

## Foreign Investment in Residential Real Estate

Under Australian law, the Foreign Investment Review Board (FIRB) examines proposals by foreign persons to acquire interests in residential real estate in Australia, and makes recommendations to the Government on whether those proposals are suitable for approval under its foreign investment policy.

Australia's eligibility rules for foreign investors in residential real estate are designed to ensure that foreign investment in residential property adds to residential housing supply and promotes new construction activity.

Following changes to the screening arrangements announced in April 2010, all foreign investors require FIRB approval before buying **any** residential real estate in Australia.

The policy restricts access to established (second-hand) residential property by foreigners. Foreign buyers who do not live in Australia are prohibited from buying established dwellings, while temporary residents are permitted to purchase **one** established dwelling as their residence in Australia. They cannot avoid the rules by acquiring property jointly with, or in the name of, an Australian citizen or resident, or via a company or trust. The policy also requires that temporary residents must sell their established properties when they leave Australia.

FIRB routinely monitors compliance with the policy. Real estate agents should ensure they fully understand the policy, as there can be severe penalties for non-compliance.

Breaches of the *Foreign Acquisitions and Takeovers Act 1975* can result in divestment of the property, as well as fines and/or imprisonment for foreign purchasers. Foreign investors may forfeit their deposit and may also be liable for damages for breach of contract.

Breaches may also have consequences for real estate agents. You may be liable for civil damages if you do not accurately advise foreign purchasers about their obligations under the policy. You may also be liable to pay penalties and compensation under consumer protection legislation (including the *Trade Practices Act 1974*).

### SUMMARY OF ELIGIBILITY CRITERIA AND NOTIFICATION REQUIREMENTS

#### *Non-residents*

Foreign citizens who do not live in Australia must seek prior approval for **all** acquisitions of Australian property. They are eligible to purchase new dwellings and/or vacant land (subject to development conditions). They are prohibited from acquiring established dwellings, except for redevelopment purposes (subject to development and other conditions).

Non-residents also require approval to acquire any beneficial interest in Australian property, even if they do not acquire legal title to the property. They also require approval to acquire **any interest** in a company or trust in which property constitutes more than half of its assets.

#### *Temporary residents*

Foreign citizens who are temporarily living in Australia must now notify and receive approval for **all** acquisitions of residential property in Australia. Temporary residents are permitted to purchase **one** established dwelling, provided it is used as their residence in Australia. Such residences must be sold once the temporary resident leaves Australia.

Temporary residents must also seek prior approval for **all other** acquisitions of residential real estate, including for new dwellings and vacant land. Conditions will apply to developments.

To be classified as a temporary resident, the foreign person must be actually living in Australia (not just intending to live here at some time in the future). They must also hold a visa as follows:

- a temporary visa permitting them to stay in Australia for a continuous period of **more than** 12 months; or
- a bridging visa permitting them to stay in Australia pending a decision on their application for permanent residency.

### ***Permanent residents***

Foreign citizens who hold a permanent visa (that is, they are permitted to remain in Australia indefinitely), are permitted to purchase Australian residential properties (including established dwellings for investment purposes) without notifying FIRB. They do not require foreign investment approval for such purchases.

### ***New dwellings***

A new dwelling is a dwelling that has never been sold and has not been occupied for longer than 12 months. All other dwellings are established (or second-hand) dwellings.