



## RESIDENTIAL REAL ESTATE - TEMPORARY RESIDENTS

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Temporary residents generally need to apply for and receive foreign investment approval before purchasing any residential real estate in Australia.

This Guidance Note sets out the factors that will be considered when assessing an application and outlines the conditions that will normally apply to an approval.

### WHO IS A TEMPORARY RESIDENT?

A temporary resident is an individual who:

- holds a temporary visa that permits them to remain in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa); or
- is residing in Australia, has submitted an application for a permanent visa and holds a bridging visa which permits them to stay in Australia until that application has been finalised.

#### Example 1

Ingrid holds a skilled worker visa that permits her to remain in Australia for a continuous period of three years. Even though Ingrid has already been in Australia for more than two years and has less than 12 months remaining on her visa, she is still considered a temporary resident.

#### Example 2

Henry holds a student visa that permits him to remain in Australia for a continuous period of nine months. Henry is considered a foreign non-resident, rather than a temporary resident.

## FACTORS CONSIDERED BY PROPERTY TYPE

### Established dwellings

An established dwelling is a dwelling on residential land that is not a new dwelling.

Commercial residential premises such as hotels, motels and caravan parks are not included in the definition of an established dwelling. Different rules apply for acquisitions of aged care facilities, retirement villages and certain student accommodation. For more information, see [Guidance Note 14](#).

Temporary residents with valid visas will normally be allowed to purchase only one established dwelling to live in as their residence (home) in Australia, subject to the conditions that they:

- use the property as their principal place of residence in Australia;

- do not rent any part of the property, including ensuring that it is vacant at settlement; and
- sell the property within three months from when 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.

Temporary residents need to apply and receive approval before purchasing an established dwelling for redevelopment (see section below).

### **Example 3**

Phillip is a temporary resident and wants to purchase an established dwelling to live in while he is in Australia. He applies for approval to purchase an established dwelling and pays the relevant fee. He is approved to go ahead with the purchase subject to the normal conditions for temporary residents purchasing an established dwelling.

Two years later, Phillip leaves Australia to return to his home country. To comply with the conditions of his approval, Phillip sells the dwelling within three months of departing Australia.

### **New dwellings**

Temporary residents will normally be allowed to purchase new dwellings in Australia without being subject to any conditions. Temporary residents may purchase new dwellings in addition to one established dwelling (that is used as their primary residence). There is no limit on the number of new dwellings a temporary resident may purchase, but approval is generally required prior to each acquisition.

A new dwelling is a dwelling that will be, is being, or has been built on residential land, has not been previously sold as a dwelling, and has either:

- not been previously occupied; or
- if the dwelling is part of a development (50 or more dwellings) and was sold by the developer of that development, has not been previously occupied for more than 12 months.

### **Example 4**

Kate is a temporary resident and has previously purchased with approval an established dwelling to live in. She now wants to purchase an apartment that is a new dwelling for investment purposes, so she applies for approval and pays the relevant fee. She is approved to go ahead with the purchase and the approval is not subject to any conditions.

New dwellings do not include established residential real estate that has been refurbished or renovated.

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

**Example 5**

Bruce decided to demolish the existing dwelling on his property and build a single dwelling. When construction of the replacement dwelling was finished, Bruce decided he wanted to sell the property. Bruce has not occupied the dwelling or rented it out.

In this case, the rebuilt dwelling does not represent a genuine increase in Australia's housing supply. To ensure the sale of the property is consistent with the national interest, the dwelling will be treated as an established dwelling, not a new dwelling, under Australia's foreign investment framework.

**Exemption to purchase a new dwelling in a development**

Developers may hold a new (or near-new) dwelling exemption certificate that allows them to sell new (or near-new) dwellings in the development specified in the certificate to foreign persons. Where a developer has this certificate, the temporary resident may not require a separate approval. The temporary resident should ask the developer for a copy of the exemption certificate for the development in which they are intending to purchase. If the exemption certificate covers their intended purchase, they do not need to seek separate foreign investment approval.

For more information, see [Guidance Note 8](#).

**Vacant land**

Temporary residents will normally be allowed to purchase vacant land for residential dwelling development, subject to conditions that:

- the development is completed within four years from the date of approval; and
- evidence of completion of the dwellings is submitted within 30 days of being received. This could include a final occupancy or builder's completion certificate.

In exceptional circumstances where the development cannot be completed within the specified four years, the temporary resident could apply for a variation to the condition (the application for the variation must be made at least two months prior to the end of the period). A fee will apply for this. Variations will be considered on a case-by-case basis.

For more information, see [Guidance Note 19](#).

Vacant land that previously had an established dwelling on the land would generally not be treated as vacant for the purposes of Australia's foreign investment framework. As such, foreign persons would generally not be eligible to purchase vacant land that previously had a dwelling built on it (unless they are proposing to construct multiple dwellings on the land which will increase the housing stock).

**Established dwellings for redevelopment**

Temporary residents will normally be allowed to purchase an established dwelling for redevelopment in Australia provided the redevelopment genuinely increases the housing stock. Such proposals are normally approved subject to conditions that:

- the existing dwelling(s) cannot be rented out prior to demolition and redevelopment;

- the existing dwelling(s) is demolished and construction of the new dwellings are completed within four years of the date of approval; and
- evidence of completion of the dwellings is submitted within 30 days of being received by the applicant. This could include a final occupancy or builder's completion certificate.

Temporary residents will generally not be approved to purchase an established dwelling to redevelop into a single new dwelling.

For more information, see [Guidance Note 6](#).

#### **Exemption certificates for established dwellings and other residential land**

Foreign persons who are temporary residents may also apply for an established dwelling exemption certificate which will allow them to purchase one unspecified established dwelling up to a specified value within a specified state or territory to use as their principal place of residence.

Foreign persons, including temporary residents can also apply for a residential land (other than established dwellings) exemption certificate which will allow them to purchase one unspecified property (except established dwellings) including new (and near-new) dwellings and vacant commercial land.

This certificate means that foreign persons do not have to seek individual approval for each property they are interested in and only pay one fee on application for the certificate. If the person applies for both certificates but will only make one acquisition under the two certificates, a single fee of the highest fee payable under the two certificates will apply. The residential land can be purchased by any method (such as auction, ballot, private offer, expression of interest or tender). No agreements (even conditional agreements) can be entered into before the exemption certificate is given.

All exemption certificates will normally be subject to the same conditions that apply to ordinary approvals, and require the foreign person to report on any purchase made.

For more information, see [Guidance Note 9](#).

## **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 Home Affairs.

## **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](#) 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.