

Information Obligations – Seller’s Guide

Jurisdiction:

State of Western Australia

Legislation:

Transfer of Land Act 1893

Community Titles Act 2018

Summary - Seller Obligations

Under the *Community Titles Act 2018* (the Act), the seller **must**:

- disclose to the buyer the information detailed in section 130 of the Act before the buyer signs the contract for sale and purchase of the lot.
- disclose notifiable variations, as defined in section 3(1) of the Act, to the buyer within the timeframes described in section 131 of the Act. Such disclosure must provide particulars that a reasonable person would consider sufficient to make an adequately informed assessment as to whether the buyer is materially prejudiced by the variation.

Sellers are advised to refer to the form Pre-contractual Disclosure Statement to the Buyer on Landgate’s website. This is the form the seller uses to disclose the information to the buyer before the buyer signs the contract. It is in 2 parts. PART 1 details information about the seller, community titles scheme and lot. PART 2 contains a Buyer’s Guide which explains:

- why the information in the form is important to the buyer;
- information about notifiable variations that the seller must disclose to the buyer; and
- the buyer’s rights under the Act to avoid the contract in certain circumstances.

Importance for the Seller

Failure to provide the required pre-contractual disclosure information to the buyer, or to provide information about notifiable variations prior to settlement, may give the buyer the right to avoid the contract or to delay the proposed settlement date. The specific avoidance circumstances are summarised below.

Buyer’s right to avoid the contract (*s133 - 136 of the Act*)

If the seller fails to provide the required information before the buyer signs a contract for sale and purchase of a lot in a community titles scheme, the buyer may have a right to avoid the contract. If the seller fails to provide the buyer with written notice of a *notifiable variation*, described in section 3(1) of the Act, which has arisen after contract signature and before settlement, the buyer may avoid the contract. There are two types of notifiable variation, described in detail in section 3(1) of the Act (“*type 1 notifiable variation*” and “*type 2 notifiable variation*”).

Type 1 notifiable variations address a reduction in the area or size of the lot by 5% or more, an increase in the relative unit entitlement of the lot, or estimated relative unit entitlement of the lot, by 5% or more or a decrease of 5% or more, or anything relating to a proposal for termination of the Lot’s Scheme or another scheme in the community scheme is served on the seller.

Type 2 notifiable variations address amendments of the community development statement, or proposed community development statement, for the community scheme, changes to the scheme

plan and the schedule of unit entitlements (that is not a Type 1 notifiable variation), amended or new contracts entered into by the community corporation, modifications to scheme by-laws of the Lot's Scheme or a community titles scheme to which the Lot's Scheme belongs, or new/amended leases, licences, rights or privileges over common property in the Lot's Scheme or a community titles scheme to which the Lot's Scheme belongs.

The specific avoidance circumstances are explained in this Guide.

Scenarios	Buyer's Avoidance Right
1. Seller gives pre-contractual information to buyer <u>before</u> contract is signed by the buyer.	No avoidance right.
2. Seller gives pre-contractual information to buyer substantially complying with the Act <u>after</u> contract is signed by the buyer and before the settlement date of the contract.	Buyer may avoid the contract by giving written notice to the seller within 15 working days after the seller's notice is given. The notice to the seller must include the grounds on which the contract is avoided, including details of material prejudice to the buyer. The onus of proving material prejudice is on the buyer.
3. Seller does not give pre-contractual information to buyer. If the seller were to give the information, the buyer would receive information or a document that would disclose material prejudice to the buyer.	Buyer may avoid the contract at any time before settlement by giving written notice to the seller. The notice must include the grounds on which the contract is avoided, including details of the material prejudice. The onus of proving material prejudice is on the buyer.
4. Seller gives buyer written notice of notifiable variation: not later than 10 working days after becoming aware of the variation OR If the seller becomes aware of the variation less than 15 working days before settlement, as soon as practicable	For both type 1 and type 2 notifiable variations, the buyer may avoid the contract by providing written notice to the seller within 15 working days after the seller's notice is given, provided the buyer: a) Is materially prejudiced by the notifiable variation (the reasons to be included in the buyer's notice to the seller) <i>and</i> b) Scenario 5 below does not apply.
5. Seller has in the contract informed the buyer of any proposed action or matter that would be a notifiable variation, AND has given the buyer written notice of completion of the action or matter with particulars which a reasonable person would consider sufficient to enable the buyer to make an adequately informed assessment as to whether the action or matter is completed differently to that described in the contract. The notice of	If the action or matter when completed <i>does not differ</i> from that described in the contract and the seller has given the buyer written notice of completion, the buyer has no avoidance right. If the action or matter when completed <i>differs</i> from that described in the contract, the seller must follow the steps in Scenario 4 above, i.e. treat the action or matter as a notifiable variation, regardless of what is in the contract.

Scenarios	Buyer's Avoidance Right
<p>completion must be given: not later than 10 working days after the seller becomes aware of completion of the action or matter OR if the seller becomes aware of completion of the action or matter less than 15 days before settlement – as soon as practicable</p>	
<p>6. Seller does not give the buyer written notice of notifiable variation</p>	<p><u>Type 1 notifiable variation:</u> Buyer may avoid the contract at any time before settlement by providing written notice to the seller (no need to prove material prejudice) <u>Type 2 notifiable variation</u> Buyer may avoid the contract any time before settlement by providing written notice to the seller which includes details of material prejudice.</p>
<p>7. Seller gives late notice of the notifiable variation to the buyer</p>	<p><u>Type 1 notifiable variation:</u> Buyer may avoid the contract by providing written notice to the seller within 15 working days after the seller's notice is given. <u>Type 2 notifiable variation:</u> Buyer may avoid the contract within 15 working days after the seller's notice is given, by providing written notice to the seller which includes details of material prejudice.</p>

Buyer's right to postpone settlement

Section 132 of the Act describes the circumstances under which the buyer may delay settlement for failure by the seller to comply with the pre-contractual and notifiable variations disclosure obligations.

The buyer has a right to postpone the settlement date of the contract for the sale and purchase of a lot, by providing written notice to the seller, if the seller has not complied with their obligation to provide pre-contractual information or particulars of a notifiable variation to the buyer. The buyer may postpone the settlement date by no more than 15 working days after the latest date that the seller complies with the relevant disclosure requirement.

Avoidance of “Proposed lot” contract

Under section 137 of the Act, if the contract is for sale and purchase of a lot which has not yet been created, the contract must require any deposit or other amount payable by the buyer prior to registration of the community titles scheme, or amendment of the community titles scheme, to be paid *by the buyer* to an Australian legal practitioner, real estate agent or settlement agent, to be held on trust for the buyer until the scheme is registered.

The contract must specify the practitioner or agent to whom payment is to be made by the buyer, and how payment may be made.

The buyer may avoid the contract at any time before registration of the community titles scheme, or amendment of the community titles scheme if:

- a) The contract does not comply with the requirements, or
- b) The lot is not created either within a period after the date of the contract agreed in writing by the buyer and seller or, in the absence of such an agreement, within 6 months after that date.

Disputes to be heard in the State Administrative Tribunal

If the buyer or seller has a dispute about a right to avoid the contract under the Act, or whether a seller has provided the notifiable information / notifiable variations as required and within the time required, the buyer and or seller may apply to the State Administrative Tribunal for orders to resolve the dispute.

The seller has the onus of proving that required information and statements were given.