



## GENERAL<sup>1</sup>

This guide will help you submit an application for approval to purchase **residential real estate** under the *Foreign Acquisitions and Takeovers Act 1975* (the FATA), if you are required to do so. Do **not** submit an application if you are **exempt** (see [Attachment A](#) for acquisitions which do not require notification).

2. The policy outlines the eligibility criteria relating to specific categories of residential real estate.
  - If you are eligible for approval under the policy, then the acquisition will be approved subject to **legally binding conditions** according to the category of property. Your application must include the relevant Declaration confirming that you meet the eligibility criteria and that you will abide by the relevant conditions.<sup>2</sup>
  - If you are **not** eligible for approval under the policy, then the acquisition is generally considered to be contrary to the national interest and will **not normally be approved**. Your application must **not** include a Declaration – instead, you must provide a cover letter explaining why you are seeking approval for an acquisition which does not meet the eligibility criteria.
3. Your application must include the relevant section 26A statutory notice: Form 4 if you are purchasing residential real estate in individual name(s); or Form 5 if you are purchasing residential real estate in the name of a company or trust.
4. Your application must clearly identify the property being purchased, as well as all foreign person(s) who are seeking approval (including individuals, companies and/or trusts) – do not include any purchasers who do not require approval (see [Attachment A](#)).
5. It is a criminal offence to provide false or misleading information, or to enter into any schemes for the purpose of avoiding the provisions of the Act.
6. **No fees or charges** apply to applications.

## RETROSPECTIVE APPLICATIONS

7. If you have **already** acquired the property (for example, if you have entered an unconditional contract, or if the condition(s) have lapsed and your contract is now unconditional) without prior approval, you have breached the FATA. You should submit an application for **retrospective** approval (**do not** submit a statutory notice).
8. Breaches carry substantial penalties including potential property divestment, fines and imprisonment. However, no action is generally taken if you meet the eligibility criteria, as long as you comply with the relevant conditions.

## CONFIDENTIALITY/PRIVACY

9. The Government respects the privacy of personal information that you provide in your application. In accordance with the *Privacy Act 1988* and the *Freedom of Information Act 1982*, you should be aware that relevant personal information may be passed to other government agencies, such as the Department of Immigration and Citizenship, the Australian Taxation Office or the Australian Federal Police.

---

<sup>1</sup> This guide only applies if you are purchasing residential real estate. Refer to [How to Apply — Business Proposals](#) for all other foreign investment proposals.

<sup>2</sup> You will be in breach of the FATA if you do not comply with those conditions.

## HOW TO APPLY

10. All application forms are available for download from the Foreign Investment Review Board (FIRB) website at [www.firb.gov.au](http://www.firb.gov.au) or by calling the general enquiry number.

11. You must complete **all** boxes on the relevant application form, including the Declaration – your application will be invalid and will not be processed until we receive the fully completed forms.

12. Please submit your application electronically (via **email or fax**) – do not post originals in addition to electronic lodgement. You should only post your application to us if you are unable to submit your application via email or fax.

### **Applications**

Email: [firbapplications@treasury.gov.au](mailto:firbapplications@treasury.gov.au)

Fax: 02 6263 2940  
(+61 2 6263 2940 from overseas)

Post: The Executive Member  
Foreign Investment Review Board  
c/- The Treasury  
Langton Crescent  
PARKES ACT 2600

### **Enquiries**

Email: [firbenquiries@treasury.gov.au](mailto:firbenquiries@treasury.gov.au)

Fax: 02 6263 2940  
(+61 2 6263 2940 from overseas)

Phone: 02 6263 3795  
(+61 2 6263 3795 from overseas)

## If you meet the eligibility criteria

13. Your application should only include **two** documents:

(a) **one** of the following forms, completed and signed by the purchaser(s) or their agent:

- Form 4 – Notice under section 26A — if you are purchasing the property in individual name(s);
- Form 5 – Notice under section 26A — if you are purchasing the property in the name of a company or trust;
- Retrospective application – individual(s) — if you have **already** purchased the property in individual name(s) without prior approval; or
- Retrospective application – company/trust — if you have **already** purchased the property in the name of a company or trust without prior approval; and

(b) **one** of the following Declarations, completed and signed by the purchaser(s) (**not** their agent):

- single block of vacant land to build a house;
- vacant land to build multiple dwellings;
- new dwelling;
- redevelopment; or
- established (second hand) dwelling for Australian-based employees (only applicable for purchases by companies operating in Australia).

14. You are **not** required to attach any other documents to your application (please note that your application will take longer to process if you attach a contract).

