overall cost you will pay for the unit.

What do I need to consider?

Buying off-the-plan means you can secure your unit of choice, paying only the deposit until the time construction is completed and settlement occurs. This can give you time to organise the funds for your purchase.

Your off-the-plan contract will contain an indicative completion date for the project. However, there is a chance sales could be slow, the developer might have difficulties obtaining finance, or there could be delays to the build for other reasons. This may mean that it takes longer than expected before you can move in.

Alterations during the development approval and building approval stages of the project may also mean your unit is not completed in accordance with the plans you have seen, and the finished build may no longer meet your requirements.

During the period the unit is being constructed, it's value could increase. However, this may not always occur, and it is possible that the value of the unit might not increase or that it may fall over that time. If the value decreases, it could mean you will find it difficult to obtain a mortgage when it comes time to settle. If you are unable to complete the purchase in accordance with the contract, you could lose your deposit.

As there's always a chance that things may go wrong during the building process, off-the-plan contracts usually contain terms that allow sellers (or buyers) to 'get out of' (or cancel) the contract. In legal terms, this is known as a 'rescission clause'.

However, there are provisions under the *Civil Law (Sale of Residential Property) Act 2003* to prevent property developers or sellers from cancelling or rescinding off-the-plan contracts unfairly. Specifically, sellers are prevented from rescinding a contract under a **sunset date** or **delay event rescission clause** unless they obtain either:

- the consent of the buyer
- an order from the Supreme Court allowing the rescission.

These provisions are designed to prevent unfair cancellations by sellers of off-the-plan contracts, by ensuring that either the buyer agreed to the rescission or that an independent third party (the Supreme Court) thought rescission was fair in the circumstances.

Before you commit to purchase, it is important that you seek independent legal and financial advice and ask plenty of questions, so you feel confident and informed of any decision you make. Some good questions to ask to your solicitor are:

- On what grounds can I terminate my contract and does the termination have an expiry date?
- What if the unit is not completed by the agreed date? Are there limits on how late the completion date can be?
- What happens to the interest on my deposit money? Are there any arrangements to share any interest?
- Do I have to pay stamp duty? If so, is the amount of stamp duty any different to what I would pay if the unit was already built? See also revenue.act.gov.au for more info about stamp duty and concessions that may apply to off-the-plan purchases.

What information the developer is required to give you:

Developers must provide a Disclosure Statement for all new contracts for sale for units sold off-the-plan. This document includes information, but not limited to, the following:

- a plan that shows the proposed location and dimensions of the unit, the internal floor plan and any unit subsidiaries that adjoins the unit (e.g. balcony or courtyard)
- a statement about the proposed use of each unit in the units plan as well as whether the developer intends to restrict any of the permitted uses – for example, will gyms and restaurants be allowed?
- the proposed schedule of unit entitlements, details of each proposed unit subsidiary and their potential uses:
    - the unit entitlements are your percentage share of the costs of managing and maintaining the property
    - subsidiaries are additional areas you own like balconies, but they may also not be attached to the unit like parking spaces or a storage cage.
- the proposed rules of the Owners Corporation including any alternative rules the developer has planned
- details of contracts that the developer intends for the Owners Corporation to enter into once the units plan is registered.
- the proposed methods for contributions for the general and sinking funds which will indicate whether they are based on unit entitlement or a different method of contribution (e.g. user pays principles for commercial units to contribute more for garbage, water, power, extra insurance costs etc.)
- the developers estimate of the general fund contributions for the next two years. As these funds are estimates, the contributions may not accurately quantify the amounts needed to fund the management of the complex and may need to rise once the Owners Corporation is able to determine more accurate costings
- information about facilities, if any, that will be provided for charging electric vehicles
- a copy of the building management statement if one is required.

Developers will also need to provide updated disclosure statements to notify buyers of any significant changes to the development, including registration of the unit plan and any material changes made since the contract was signed.

These requirements give buyers clearer rights to terminate a contract for sale where the end result (i.e. what is actually built) is significantly different to what you thought you were buying. Conditions and time limitations apply if you need to terminate your contract.

You should talk to your solicitor about any concerns you may have if the developer gives you an updated disclosure statement notifying of any changes made during the development and construction of your unit.

At handover, an owner's manual should be provided detailing information and warranties for all inclusions (e.g. air-conditioning and appliances), as well as specific cleaning and maintenance advice (tempering valves, air-conditioning filters and stone bench top maintenance where appropriate). This will help you understand how to use and what maintenance is needed for items inside your unit.

Some other important information you may need to know:

Building Warranties

Building work on apartment buildings which are three storeys and below, not including a car park, must be covered by residential building work insurance. This is sometimes called home warranty insurance or builder's warranty insurance. However, regardless of the height, statutory warranties apply to all building contracts. The statutory warranty periods are:

- Structural Defects: Covered for 6 years from the date of occupancy.
- Non-Structural Defects: Covered for 2 years from the date of occupancy.

Buyers will also have a maintenance/defect period for the unit. Developers typically include a maintenance period for minor defects following practical completion, so make sure to check what timeframes are included in the contract (e.g. 90-days) which entitles you to raise any minor defect issues with the developer.

