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| https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/bed454f5-374e-46e6-a733-ff8ea431817c.jpg   |  | | --- | | October Newsletter    https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/2feee961-ed4e-4d3b-a747-f6e6493f6c6d.jpg  ***Purchasing Off the Plan- What happens when the bank won’t lend you enough money to complete your off-the-plan purchase?***    Over the last 5 year period, many investors and many home-buyers have been keen to purchase apartments and townhouses “*off-the-plan”* particularly in metropolitan cities such as Sydney, Melbourne and Brisbane. When this occurs purchasers generally sign huge contracts, often substantially thicker than telephone directories, in circumstances where they know that they will not be able, and will not be required, to settle by paying the balance of the purchase price until perhaps 3, 4 or even 5 years’ time.   In those circumstances it generally isn’t possible to secure finance from an Australian bank or other lender at the time the contract is entered into. It follows, therefore, that most often there needs to be something of a leap of faith on the part of the purchaser in deciding to commit themselves to purchase the off-the-plan apartment or townhouse in circumstances where a firm offer from a lender will not be forthcoming, if at all, until, perhaps, just prior to the eventual settlement date.    ***So what happens, in those circumstances, when the awaited day draws near and your solicitor informs you that the vendor’s solicitor is “calling for settlement”?***  In recent times, the Federal Government has ensured that the Australian Prudential Regulation Authority (*“ARPA”*) rules are tightened to make it more difficult for both Australian and overseas investors to obtain funds from Australian Banks and other Australian lenders to purchase off-the-plan properties.   In addition thereto, the Chinese Government has caused Chinese banks to make it more difficult for Chinese nationals to obtain finance from Chinese banks for investment purposes in Australia and elsewhere.   Additionally, the following additional expenses have been put in place for overseas buyers:     *New South Wales*   The state government announced in its 2016 NSW Budget that a 4% surcharge is applicable to a foreign person who purchases a residential property in NSW which is *in addition* to stamp duty payable on the purchase of a residential property.   A foreign purchaser is no longer entitled to a 12 month deferral for the stamp duty payment for off-the-plan residential property purchases and they must pay the stamp duty within 3 months from the contract date.   A new form called, the *“Purchaser Declaration”* Form, has also been introduced which is now compulsory to complete for *any*person who enters into a transaction to acquire an interest in land in NSW on or after 21 June 2016.      *Victoria*   Similarly, in the state of Victoria, if a foreign purchaser acquires an interest in a residential property, additional duty in addition to land transfer duty is applicable.   If the date that the contract, transaction, agreement and arrangement is entered into on or after 1 July 2015, but before 1 July 2016, the additional duty rate is 3%. For contracts, transactions, agreements and arrangements entered into on or after 1 July 2016, the additional duty rate is 7%.     *Queensland*  The Queensland Treasurer also announced as part of the 2016-17 Queensland Budget a 3% surcharge purchaser duty on the purchase of real estate by foreigners from 1 October 2016.        ***What generally happens when you enter into a contract and, for reasons beyond your control, for example, a bank refuses to lend you enough money, causing you to default on your contractual obligations and to be unable to complete the contract?***  The short answer is that, in most circumstances, your 10% (or other) deposit may be forfeited and it is possible that the losses you incur may not stop there as a vendor may then sue you for any additional losses that it claims it has incurred as a result of your default.   For example, if you agree to buy an apartment for $1,500,000, but do not complete the contract and the vendor eventually sells to someone else for $1,200,000, it follows that the vendor forfeiting your $150,000 deposit may not be sufficient recompense to the vendor who may, then, decide to sue you for the difference. *ie. another $150,000!*   You may well think that many purchasers of off-the-plan contracts won’t ultimately be successful in obtaining finance or may, for a variety of other reasons, such as marital breakdown and separation, financial hardship, unemployment or some other matter, may not be able to complete the contract.      ***Do all of the unfortunate purchasers in those circumstances lose their deposit and or find themselves being sued for damages by the vendor?***  Fortunately, vendors do not, for reasons which they often elect not to disclose, always take such a hard line with defaulting purchasers. Very often property developers, who are not always necessarily thought of as particularly altruistic and compassionate people, do, often, assist defaulting purchasers with finding practical alternatives.       ***Are these alternatives the same in New South Wales, Victoria and Queensland?***     The answer is *“not necessarily”.*    *New South Wales*     ***On-sale***   In New South Wales, a purchaser may be able to enter into *a contract, option agreement or other arrangement* for the sale of the property prior to settlement subject to vendor’s consent.   A vendor may, or may not, provide consent to such an arrangement and a purchaser will have a contractual obligation to notify the vendor in relation to the details of that arrangement such as, purchase price, identity of new buyer and contract details of the new buyer.      *Queensland*   ***Rescission and Entry into a New Contract***   In Queensland, a purchaser may request that a vendor rescind the current contract and simultaneously enter into a new contract with a new buyer on identical contractual terms including the same purchase price.   If a vendor agrees, a vendor’s solicitor will prepare a *rescission agreement* which stipulates all the relevant contractual terms including the issue of whether a purchaser can get his deposit back, when the original purchaser can get his deposit back, and whether the original buyer is entitled to interest accrued on deposit.   It is common practice in Queensland that a purchaser who rescinds a contract, does not have an entitlement to interest accrued on deposit.      *Victoria*   ***Nomination***   In Victoria, general condition 18 of the standard form of contract prescribed by the Estate Agents (contract) Regulations 2008, provides that a purchaser may nominate a *substitute* or *additional* purchaser.   It requires a purchaser to remain *personally liable* for the due performance of all the purchaser’s obligation under the contract.   Typically upon the nomination of a substitute purchaser, a nominee accepts the transfer right, but, will not ordinarily acquire any rights against the vendor as they are not party to the contract.  *Sally Kim* | |
| |  | | --- | | **St Leonards –**“*Little Manhattan*”, “*Get out of Jail Free Card*” or “Split Personality"?    https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/9e01fcf9-7d6e-4bcf-9e98-29daafede237.jpg    ***Who was Saint Leonard and why was he made a saint?***  Saint Leonard, whose name has been adopted for the area of the Lower North Shore of Sydney where our office and the Royal North Shore Hospital is located, is the patron saint of *political prisoners*, *imprisoned people*, *prisoners of war*, *captives*,*women in labour*, and *horses*.  Leonard was a Frankish noble who died in the 6th century AD.  He asked Clovis, the head of his court, to grant him the personal right to liberate, at any time, prisoners whom he found worthy of liberation.  He was granted this right by Clovis, and secured the release of a number of prisoners and, in consequence, he has become the patron saint for all prisoners  Given the many different and often polarised views of Australia’s relationship with Manus Island and Nauru, it might be considered surprising that St Leonard’s name is not more often invoked by those seeking to have the 2,000 or so detainees still detained on those islands released.   Notwithstanding this oversight by many Australians, today, Saint Leonard is celebrated each year on 6th November in Bad Tölz, Bavaria*.*   Clive Mills & Associates is not aware of any moves to promote such festivities in St Leonards in New South Wales by way of a public holiday or otherwise although we would not envisage strenuous opposition to any such proposal.   There are many towns and cities named after St Leonards all over the world, directly or indirectly.  Clive Mills' first job as a qualified solicitor was in East Sussex in England in the towns known collectively as *“Hastings and St Leonards”*.  ***St Leonards, New South Wales***  St Leonards on the Lower North Shore of Sydney was named after English statesman Thomas Townshend, 1st Viscount Sydney of St Leonards.[[1]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=08eac16ae3" \l "_ftn1" \o ")  St Leonards hosts the *Royal North Shore Hospital*, the *College of Law*, and a variety of medium to large IT companies including *IBM*, *Cisco* and *EMC2*.  