

DRAFT FOR CONSULTATION

Property Law (Sunset Clauses) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Purchasing a home is one of the most significant decisions a family can make. New Zealand families deserve to know that when they sign on the dotted line and entrust a vendor with the creation of that home that they will not lose out due to a technicality.

Over the past several years, there have been a multitude of cases where a family has committed themselves and their hard-earned savings to a vendor, only for delays to push their agreement over a sunset date that allows a bad faith vendor to tear up the contract and list the property at a higher price.

This legislation would mean that a purchaser would have to provide written consent to a vendor in order to initiate a sunset clause in most cases. It would also permit vendors to apply to the relevant authority to permit the rescission if they judge it to be just and equitable given the circumstances.

Most property vendors act with integrity and respect towards their purchasers. This legislation is aimed to protect consumers and first home buyers from the minority who have acted in bad faith. This legislation also provides for developers who have acted reasonably, allowing a sunset clause to be initiated with the consent of both parties.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on the day after it receives Royal assent.

Clause 3 identifies the Property Law Act 2007 (the **principal Act**) as the Act being amended by the Bill.

Clause 4 inserts new sections regarding a vendor's ability to use a sunset clause to cancel an off-the-plan contract for a residential lot.

- *New section 41A*: inserts new definitions that apply to off-the-plan contracts that contain a sunset clause and also provides that a subject lot is created when the plan creating the lot is deposited under the Land Transfer Act 2017:
- *New section 41B* limits the circumstances in which a vendor is able to cancel an off-the-plan under a sunset clause, that is, where—
 - each purchaser under the contract consents in writing to the cancellation; or
 - the vendor has obtained an order of the High Court permitting the vendor to cancel the contract under the sunset clause:
- *New section 41C* provides for an application by the vendor to cancel an off-the-plan contract under a sunset clause:
- *New section 41D* requires certain information to be included in a sunset clause in an off-the-plan contract.

Ingrid Leary

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Contents

	Page
1 Title	1
2 Commencement	1
3 Principal Act	1
4 New sections 41A to 41D inserted	2
<i>Sunset clauses</i>	
41A Interpretation	2
41B Cancellation under a sunset clause	2
41C Court may permit vendor to cancel under a sunset clause	3
41D Information that must be included in a sunset clause	3
5 Schedule 1AA amended	4
Schedule 1	4
New Part 3 inserted into Schedule 1AA	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Property Law (Sunset Clauses) Amendment Act **2023**.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

3 Principal Act

This Act amends the Property Law Act 2007 (the **principal Act**).

4 New sections 41A to 41D inserted

After section 41, insert:

Sunset clauses

41A Interpretation

- (1) In **sections 41B to 41D**,—

court means the High Court

estate in land includes a stratum estate within the meaning of the Unit Titles Act 2010

off-the-plan contract means a contract for the sale of a residential lot that has not been created at the time that the contract is entered into

residential lot means an estate in land that is or contains (or is intended to be or to contain) a dwelling that is—

- (a) used, or intended to be used, only or mainly for residential purposes; and
- (b) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (c) does not include any dwelling to the extent that it is, or is part of, a retirement village or rest home

subject lot, in relation to an off-the-plan contract, means the residential lot that the contract anticipates will be created and that the purchaser will own at the completion of the contract

sunset clause means a provision of an off-the-plan contract that provides for the contract to be cancelled (whether automatically, by one of the parties, or by some other means) if the subject lot is not created by the sunset date

sunset date means the date set out in the off-the-plan contract as the latest date (subject to any extension provided for in the contract) by which the subject lot must be created.

- (2) For the purposes of this section and **sections 41B to 41D**, a subject lot is created when the plan creating the lot is deposited under the Land Transfer Act 2017.

41B Cancellation under a sunset clause

- (1) A vendor may not cancel an off-the-plan contract unless—

- (a) each purchaser under the contract, having received the notice under **subsection (2)** consents in writing to the cancellation; or
- (b) the vendor has obtained an order under **section 41C** permitting the vendor to cancel the contract under the sunset clause.

- (2) A vendor who is proposing to cancel the contract under **subsection (1)(a)** must serve a written notice on each purchaser under the contract at least 28

days before the proposed cancellation that specifies why the vendor is proposing to cancel the contract and the reason for the delay in creating the subject lot.

- (3) The notice may be served on a purchaser by serving it on a person who is authorised under the off-the-plan contract to receive it as a representative of the purchaser.
- (4) A sunset clause that purports to automatically cancel an off-the-plan contract must be read as if it permits the contract to be cancelled on or after the sunset date only in accordance with this section.
- (5) Nothing in this section limits any right that a purchaser may have to cancel an off-the-plan contract under a sunset clause.
- (6) A provision of an off-the-plan contract has no effect to the extent that it is inconsistent with this section.

41C Court may permit vendor to cancel under a sunset clause

- (1) A court may, on the application of a vendor under an off-the-plan contract, make an order permitting the vendor to cancel the contract under a sunset clause if the court is satisfied that making the order is just and equitable in all the circumstances after taking into account all of the factors in **subsection (2)**.
- (2) The factors are—
 - (a) the terms of the off-the-plan contract;
 - (b) whether the vendor has acted unreasonably or in bad faith;
 - (c) the reason for the delay in creating the subject lot;
 - (d) the likely date on which the subject lot will be created;
 - (e) whether the subject lot has increased in value;
 - (f) the effect of the cancellation on each purchaser;
 - (g) any other matter that the court considers to be relevant.
- (3) A court may make any other order it considers just and equitable in the circumstances, including an order for compensation for the purchaser.
- (4) The vendor must pay the costs of a purchaser in relation to an application for an order under this section.

41D Information that must be included in a sunset clause

A sunset clause in an off-the-plan contract must contain the following information—

- (a) that a vendor may cancel an off-the-plan contract under a sunset clause if the subject lot has not been created by the sunset date, but only in accordance with **section 41B(1)**; and

- (b) that a vendor who is proposing to cancel the off-the-plan contract under **section 41B(1)(a)** must serve a written notice on each purchaser under the contract at least 28 days before the proposed cancellation that specifies why the vendor is proposing to cancel the contract and the reason for the delay in creating the subject lot; and
- (c) that the purchaser has the right to consent to the proposed cancellation of the off-the-plan contract but is not obliged to consent; and
- (d) that the court may make an order permitting the cancellation of the off-the-plan contract if satisfied that the making of the order is just and equitable in all the circumstances; and
- (e) that a sunset clause cannot automatically cancel an off-the-plan contract.

5 Schedule 1AA amended

In **Schedule 1AA**,—

- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Schedule 1

New Part 3 inserted into Schedule 1AA

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Part 3

Provisions relating to Property Law (Sunset Clauses) Amendment Act 2022

4 Amendments relating to sunset clauses apply to off-the-plan contracts entered into after commencement date

The amendments made by the **Property Law (Sunset Clauses) Amendment Act 2022** do not apply to an off-the-plan contract entered into before the commencement of that Act.