Developer Licensing

From 1 October 2026, a property developer licence is required if a person or entity is doing any of the following related to residential building projects for 3 or more residential dwellings:

- applying for development approval
- applying for a building approval, building commencement notice, or a certificate of occupancy
- selling or advertising the sale of residential property off-the-plan.

The ***Property Developers Act 2024*** establishes a licensing and regulatory scheme that will ensure that residential property developers are competent, transparent, and have the capacity and capability to deliver high-quality builds. More information about the scheme can be found here: https://www.planning.act.gov.au/professionals/regulation-and-responsibilities/property-developers-licensing-scheme

More things to think about:

- What are the projected timeframes for the completion of the development? Will the development be built in stages?
- Who is the developer? Look at some of their other developments and do some research like checking online reviews.
- What facilities are on the common property, if any; such as a pool, gym or barbecue area? If the building has facilities that require regular maintenance your contributions will be higher. Can I afford that?
- Who is the proposed strata manager.
- What is the proposed insurance premium and the excesses.
- Will there be solar panels installed and if so, will they offset either unit power costs, or common area power costs that form part of the contributions? If solar panels are not part of the development, why not?
- Is Electric Vehicle charging available and how is it managed?
- Does the complex have a communal gas-fired HWS (hot water system) that will need to be replaced in coming years, as gas is phased out in the ACT. A retrofit will be a future expense to consider. Is provision made for this cost in budgets?

Buying a unit or apartment means you are also buying into a small community

Being part of a community can have great benefits and is often a key drawcard for this type of living.

It is important to be aware that, due to shared common spaces and close proximity to neighbours, there may also be restrictions to some of the things you can do, such as where you park your car, making noise in your unit or when and how you can renovate. This can differ from owning a standalone home. Understanding these differences before moving in can help reduce issues down the track.

Units and apartments may be either Class A or Class B

There are 2 classes of units in the ACT and knowing the difference is important as it impacts on what an owner actually ‘owns’ and future maintenance and management in a units plan.

Class A Units are generally multi-storey apartments. The owner owns the inside of the unit to the mid-point of shared walls and may own one or more subsidiaries, such as a car parking space or storage area. You should also note that the units owns the inside and outside of a wall separating the unit from a balcony.

Class B Units are generally town house style units. The owner owns a plot of land (such as a small courtyard) and the inside and the outside of their unit and to the mid-point of any adjoining walls. The owner also has responsibilities for maintaining their unit which includes fencing and maintaining any garden within their unit boundary.

Some complexes are ‘mixed use’

This means they have both residential and commercial units in the same building/complex which can offer a range of benefits, including cafes and bars, small businesses, gymnasiums, and supermarkets close by.

However, it is important that you consider whether this type of living is suitable for you. For example, there may be an increase in noise and odours as well as competition for visitor parking and general busyness around the complex.

Seek advice and understand if, and what, mixed use properties may be permitted or planned in your complex. Having a high-risk business (e.g. tobacconist) in the complex may have significant impacts on the cost of insurance.

Some complexes are 'multi lease'

Some buildings in the ACT can be divided into multiple leases, which means that instead of there being one Owners Corporation (also known as a body corporate) for the whole building, there may be one or more Owners Corporations and other owners for different parts of the building. For example, there may be an Owners Corporation for the residential apartments located on the top floors, but the lower floors with commercial units may have a different Owners Corporation. This is common where there are larger commercial services, like supermarkets operating from the building.

In these circumstances and to ensure all the different owners work together, all new all multi-lease building must have a Building Management Statement (**BMS**) and form a building management committee, made up of the owners of all the different leases, to jointly deal with issues such as shared facilities and easements. The BMS is a binding agreement that requires all lease owners to comply with the terms of the statement to help manage and maintain the building into the future. That allows, for example, unit owners who occupy the upper floors of a building to work with ground floor businesses to manage areas of common property as well as the building as a whole.

Other important considerations

The purchase of a property is often the biggest financial commitment you will make. It is therefore important that it is carefully considered – including if it will meet your needs now and into the future.

When buying *any property* think about:

- Location – Are you close to shops, schools, work, friends, family, public sporting fields, greenspace or a busy town centre?
- Transport – Is it close to public transport? Cycle or footpaths? What about traffic noise? How long will your commute be to key places you'll want to go?
- Size – Does it meet your needs now and in the future? Note: when size increases so will costs – think heating/cooling, fees and charges.
- Amenities – Do you want access to a pool? Gym? Garden? Outdoor areas?
- Safety and security – What security features will the property have (e.g. gates, fences, security cameras, secure pass access, lighting)? Are these inclusions guaranteed?
- Finances – Consider fees and charges and how costs may be managed if your personal circumstances were to change.
- Sustainability infrastructure – will there be solar panels or batteries, EV charging or water conservation infrastructure available and how are they managed.

Where can I get more information?

Access Canberra: accesscanberra.act.gov.au or 13 22 81

Owners Corporation Network of the ACT: ocnact.org.au

Strata Community Association (ACT): strata.community/act-chapter

Real Estate Institute of the ACT: reiact.com.au