



RECOVERING UNPAID PENALTIES

A person who fails to comply with certain obligations under the *Foreign Acquisitions and Takeovers Act 1975* (the Act) may be ordered by a court to pay a civil penalty (a fine) up to \$52,500 (in the case of an individual) or \$262,500 (in the case of a body corporate). The penalty is a debt that is due and payable to the Commonwealth. To help ensure that any person who is ordered to pay a pecuniary penalty actually pays the penalty, in some circumstances a charge may be created over land owned by the person.

IN WHAT CIRCUMSTANCES IS A CHARGE CREATED?

Broadly, if a court orders that a person must pay a civil penalty because the person contravened a requirement under the Act relating to the acquisition of land, a charge is automatically created on that land to secure the payment of the penalty. In some circumstances the Treasurer may also declare that there is a charge on other land owned by a person (including land that was lawfully acquired) who has been ordered to pay a civil penalty if the Treasurer is satisfied that it is necessary to do so to secure the payment of the civil penalty.

The charge will remain in force until the person pays the civil penalty and certain associated costs. A charge has priority over any other interest in the land, including any registered mortgage, and is not affected by a change in ownership in the land.

If the person still hasn't paid the civil penalty and certain associated costs by a particular time (usually three months, unless a court or the Treasurer decide on a longer period), the land will vest in the Commonwealth. The Treasurer may then sell the land.

HOW CAN I TELL IF THERE IS A CHARGE OVER LAND I AM PROPOSING TO BUY?

To make sure that any potential purchaser is aware that a charge applies to land, any charge created under the Act will be registered on the land title register in the State or Territory in which the land is located. This will ensure that a potential buyer of the property is aware that there is a charge over the land.

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au or by contacting +61 2 6263 3795.

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.