



RESIDENTIAL REAL ESTATE — PENALTIES AND OFFENCES FOR NON-COMPLIANCE

Last update: 1 July 2020

Strict penalties apply for breaches of the *Foreign Acquisitions and Takeovers Act 1975* (Act).

This Guidance Note outlines the penalties and offences that apply in relation to non-compliance with the Act in relation to residential real estate.

THE OFFENCES AND PENALTY REGIME

The following enforcement measures are available for non-compliance with residential real estate obligations:

- criminal prosecution;
- civil penalty orders;
- infringement notices.

In addition, the Treasurer may be able to require the interest in residential real estate to be sold.

BREACHES AND POTENTIAL PENALTIES

Action	Penalty
Foreign person acquires new property without approval (failure to notify or purchase before approval granted)	Criminal Penalty (sections 84 and 85 of the Act) Maximum criminal penalty of: Individual — 750 penalty units (\$166,500) and/or 3 years imprisonment. Company — 3,750 penalty units (\$832,500).
Temporary resident acquires established property without approval (failure to notify or purchase before approval granted)	Civil Penalty (section 94 of the Act) Maximum civil penalty is the greater of: 10 per cent of the consideration for the residential land acquisition (an amount equivalent to the relevant application fee may also be payable in relation to the issue of an order or notice by the Treasurer); or 10 per cent of market value of the interest in the property (an amount equivalent to

	<p>the relevant application fee may also be payable in relation to the issue of an order or notice by the Treasurer).</p> <p>Tier 1 Infringement notice — Person notified the Commonwealth of the alleged contravention before an infringement notice was issued</p> <p>Individual — 12 penalty units (\$2,664) plus the relevant application fee. Company — 60 penalty units (\$13,320) plus the relevant application fee.</p> <p>Tier 2 Infringement notice — Identified through compliance activities</p> <p>Individual — 60 penalty units (\$13,320) plus the relevant application fee. Company — 300 penalty units (\$66,600) plus the relevant application fee.</p> <p>An infringement notice or civil penalty may be sought, but not both.</p>
<p>Non-resident acquires established property or temporary resident acquires more than one established property (failure to notify, purchase before approval granted or breach of conditional approval)</p> <p>Temporary resident fails to sell established property when it ceases to be their principal residence (breach of conditional approval)</p> <p>Temporary resident rents out an established property (breach of conditional approval)</p> <p>Failure to complete construction within four years without seeking extension (breach of condition of vacant land or redevelopment approvals)</p>	<p>Maximum criminal penalty of:</p> <p>Individual — 750 penalty units (\$166,500) or 3 years imprisonment. Company — 3,750 penalty units (\$832,500).</p> <p>Civil Penalty</p> <p>Maximum civil penalty is the greater of the following:</p> <p>the capital gain made on divestment of the interest in the property; 25 per cent of the consideration for the acquisition of the interest; or 25 per cent of market value of the interest.</p>
<p>Property developer fails to market apartments in Australia in accordance with conditions applying to an exemption certificate</p>	<p>Criminal Penalty</p> <p>Maximum criminal penalty of:</p> <p>Individual — 750 penalty units (\$166,500) or 3 years imprisonment.</p>

Residential real estate — penalties and offences for non-compliance

<p>(breach of new dwelling exemption certificate)</p>	<p>Company — 3,750 penalty units (\$832,500).</p> <p>Civil Penalty</p> <p>Maximum civil penalty of:</p> <p>Individual — 250 penalty units (\$55,500) Company — 1,250 penalty units (\$277,500)</p>
<p>Property developer fails to comply with reporting conditions associated with approval (breach of new dwelling exemption certificate)</p> <p>Foreign person fails to comply with reporting condition which requires them to notify of actual purchase and sale of established properties (breach of conditional approval or exemption certificate)</p>	<p>Criminal penalty</p> <p>Maximum criminal penalty of:</p> <p>Individual — 750 penalty units (\$166,500) or 3 years imprisonment. Company — 3,750 penalty units (\$832,500).</p> <p>Civil penalty</p> <p>Maximum civil penalty of:</p> <p>Individual — 250 penalty units (\$55,500) Company — 1,250 penalty units (\$277,500)</p> <p>Tier 1 Infringement notice — Person notified the Commonwealth of the alleged contravention before an infringement notice was issued</p> <p>Individual — 12 penalty units (\$2,664) plus the relevant application fee. Company — 60 penalty units (\$13,320) plus the relevant application fee.</p> <p>Tier 2 Infringement notice — Identified through compliance activities</p> <p>Individual — 60 penalty units (\$13,320) plus the relevant application fee. Company — 300 penalty units (\$66,600) plus the relevant application fee.</p> <p>Either an infringement notice or civil penalty would be sought, but not both.</p>
<p>Third party assists foreign investor to breach rules</p>	<p>Civil penalty</p>

	<p>Knowingly assisting another person to contravene a civil penalty provision is a breach of the <i>Regulatory Powers (Standard Provisions) Act 2014</i>. Maximum civil penalty the same as the primary breach.</p> <p>Criminal penalty</p> <p>Knowingly assisting another person to commit a criminal offence is an offence under section 11.2 of the <i>Criminal Code Act 1995</i> (maximum penalty is the same as the primary offence).</p>
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CONTRAVENTIONS THAT CAN BE SUBJECT TO CRIMINAL PROSECUTION

There are a number of offences that can relate to actions involving residential real estate which could be referred for criminal prosecution. This will occur where the behaviour that constitutes the breach is serious enough to warrant criminal sanction.

If the Treasurer identifies breaches that are serious enough to warrant criminal prosecution the Treasurer will refer the matter to the relevant Crown authority (such as the Federal Police or the Director of Public Prosecutions). The Treasurer will continue to assist those authorities as required to prosecute the breach.

POWERS TO PROHIBIT AN ACTION

The Treasurer may issue orders that prohibit a foreign person from acquiring an interest in residential land (known as a prohibition order).

There are criminal and civil penalties for breaching these orders issued under Part 3 of the Act.

CONTRAVENTIONS THAT CAN BE SUBJECT TO A CIVIL PENALTY ORDER

Contraventions of the Act that are related to residential real estate can be subject to a civil penalty (section 89 and sections 94 to 97). These contraventions can be the subject of a civil penalty order issued by a relevant court. The table above specifies the penalties that may be ordered if a civil penalty order is issued.

INFRINGEMENT NOTICES

Where an alleged contravention can be the subject of a civil penalty, for less serious matters, these alleged contraventions could instead be subject to an amount payable under an infringement notice. For more information, see [Guidance Note 12](#).

PENALTIES AND OFFENCES INVOLVING THIRD PARTIES

Where an alleged contravention can be the subject of a civil penalty or criminal sanction, third parties that knowingly assist in the commission of the breach can be subject to a penalty that is the same as the primary breach.

Third parties can include advisors and those who provide services to facilitate the transactions, such as stockbrokers, lawyers and solicitors, and conveyancers. For more information, see [Guidance Note 13](#).

FURTHER INFORMATION

Further information is available on the [FIRB website](#) 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.