



Foreign Investment Review Board (FIRB) Residential Real Estate Guidance Notes

The Australian Government's foreign investment policy has been developed to encourage investment in Australia and ensure that such investment is consistent with the needs of the Australian community. The Government recognises the important contribution offshore investment makes to the development of Australia's industry, resources and community.

What Is The Approval Process?

Foreign persons should apply for approval before taking an interest in residential real estate. Applicants must wait to receive that approval before taking an interest in residential real estate. To take any action before approval is received is a breach of the law.

Foreign persons who want to minimise the risk of a property they are interested in purchasing being sold to someone else before they receive foreign investment approval can enter into a contract as long as the contract is conditional on receiving foreign investment approval.

Entering Into A Contract

All contracts by foreign persons to acquire interests in Australian real estate must be made conditional upon foreign investment approval, unless approval was obtained prior to entering into the contract.

For properties to be purchased at auction, prior foreign investment approval must still be obtained and advice provided whether the parties were successful or not, and if so, a copy of the signed contract forwarded to the Foreign Investment Review Board (FIRB) after the auction.

It is important that foreign investors understand and comply with Australia's foreign investment framework as strict criminal and civil penalties may apply for breaches of the law, including disposal orders.

Definition of Foreign Investment

A foreign interest is briefly described as:

A natural person not ordinarily resident in Australia;

A corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest (that is, a holding of 15 percent or more);

A corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest (that is, a total holding of 40 percent or more);

The trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;

Or

The trustee of a trust estate, in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.



When Does A Foreign Person Need To Seek Approval For A Proposed Purchase?

Foreign persons must have received foreign investment approval before they acquire an interest in residential real estate.

An interest in residential real estate can include:

- signing an unconditional contract agreeing to purchase a dwelling;
- signing an unconditional contract agreeing to purchase a share of a dwelling (such as joint tenants or tenants in common with any number of other people);
- a security interest under a real property mortgage, even if the person that possesses the property is an Australian citizen or permanent resident;
- an option that provides the right to purchase a property at an agreed price at some time in the future (such as a put and call option);
- a leasehold agreement that is reasonably likely, at the time the interest in the agreement is acquired, to exceed five years;
- increasing the share of ownership of a dwelling that the foreign person already has an interest in;
- acquiring shares in a corporation or units in a unit trust where interests in residential real estate exceeds 50 per cent of the entity's assets; or
- any other acquisition that meets the definition of an interest in Australian land under the Foreign Acquisitions and Takeovers Act 1975.

Residential Real Estate

Proposed acquisition of residential real estate is exempt from examination in the case of Australian citizens living abroad who are holders of permanent visas or entitled to hold a 'special category' visa.

Foreign interests are usually given approval to buy vacant residential land on condition that construction of a dwelling is completed in a timely manner. Approval will also usually be granted to buy home units and townhouses off the plan, under construction or newly constructed (but never occupied), on condition that no more than half of the units in any one development are sold to foreign interests.

Who is Exempt?

Exemptions include:

Australian citizens do not require foreign investment approval to purchase residential real estate, regardless of whether they are resident in Australia or not. New Zealand citizens and holders of Australian permanent residency visas are also exempt from the requirement to seek foreign investment approval to buy residential real estate. Spouses of Australian citizens, New Zealand citizens and holders of Australian permanent visas do not require foreign investment approval when purchasing residential real estate as joint tenants.

Other situations where approval is normally granted includes:

1. Foreign companies buying residences in Australia for their senior executives
2. Foreign nationals temporarily resident in Australia for more than 12 months buying for their own use as a principal place of residence subject to the sale of the property when they cease to reside in Australia.
3. Foreign nationals purchasing residential real estate as joint tenant with an Australian spouse

For more detailed information visit the Foreign Investment Review Board's web site at www.firb.gov.au

The information contained on this or printed from this web site is general in nature and does not take into account your personal situation. You should consider whether the information is appropriate to your needs, and where appropriate, seek professional advice.

290 Gowan Rd Sunnybank Hills 4109

E: julie@juliesrealty.com.au W: www.juliesrealty.com.au