



## RESIDENTIAL REAL ESTATE – OVERVIEW

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

The Government's policy is to channel foreign investment into new dwellings as this creates additional jobs in the construction industry and helps support economic growth. It can also increase government revenues, in the form of stamp duties and other taxes, and from the overall higher economic growth that flows from the additional investment.

Foreign investment applications are therefore generally considered in light of the overarching principle that the proposed investment should increase Australia's housing stock (by creating at least one new additional dwelling).

Consistent with this aim, different factors apply depending on whether the type of property being acquired will increase the housing stock or whether it is an established dwelling.

From 9 May 2017, foreign persons who purchase residential real estate will be subject to an annual vacancy charge where the property is not rented out or occupied for more than six months per year. For more information see Guidance Note 48.

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 disposal orders.

## NEW DWELLINGS AND VACANT LAND

Foreign persons generally need to apply and receive foreign investment approval before purchasing new dwellings and vacant residential land for development. Applications to purchase new dwellings are usually approved without conditions. Applications to purchase vacant land are normally approved subject to construction being completed within four years (to prevent land banking). Once new dwellings are built or purchased, they may be rented out, sold, or retained for the foreign investor's own use.

Land that has previously had an established dwelling on it would generally not be treated as vacant land for the purposes of Australia's foreign investment framework.

A single dwelling that has been built to replace one or more demolished established dwellings would generally not be considered a new dwelling for the purposes of Australia's foreign investment framework.

## ESTABLISHED DWELLINGS

Non-resident foreign persons are generally prohibited from purchasing established dwellings in Australia. However, reflecting the fact that foreign persons who are temporary residents need a place to live during their time in Australia, temporary residents can apply to purchase one established dwelling to use as a residence while they live in Australia. The purchase of an

established dwelling in these circumstances would normally be conditional on the foreign person selling the property when they leave Australia, or cease being a temporary resident and do not become a permanent resident or an Australian citizen. Temporary residents cannot acquire established dwellings to rent out or for use as a holiday home.

Foreign controlled companies are generally prohibited from purchasing established dwellings, although foreign companies with a substantial Australian business may be permitted to acquire established dwellings for the purpose of providing housing for their Australian based staff.

Consistent with the aim of increasing the housing stock, foreign persons (both temporary residents and non-residents) can apply for approval to purchase an established dwelling for redevelopment (that is demolishing the dwelling and constructing new residential dwellings in its place). These applications are normally approved on the condition that at least two dwellings are built for the one demolished. For more information for temporary residents, see Guidance Note 2.

For more information for foreign non-residents, see Guidance Note 3.

For more information for established dwellings for redevelopment, see Guidance Note 6.

For more information on established dwellings for Australian-based employees, see Guidance Note 7.

## WHEN DOES A FOREIGN PERSON NEED TO SEEK APPROVAL FOR A PROPOSED PURCHASE?

Foreign persons must have received foreign investment approval **before** they acquire an interest in residential real estate.

An interest in residential real estate can include:

- signing an unconditional contract agreeing to purchase a dwelling;
- signing an unconditional contract agreeing to purchase a share of a dwelling (such as joint tenants or tenants in common with any number of other people);
- a security interest under a real property mortgage, even if the person that possesses the property is an Australian citizen or permanent resident;
- an option that provides the right to purchase a property at an agreed price at some time in the future (such as a put and call option);
- a leasehold agreement that is reasonably likely, at the time the interest in the agreement is acquired, to exceed five years;
- increasing the share of ownership of a dwelling that the foreign person already has an interest in;
- acquiring shares in a corporation or units in a unit trust where interests in residential real estate exceeds 50 per cent of the entity's assets; or
- any other acquisition that meets the definition of an interest in Australian land under the *Foreign Acquisitions and Takeovers Act 1975*.

## WHAT IS THE APPROVAL PROCESS?

Foreign persons should apply for approval before taking an interest in residential real estate. Applicants must wait to receive that approval before taking an interest in residential real estate. To take any action before approval is received is a breach of the law.

Foreign persons who want to minimise the risk of a property they are interested in purchasing being sold to someone else before they receive foreign investment approval can enter into a contract as long as the contract is conditional on receiving foreign investment approval.

The decision maker has a statutory period of 30 days to make a decision from the date of full payment of the relevant fee on application, and a further 10 days to notify the applicant of the outcome.

## ARE THERE ANY EXEMPTIONS?

Australian citizens do not require foreign investment approval to purchase residential real estate, regardless of whether they are resident in Australia or not. New Zealand citizens and holders of Australian permanent residency visas are also exempt from the requirement to seek foreign investment approval to buy residential real estate. Spouses of Australian citizens, New Zealand citizens and holders of Australian permanent visas do not require foreign investment approval when purchasing residential real estate as joint tenants.

For more information, see Guidance Note 4.

## FEES

An application for approval to purchase residential real estate will not be considered until the relevant application fee has been paid in full.

For more information on fees, see Guidance Note 29.

## PENALTIES

Strict penalties (including civil and criminal penalties and disposal orders) may apply for breaches of Australia's foreign investment rules. For more information, see Guidance Note 11.

Cases of non-compliance with Australia's foreign investment framework may also be brought to the attention of law enforcement agencies and other Commonwealth departments such as the Department of Immigration and Border Protection.

## HOW TO APPLY

If you would like to apply for foreign investment approval for:

- A new dwelling
- Vacant residential land
- A second hand or established dwelling
- An exemption certificate for established dwellings
- An exemption certificate for residential land (other than established dwellings)

Please use the [Australian Taxation Office's foreign investment application form](#).

Foreign persons should take care to ensure they supply the correct details and all required information as part of their application, as changes to details such as name or property address after an approval has been granted may require foreign persons to seek a new approval and be subject to further fees.

## **FURTHER INFORMATION**

Further information is available on the FIRB website at [www.firb.gov.au](http://www.firb.gov.au) or by contacting 1800 050 377 from Australia or +61 2 6216 1111 from overseas.

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**Important notice:** This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.