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| June 2015 Newsletterhttp://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif*Could You Be FIRBed?*Interesting and, for some, stressful, experiences await many in relation to the Sydney property market in the next 6 to 18 months and all those it affects particularly real estate agents, solicitors, licensed conveyancers and homebuyers - especially “*foreign buyers*”.Potentially costly times lay ahead for some buyers and owners who may not be aware now, or, who may not have been aware in the past, but who, in all probability, will become aware in the next 6 months, that they need (or previously needed) approval from the *“FIRB*” - who are not a sister department of MIB (“Men in Black”) but the less funereal “*Foreign Investment Review Board”*which was established under the 40 year old Act the “*Foreign Acquisitions and Takeovers Act 1975”* (the “Act”) which, together with equally complex *“Foreign Acquisitions and Takeover Regulations 1989 (Cth)”*(“FATR”), are about to take on a new lease of life and assist the Federal Government to “*Stop the illegal foreign buyers*” who are believed by many in the government and elsewhere to be a significant factor in pushing up the prices of houses and apartments in Sydney. So what’s changed and why are things now different to when this Act was passed when flared trousers and platform heels were the last word in sartorial elegance and a vendor of a terraced house in Paddington asking $100,000 was “dreaming”? On Saturday 9 May 2015, Mr Abbott declared a change to government policy and a crackdown on illegal foreign buyers of Australian real estate. Whilst $5,000 fees for many “foreign buyers” payable from December 2015, have caused Mr Simon Henry of the Chinese language website Juwai.com where many overseas buyers look to buy Australian property to say: “*There is no other country that charges fees to foreign investors that is actually seeking foreign investment”;*  to some vendors and real estate agents, potentially of more concern is that the Parliamentary Secretary, Kelly O’Dwyer, has recently stated that the Australian Taxation Office is to undertake a data-matching campaign which may lead to *audits* of taxpayers and *criminal prosecutions*. The Tax Office is said to go through the records of 30,000 “entities” and cross-check with other government agencies the names, contact details, country of residence, nationality, passport details and the type and title references of the land owned by those entities. The Act provides that a “foreign person” wishing to buy real estate in Australia should seek prior approval from the FIRB unless exempt from that requirement. The legislation and regulations are complex and will not be easy for many persons, whether “foreign” or otherwise and whether or not English is their first language, to comprehend. The definition of a “*foreign person”* is set out in s5 of the Act and includes:  -*a natural person not ordinarily resident in Australia* -*a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest* -*a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation hold an aggregate interest* Acquisitions by: -*Australian citizens resident abroad (clause 3 of the FATR)* -*foreign nationals who hold permanent resident visas or who hold or, are entitled to hold, a special category visa and who are purchasing residential property either in their own names or through an Australian corporation or trust; and* -*foreign nationals purchasing (as joint tenants) with an Australian citizen spouse or de facto spouse*  are*exempt* from the requirement to obtain FRIB approval. Otherwise, all other proposals to acquire residential real estate by foreign persons must be made to the FIRB (*Reg 3* and *s5A* of the Act). Approval must be obtained by a non-exempt foreign person before signing a contract to purchase or, alternatively, sign a contract conditional upon FIRB approval being granted. The application for approval must be made to: *The Executive Member,**Foreign Investment Review Board,**c/- The Treasury, Langton Crescent,Parkes, ACT, 2600;*(Tel: 02 6263 2111 or 1800 020 008)and specify the particular property as the FIRB will not give in-principle approval.  What may happen if a foreign person or an Australian company with foreign shareholders enters into a contract to purchase residential real estate without FIRB approval or without the contract being conditional on obtaining that approval? The experience of those who breach the rules is likely to be significantly more unpleasant than the “*flashy thing”* deployed by MIB. S21A empowers the *Treasurer, Mr Hockey, to make an order requiring the foreign person or company to “dispose*” of the real estate. The Tax Office is to look at shareholdings in Australian companies that own units in Australian urban land trusts and urban land and also at ownership structures to determine if real or beneficial owners are non-resident. Ms Dwyer stated on 9 May 2015 that an amnesty with reduced penalties is to run until 30 November 2015 for those who fess up and tell the Tax Office that they have breached the rules. Until 30 November, foreign buyers who had made “*inadvertent breaches*” would avoid being referred to the Commonwealth Director of Public Prosecutions for criminal prosecution and they could claim under the amnesty before proposed new laws come into effect.  The new laws are, from 30 November 2015, to enable courts to:  - impose prison sentences of up to*3 years* and fines for individuals up to*$127,500* and*$637,500* for companies; -order sales *of real estate acquired without approval;*-*confiscate capital gains*  Ms Dwyer said that those under investigation may not be aware that an investigation is underway and that those who have breached the Act should approach the Treasury or the Tax Office *“Before we get to them*”.  Lawyers, accountants or real estate agents who knowingly assist in any such breaches will also face civil and criminal penalties including fines of $*42,500* for individuals and $*212,500* for breaches by corporate entities. The effect, if any, of these proposed new laws and enforcement of existing laws on the seemingly ratchet-like resilient Sydney housing market remains to be seen, although if the number of contemplated forced sales and confiscation of capital gains post-30 November 2015 is significant, some might think that downward pressure on prices could be a consequence. Could that be the *pin* to “*burst the bubble”?* Accordingly, anyone fessing up to the Tax Office and selling real estate which required, but which did not receive, approval may wish to consider taking such action sooner rather than later. Even if you haven’t breached the rules, but are thinking of selling your home, you may wish to ensure that your sale contract contains a special condition requiring the purchaser to warrant that in the event that he or she is a foreign person as defined by the Act, all requirements with the Act have been observed and that any loss occasioned by a breach of that warranty will result in damages being payable by the purchaser to you the vendor. You may wish to read the government’s recent pronouncement at to its proposed changes to the legislation: <http://www.firb.gov.au/content/real_estate/compliance.asp?NavID=23>   If you find this article interesting you may also be interested in an article called *"How the $52m Altona sale dodged investment laws"*,  published in The Sydney Morning Herald on 4 June 2015 by Lucy Macken, Philip Wen and John Garnaut. A link to the online version can be found below: <http://news.domain.com.au/domain/real-estate-news/point-pipers-altona-mansion-sale-dodged-foreign-investment-laws-20150603-ghfheb.html>  |