St Leonards is also a significant residential area that is about to expand exponentially through new high-rise developments, especially in the Lane Cove Council area of the suburb which lies to the west of the Pacific Highway.    ***New Residential Developments***  As of 2011, St Leonards housed 4,467 people in a mix of low, mid and high-rise dwellings. Over the last three years, a number of developments have been approved and the number of residents has increased significantly.  St Leonards is serviced by no less than 3 councils:   * *North Sydney*Council - to the north and the south; * *Willoughby* Council - to the east; and * *Lane Cove* Council - to the west.   Most of the high-rise buildings currently in St. Leonards including "*Air Apartments*"  and "*The Forum*" lie within the North Sydney area as the North Sydney Council appears to have been the prime driver to the creation of a *"Little Manhattan"*hub.  Until relatively recently, the Lane Cove Council had resisted the temptation to develop the western side of the Pacific Highway with many of the elderly one and two storey buildings fronting the highway being potential candidates for backdrops for the next *Mad MAX*movie.  The current mixture of buildings, old and new, due in part to the hitherto differences in approach by its 3 councils have given it something akin to a split personality seemingly uncertain as to its identity - *"old"* or *"modern"*.  However, in recent times, Lane Cove Council has embraced modernity with a number of high-rise developments planned to be completed within the next 3 to 4 years.  The “[*Landmark*](http://thelandmarksydney.com.au/)” development at 500 Pacific Highway at over 40 storeys will be one of the tallest buildings on the North Shore when it is completed in or about late 2019.  ***Figure 1: The proposed “the Landmark” development***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/73df59b0-d9c7-4076-895a-3bccd78db639.jpg *Source: The Daily Telegraph*  And the *St Leonards Square*[Mirvac development](https://www.theurbandeveloper.com/mirvac-ramps-construction-st-leonards-square/) at 472-786 Pacific Highway is also scheduled to be completed in late 2019.   ***Figure 2: St Leonards Square interior (artist’s impression)***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/4968bd78-8cfd-4cdc-a2a0-b221ee4d49b2.jpg *Source: Mirvac*    ***Figure 3: St Leonards Square (2 towers)*** https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/8fc91c48-5f80-41a6-acaa-3d18cbf769af.jpg *Source: Mirvac*   With a view, in part,  to ensuring a continued timely service for our clients, Clive Mills has [purchased](https://www.theurbandeveloper.com/mirvac-ramps-construction-st-leonards-square/) an apartment in St Leonards Square.  <https://www.theurbandeveloper.com/mirvac-ramps-construction-st-leonards-square/>  According to The [Daily Telegraph](http://www.dailytelegraph.com.au/newslocal/north-shore/new-apartment-development-in-st-leonards-could-become-one-of-the-tallest-buildings-on-the-north-shore/news-story/b4119c0973b45cd0f1ffdf0e6b659583http:/www.dailytelegraph.com.au/newslocal/north-shore/new-apartment-development-in-st-leonards-could-become-one-of-the-tallest-buildings-on-the-north-shore/news-story/b4119c0973b45cd0f1ffdf0e6b659583), the rezoning agreement for the Landmark and St Leonards Square developments requires the developers to pay a total of $45.03 million to Lane Cove Council, which will be deployed for public purposes.   The Embassy Tower and St Leonards Plaza Residential developments should release more funds to the council for these purposes entirely transforming the suburb.  **Figure 4: The proposed “Embassy Tower”** **development on St Leonards Plaza**  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/8781f174-04ab-4365-840e-ff5dedf23d4d.jpg *Source: [Loftex](http://embassytower.com.au/)* ***Figure 5: Winten Property Group’s St Leonards Plaza Residential proposal*** https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/f2c84b8c-c10c-4185-8d47-1822abd495c7.jpg *Source: [Winten Property Group](http://www.winten.com.au/apartments/link-st-leonards/)*  ***New public facilities***  Under the re-zoning agreement for the Landmark and St Leonards Square developments, the council can use up to 50 per cent of the $45.03 million to:   * buy units in the future towers for “affordable/key worker” housing; * create incubator commercial space for start-ups; and * improve public spaces like Friedlander Place, local streets and the bus/rail interchange on the western side of the Pacific Highway.   