## If you do not meet the eligibility criteria

15. *If you are not eligible for approval under the policy, then the acquisition is generally considered to be contrary to the national interest and will **not** normally be approved. On rare occasions, applications that are not eligible under the policy may be approved if there are extenuating circumstances.*
16. Your application should include **three** documents:
- (a) **one** of the following forms, completed and signed by the purchaser(s) or their agent:
- Form 4 – Notice under section 26A — if you are purchasing the property in individual name(s);
  - Form 5 – Notice under section 26A — if you are purchasing the property in the name of a company or trust;
  - Retrospective application – individual(s) — if you have **already** purchased the property in individual name(s) without prior approval; or
  - Retrospective application – company/trust — if you have **already** purchased the property in the name of a company or trust without prior approval; and
- (b) **a** cover letter explaining the situation; and
- (c) **a** copy of the contract/agreement showing that it is conditional on foreign investment approval.
17. **Do not** submit a Declaration if you do not meet the eligibility criteria.
18. Additional documentation may be requested during the examination process.
19. These applications are complex in nature and may take up to 30 days to process.
20. If you are acquiring a property for redevelopment but you will not be increasing the number of dwellings, you must also provide evidence that the dwelling(s) are uninhabitable and must be demolished (refer to the [policy](#) – paragraph 32).

## ELECTRONIC NOTIFICATION OF ‘APPROVAL’ OR ‘CONDITIONAL APPROVAL’

21. The Government is committed to switching to electronic processing of applications wherever possible, in order to improve the services it provides (by reducing unnecessary delays) as well as to help the environment (by reducing the use of paper). In line with this strategy, and in accordance with the Assistant Treasurer's announcement on 18 December 2008 to streamline the administrative processes for residential real estate acquisitions which meet the eligibility criteria, the decision advice for such applications (usually an 'approval' or 'conditional approval') will be sent via email where an email address has been provided. Such emails represent official advice of the Government's decision under the FATA.
22. If you do not want the decision advice to be sent via email, please clearly indicate this in the covering email or fax enclosing your application. Please note that decision advices sent by ordinary post will look the same as email advices (that is, they will not include Government letterhead or a signature) but may take considerably longer to receive.

## FURTHER ENQUIRIES

23. Further information on the policy may be found at the FIRB website, [www.firb.gov.au](http://www.firb.gov.au).

# ATTACHMENT A

## ACQUISITIONS NOT REQUIRING NOTIFICATION OR APPROVAL

Certain acquisitions do not require notification or approval under the *Foreign Acquisitions and Takeovers Act 1975* (also referred to as **exempt** acquisitions). Foreign persons should determine whether their proposed acquisition is exempt and if in doubt, seek legal advice.

Please note that we do not issue exemption letters.

You do **not** need to submit an application for approval (that is, you are exempt) if:

- you are an Australian citizen living abroad;
- your spouse<sup>3</sup> is an Australian citizen (not a permanent resident) and you are purchasing residential real estate in both names as *joint tenants* (not tenants in common);
- you are a New Zealand citizen and you are purchasing residential property;
- you hold a permanent resident visa and you are purchasing residential property;
- you are a temporary resident<sup>4</sup> and you are purchasing certain residential property as follows:
  - single block(s) of vacant land;
  - new dwelling(s); and/or
  - a second hand dwelling to be used as your principal place of residence (including if it is going to be demolished first then redeveloped);
- you are purchasing new dwelling(s) from the developer, where the developer has pre-approval to sell those dwellings to foreign persons;
- you are acquiring an interest in a time share scheme which does not permit you (and any of your associates) more than 4 weeks entitlement per year;
- you are purchasing certain residential real estate in an Integrated Tourism Resort (ITR)<sup>5</sup>;
- you are acquiring an interest by will or by operation of law (such as, a court order regarding the division of property in a divorce settlement, but not if both parties simply agree to transfer property without a court's intervention); or
- you are purchasing property from the Government (Commonwealth, State or Territory, or local).

---

<sup>3</sup> **Spouse** includes de facto partner (whether of the same sex or a different sex) – that is, although they may not be legally married, they have a relationship as a couple and live together on a genuine domestic basis (sections 22A and 22B of the *Acts Interpretation Act 1901*).

<sup>4</sup> You are a **temporary resident** if you are living in Australia and:

- you hold a temporary visa which permits you to stay in Australia for a continuous period of more than 12 months; or
- you have submitted an application for permanent residency (PR), and you hold a bridging visa which permits you to stay in Australia until your PR application has been finalised.

<sup>5</sup> Refer to the [policy](#) for details regarding ITRs.

## ATTACHMENT B

### FREQUENTLY ASKED QUESTIONS (FAQ)

#### Q1. Can I apply before finding a property?

No, foreign investment approval is required for a specific property you wish to acquire. You cannot apply for a general or 'in principle' pre-approval.

