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New foreign investment rules for property investors

In December 2008 the Federal Government issued a statement regarding changes to the foreign investment review process.

The changes include streamlining and updating the foreign investment screening process for residential real estate transactions and reducing compliance costs for temporary residents and, the construction and property development industries.

The Government sought to review the process that had remained unchanged since 1989. The review process also revealed that each year 7,500 foreign residents and businesses sought approval from the Foreign Investment Review Board and more than 90% of applications related to residential real estate.

Changes were passed and on 31 March 2009 having effect from 18 December 2008. The changes include:

Temporary Resident

- A 'temporary resident' is defined to mean a foreign person living in Australia who holds a valid temporary visa which permits them to stay in Australia for a continuous period of more than 12 months or who has submitted an application for permanent residency and holds a bridging visa which permits them to stay in Australia until their permanent residency application has been finalised.
- The definition of temporary resident does not include short term visitors such as tourists, short term business visa holders and medical visa holders but does include long term students and employees holding 457 long term temporary visas.
- The restriction on students being permitted to buy a principle place of residence valued up to \$300,000 has been lifted and no monetary limit has been set.
- The requirement of a foreign resident purchasing vacant land to build a dwelling on that land within 12 months has been extended to 24 months.

Established Dwellings

The restrictions regarding established dwellings remain unchanged.

New Dwellings

The changes in relation to new dwellings include **benefits for developers** such as:

- The restriction that no more than 50% of an off the plan development can be sold to foreign persons has been removed. The developer must still market locally and overseas. Similarly, a developer does not have to show that it has concurrently developed a similar dwelling in order to sell this dwelling to a foreign person. This relaxation will be reviewed after 2 years.
- The definition of 'new dwelling' has been changed to include dwellings that have not been sold by the developer but that have been occupied for no more than 12 months. The change allows developers to rent apartments to non-residents for up to 12 months after completion.

The changes enable the Foreign Investment Review Board to concentrate on larger and more sensitive foreign investment proposals and consider the 'national interest' view. The term 'national interest' is not defined but is determined on a case by case basis having regard to widely held community concerns.

For further details in relation to the Foreign Investment Review Board process please contact:

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