



BAN THE BANNERS

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You may have seen media reports warning the property industry of a raft of new obligations arising for the sale of properties including:

1. the “ban the banners” legislation which is designed to stop developers and bodies corporate from restricting the use of sustainable and affordable design features in homes such as light coloured roofs, single garages, smaller houses and solar hot water systems;
2. introducing the mandatory completion of a Sustainability Declaration at the point of sale for houses, townhouses and units.

The new obligations must be complied with from 1 January 2010.

This article deals with the “Ban the Banners” obligations.

EFFECT OF NEW LAWS – BUILDING ACT 1975 RECENT AMENDMENTS

Generally the new laws will not affect:

1. contracts entered into prior to 1 January 2010;
2. however, for restrictions associated with installation of a solar hot water system or photovoltaic cells on the roof or other external surface the amendments apply to allow the structures notwithstanding the contract;
3. the contract conditions restricting the particular building works specified in the Act has no force or effect to the extent of the prohibition or requirement contained in the contract.

PROHIBITIONS AND REQUIREMENTS

The following is a summary of the types of matters which must not be prohibited or required in contracts entered after 1 January 2010:

1. prohibiting the use of a colour for the roof of the building if the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55;
2. prohibiting the use of a window that is energy efficient;
3. prohibiting the treatment of a window to ensure the window is energy efficient;
4. prohibiting a person from occupying a building **before** particular landscaping, fencing, driveways or similar work associated with the construction of the building is completed;
5. requiring a minimum floor area;
6. requiring a minimum number of bathrooms or bedrooms;

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7. requiring the construction of the building, or any landscaping, fencing, driveways or similar work associated with the construction of the building to be completed within a stated period;
8. requiring more than one garage;
9. requiring a minimum pitch for the roof;
10. requiring the building to be orientated on the land in a particular way;
11. prohibiting the use of a specific material or type of surface finish for the roof or external walls; or
12. prohibiting the installation of a solar hot water system or photovoltaic cells on the roof or other external surface of the building.

BUILDING COVENANTS IN CONTRACTS

Many developers have not yet amended the Building Covenants contained in Contracts to comply with the new laws.

Please do not hesitate to call me if you have any doubt about whether you are required to comply with Building Covenants included in Contracts where you are buying land or propose building on land you currently own.