Lane Cove council has also proposed to use part of the money to build a new plaza on the western side of the Pacific Highway, opposite St Leonards Station, together with a bus interchange, and connections to the north side of the Pacific Highway.  This plaza may prove to become the new *“heart”* of St Leonards.  ***Figure 6: St Leonards Interchange*** https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/6463e46a-9eb5-4b12-8ca2-d59cd1e5553a.jpg  *Source: St Leonards Public Domain Master Plan, Lane Cove Council (December 2014)*  It is envisaged to comprise:   * Green areas of soft landscaping; * Children’s play areas; * Water features; * Public artworks; * Retail facilities including cafes and alfresco dining; and * Connections with surrounding areas and public transport.   ***On the Eastern side of the Pacific Highway***  While the developments mentioned above are on the Western (Lane Cove Council) side of the Pacific Highway, there have also been proposals for significant development on the Eastern side of the Pacific Highway.   One block down from the existing *“heavy rail”* St Leonards Station, on the corner of Reserve Road and the Pacific Highway, Gore Hill Oval is the subject of a significant project to upgrade it to a synthetic turf surface.   And at a site just north of St Leonards station, a significant proposal from Brookfield Multiplex and Alto Group was knocked back by the state government in January this year.  It involved constructing a public plaza over the railway line, upgrading the station, improving pedestrian and road connections, and build several towers ranging between 38 and 55 storeys.  ***Figure 7: St Leonards Central proposal (not progressed)***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/c1302ded-d0bf-453e-bb86-8fea09c4f2c5.jpg *Source:*[*St Leonards Central consortium*](http://media.wix.com/ugd/0deb23_9c47846a9d28462983ac6f321d7611eb.pdf)  ***Sydney Metro***  Early works on Stage 2 of the Sydney Metro are scheduled to commence in 2017, with completion due in 2024.  This will provide more convenient travel between St Leonards and North Sydney, the Sydney CBD, Chatswood, the North-West, and the South-West.     St Leonards will be the only stop between Chatswood and the new “Victoria Cross” station in North Sydney.  The state-of-the-art system will deploy *driverless trains* departing every 4 minutes, dispensing with the need for both a timetable and a train driver.  ***Figure 8: Proposed Sydney Metro route***  https://gallery.mailchimp.com/d7ac35d590989fce96f6014e9/images/4155be0e-7b9e-4fc3-8f16-403f48073d0c.jpg  *Source:*[*Sydney Metro*](http://www.sydneymetro.info/map/interactive-map)  ***Conclusion***  These are exciting times for St Leonards.  We look forward to continuing to be a small but integral part of St Leonards as it grows and changes and, like St. Leonard, we will continue to remain ready, willing and able to provide legal services and assistance to those who require it including those of our clients whose liberty might be at risk or even those who may have lost their liberty temporarily at least.  **Sources:** <http://www.catholic.org/saints/saint.php?saint_id=4246> St Leonards Public Domain Master Plan, by Lane Cove Council, 2014 St Leonards Strategy, by David Lock Associates, for Lane Cove Council, Willoughby Council, and North Sydney Council, 2006 A Plan for Growing Sydney, by the New South Wales Department of Planning & Environment <http://www.stleonardscentral.com.au/>   <http://www.winten.com.au/apartments/link-st-leonards/>   <http://www.dailytelegraph.com.au/newslocal/north-shore/new-apartment-development-in-st-leonards-could-become-one-of-the-tallest-buildings-on-the-north-shore/news-story/b4119c0973b45cd0f1ffdf0e6b659583>   <http://www.dailytelegraph.com.au/newslocal/north-shore/new-apartments-by-the-thousand-going-up-in-st-leonards-could-have-a-devastating-effect-on-residents/news-story/0b9de24faabe35a0ede2d58c5a263cec>   <http://www.news.com.au/finance/real-estate/units-snapped-up-in-north-shore-at-new-st-leonards-developments/news-story/ed7b588f770b1db0effa217479cf1a5c>   <http://www.dailytelegraph.com.au/newslocal/north-shore/new-plan-to-give-st-leonards-a-heart-with-a-new-plaza-over-the-railway-line/story-fngr8h9d-1226877599164>   <http://www.dailytelegraph.com.au/newslocal/north-shore/gore-hill-multimillion-dollar-sports-and-community-centre-put-on-the-backburner-by-willoughby-council/news-story/9515c316ee36a8c30a4ed4ef3b90367d>   <http://www.dailytelegraph.com.au/newslocal/north-shore/north-sydney-byelection-federal-government-spends-95-million-on-gore-hill-park-upgrade/news-story/77b306986f43de83121256d481cbb8be>      [[1]](http://us4.campaign-archive2.com/?u=d7ac35d590989fce96f6014e9&id=08eac16ae3" \l "_ftnref1" \o ") https://en.wikipedia.org/wiki/St\_Leonards,\_New\_South\_Wales | |