

Herald Sun

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HD Guide to foreign sales
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AUSTRALIAN **property** is viewed internationally as being a safe, stable and secure investment with the potential to substantially increase in value.

It is for this reason that Australian **property** ownership is becoming increasingly attractive to foreign **purchasers**.

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In particular, Australia appears to be one of the most popular investment destinations for **Chinese** nationals, who by some estimates spent about \$6 billion on Australian real **estate** last financial year.

The Foreign Investment Review **Board**, or FIRB as it is commonly known, is the government institution that regulates the **purchase** of Australian **property** by overseas **purchasers**. The FIRB is required to approve all **transactions** by overseas **purchasers** in accordance with the Foreign Acquisitions and Takeovers Act. Currently overseas **purchasers** are only permitted to **purchase** new **residential property** as opposed to existing **property**.

However, it is interesting to note that there are a number of exemptions contained in the act. For example, if an overseas **purchaser** is studying in Australia or if the existing home is to be demolished and two or more units constructed in its place, the FIRB will permit an existing home to be **purchased**.

But what or who exactly is an overseas **purchaser**?

An overseas **purchaser** is a person who is not a resident in Australia. This person is defined as being a "foreign interest".

Should they wish to **purchase** Australian real **estate**, which is defined to include all urban land, they will require FIRB approval. There are however different rules relating to the **purchase** of **commercial property**.

The Foreign Acquisitions and Takeovers Act provides that it is an offence for such a person to **buy** a **property** without first obtaining FIRB approval. It is possible for such a person to enter into a contract of **sale** that is conditional on obtaining FIRB approval, however settlement of that contract of **sale** may not proceed until FIRB approval is granted. The procedure for obtaining FIRB approval is relatively straightforward and can be applied for over the internet. Should an overseas **purchaser purchase property** without FIRB approval, there are severe criminal penalties.

It is now commonplace for developers (of projects that number more than 10 properties) who are constructing **residential** properties to seek pre-approval from the FIRB to sell 50 per cent of that project to overseas **purchasers**.

An overseas **purchaser** buying a **property** that has already received pre-approval will not then be required to seek individual approval for their **purchase**. However, should an overseas buyer **purchase** a **property** after that 50 per cent allocation has already been **sold**, they will be required to apply for individual FIRB approval in the usual way.

As always this article contains general information only and should not be relied on for detailed advice related to your particular circumstances. Should you require such advice, please contact your lawyer. Adam Zuchowski is a principal **property** lawyer with Network Legal & Associates

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