TIME FOR DEVELOPERS' LAWYERS TO GET REAL

This post might seem strange coming from a Lawyer who predominantly works for Property Developers. But the days of one sided off-the-plan contracts of sale are over, or if they aren't, they should be.

With the market moving towards satisfying down-sizers who are starting to accept that they will buy their next home off the plan, and that they'll be paying somewhere between $1M and $20M, contracts of sale should be more respectful of the purchaser and their expectations.

For the past 15 years or so the development industry has delivered mainly investment grade apartments to buyers who may never set foot in their new income producing negatively geared asset. And most of the time lawyers for developers have got away with the standard response of 'not agreed' to often reasonable requests for changes to one sided pro-forma contracts.

But owner occupiers intend to live in and love their new castle in the sky, and at some point they want to know with certainty that they will in fact get to own it and that they will only be required to pay for it when it has been completed. Many of our clients are now buying their new homes off the plan. And Developers - our clients included - are catering to that market.

But I'm disappointed by the number of emails we receive from other law firms stating (with no explanation) that their developer clients 'do not agree' when we make sensible and reasonable requests for contract changes. The response that the contract 'is standard and can't be changed' just doesn't cut it. By way of example, contracts selling to owner occupiers (who are most likely selling their current home) should allow for the contract to be ended by the purchaser if construction doesn't start for an inordinate period of time. This allows them to make other arrangements, rather than waiting for a 48 or 60 month sunset date to expire. Contracts should not allow developers to end a contract if they have in fact built the property but have delayed completion (as has been highlighted in a recently publicised case). Contracts should certainly not entitle a vendor to call for settlement until the property has been completed. A certificate of occupancy does not mean that the property has been completed!

Given the serious dollars being paid for off the plan apartments and townhouses, developers and their lawyers should be more accommodating of the needs of purchasers. Sure we all appreciate that developers and their banks need certainty. Our off-the-plan contracts are firm but as a matter of policy we encourage our developer clients to agree to include reasonable provisions because it gets the deal done and in the right way.

And here's a bonus … lower legal fees … because in this market for owner occupier product, the outcome of lawyers who continue to say 'not agreed' when asked to modify one sided contracts is, invariably, protracted negotiations, slower sales and high legal fees.

Let's make the whole process fairer and easier by agreeing to produce contracts that make sense for both developers and the people they are selling to. What are your thoughts on this? Have a chat with Henry Kalus to discuss.

For over 20 years Kalus Kenny Intelex have been providing expert legal and proactive strategic advice for some of Melbourne's most successful property developers, entrepreneurs and business people. Underpinning this success, and what really sets us apart from other firms, is the way we work with our clients. What exactly does this mean for you? It means providing clarity. It means understanding strategy and risk. It means being a different kind of lawyer.