#### Q2. Can I apply for several properties at once?

Yes, but you must submit a separate application for each property you wish to purchase.

#### Q3. How many properties can I purchase?

There are no restrictions on the number of properties you are permitted to purchase, but you must obtain approval and meet the eligibility criteria for each property.

#### Q4. Can I purchase a property at auction?

Yes, but you should obtain foreign investment approval **before** the auction.

#### Q5. Can I sign a contract before receiving approval?

Yes, but you should ensure that the contract remains conditional until after you receive foreign investment approval – if it becomes unconditional before you receive approval, you will be in breach of the *Foreign Acquisitions and Takeovers Act 1975* (the FATA).

#### Q6. Can you give me an example of a 'condition' to include in the contract?

'This contract is subject to foreign investment approval. If such approval is not obtained within 40 days, this contract is terminated and all monies deposited will be refunded.'

#### Q7. I did not know I needed approval and have already purchased property (or entered an unconditional contract to purchase property) – what should I do?

You should submit a retrospective application. If you meet the eligibility criteria, retrospective approval is generally granted (that is, no action will be taken with respect to the breach as long as you comply with the standard conditions).

#### Q8. How long will it take for my application to be processed?

Acquisitions which meet the eligibility criteria will generally be approved within one or two weeks of receipt of **completed and signed applications** (that is, the relevant form and Declaration of eligibility).

All other proposals should allow 30 days from the date we receive the application for a decision.

If you wish to seek urgent consideration of your application, valid supporting reasons must be provided (for example, if the property is scheduled for auction).

#### Q9. Will you contact me about my application?

We will contact you or the nominated contact person (preferably by email) if we require more information.

The decision advice will normally be sent to the nominated contact person via email.

#### Q10. What if I change my mind about purchasing the property?

If you no longer intend to purchase the property and wish to withdraw your application before receiving approval, please notify us in writing (preferably by email or fax).

#### Q11. What if I want to change or add purchaser(s)?

Approval is granted for **specific person(s)** – the approval will not apply to any other person(s). If you wish to change the person(s) who will be acquiring the property, you must submit separate application(s).

**Q12. What if I want to change the property?**

Approval is granted for a **specific property** – the approval will not apply to any other property. If you wish to purchase a different property (or additional properties), you must submit separate application(s).

**Q13. What if I don't have a passport?**

Alternative information is required for identification purposes (such as a Driver's Licence or identity card).

**Q14. Why do I have to provide details of other properties and FIRB applications?**

This will help us locate your details in our database and may be used for compliance purposes.

**Q15. What does 'land title details' mean?**

The official land title details can be found on the contract. The type of details shown on your contract will depend on the State or Territory. You do not need to fill in all the boxes – just those with the relevant details from your contract. If you can't find the 'lot and plan' or the 'volume and folio' numbers, please provide alternative details under 'other' (for example, 'folio identifier').

**Q16. What if we haven't agreed on the purchase price yet?**

Please provide an approximation of the expected purchase price.

**Q17. Do I have to provide details of an agent on the application form?**

No, do not complete that Part if you would like us to deal with you directly, rather than through a third party. However, if you are overseas, please provide details of a contact person in Australia.

**Q18. Should I tick 'yes' or 'no' in the Declaration?**

Tick 'yes' if the statement is correct (for example, *New Dwelling Declaration*: tick 'yes' to confirm that the dwelling has been occupied for less than 12 months (including if it has never been occupied)).

If you tick 'no' to any statements, it means you are **not** eligible under the policy and you **cannot** submit a Declaration with your application (see [paragraphs 14-19](#)).

**Q19. Does it matter if I leave some of the boxes empty on the form or Declaration?**

Yes, your application is **not valid** and will not be processed until we receive the fully completed forms (for example, you must print the address of the property being acquired on the Declaration as well as on the statutory notice/retrospective form).

**Q20. Can I sign the Declaration on behalf of the applicant(s) as their agent?**

No, the Declaration is **not valid** unless it is signed by the applicant(s).

**Q21. I have received an 'approval' email – will you also send me an 'approval' letter in the post?**

No, the email represents official 'approval' under the FATA (see [paragraphs 20-21](#)).

**Q22. I am exempt – can you provide written confirmation of this for my bank/mortgage provider?**

No (see [Attachment A](#)).

**Q23. I am a temporary resident and I wish to purchase a property to live in while I am in Australia, but I cannot afford to buy a property by myself. Can my parents (who live overseas) purchase a property with me?**

Yes. As foreign non-residents, they will need approval if they wish to purchase any property (even if they are purchasing it together with other person(s) who are exempt). Approval will be granted according to the eligibility criteria – that is, they can purchase vacant land (subject to the relevant development conditions) or new dwellings, but they will **not** be permitted to purchase established property.