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| http://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif*Guardianship Appointments**What is an Enduring Guardianship Appointment?*An enduring guardianship appointment is a document which allows you to appoint someone to make medical and/or lifestyle decisions for you in the event you lose capacity.  Their functions are set out under section 6E of *The Guardianship Act 1987NSW (“the Act”)*and include:1. *Deciding the place (such as a specific nursing home) in which you are to live;*
2. *What health care you are to receive;*
3. *What kinds of personal care you are to receive;*
4. *Consenting to medical or dental treatment;*
5. *Any other function specified in the document.*

*I have an Power of Attorney, and so do I need to appoint an Enduring Guardian?*A Power of Attorney appointment is complementary to a enduring guardianship appointment.An Attorney can only make *financial decisions* on your behalf. They cannot make medical and/or lifestyle decisions for you.In the event that you do not appoint an Enduring Guardian and you lose the capacity to appoint one an application can be made to the Guardianship Division of NSW Civil and Administrative Tribunal (NCAT) to have one appointed for you.When it is impracticable to wait for a guardian to be appointed by NCAT, such as, when consent is required for a medical or dental treatment, section *36 of The Act*provides that, in addition to NCAT, the person responsible for you may give consent.  The person responsible is defined in the Act as a parent, child, guardian, spouse or possibly a close friend.Although it is worth remembering that there are some procedures which do not require consent  such as to save a patient’s life or prevent serious damage to the patient’s  *health (please see section 37 of the Act for a complete list).*  *So Why Should I appoint an Enduring Guardian?*An Enduring Guardianship appointment provides you with the certainty and comfort in knowing that if anything happens and you are no longer able to make decisions for yourself  you have appointed someone you trust to make those decisions for you.If you wish to discuss the making of an Enduring Guardianship Appointment please feel free to contact us on 02 9906 8188.   |

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| http://gallery.mailchimp.com/653153ae841fd11de66ad181a/images/transparent.gif *Tossers Beware*When growing up I was always told that no one likes a dib-a-dobber.Now, years later, it appears that the Government is encouraging us, more and more, to be dib-a-dobbers. This is evident by their latest campaign *“dob-in a tosser”* in an attempt to curb littering.Is it just me, or is this a little "*un-Australian*"?As of 1 March 2015, members of the public are able to, with ease, dob-in ‘tossers’ to the New South Wales Environmental Protection Authority (*“EPA”*) for littering.Now, concerned members of public have always been able to contact the EPA and provide them with details of people who litter. The EPA was then able to, based upon those “tips”, issue warning letters to those people.  However, they were not able to issue fines based solely upon the ‘tip’. Only a report from enforcement staff, such as police and council, could lead to a fine being issued.However, this has now changed. From 1 March 2015, fines can be issued from people “dobbing-in a tosser”.  Motorist driving a private vehicle  are now able to be fined up to $250 with motorists driving a company vehicles being fined up to $500 *(note that there aggravated circumstances where a larger fine may be issued, such as, dispensing a lit cigarette during a total fire ban).**So how does one dob-in a tosser?*The EPA has, “for ease of dobbing”, developed an app which can be downloaded to your smart phone and after registering in their system and accepting the EPA’s terms and conditions you are able to begin dobbing in tossers. Provided that you:1. observed the litter being discarded or blown from the vehicle;
2. report the incident within 14 days;
3. provide the registration No.  of the vehicle and the State of registration;
4. provide the location;
5. provide the date and time; and
6. provide any other relevant details such as,  what type of litter, who it was that ejected the littler, male/ female , driver or passenger

The owner of the vehicle is liable to receive a penalty notice from the State Debt Recovery Office, imposing a fine. *But what if you didn’t do it?*The onus is upon *you* to prove that you did not littler. In effect, you are guilty until you prove that you are innocent.So Tossers beware! No place is a safe place to litter!   |

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