

**Contact Points:**

General Inquiries: (02) 6263 3795  
Overseas: (61-2) 6263 3795

Internet Website:  
<http://www.firb.gov.au>

E-Mail: [firb@treasury.gov.au](mailto:firb@treasury.gov.au)

**Mail application form to:**

Executive Member  
Foreign Investment  
Review Board  
c/o The Treasury  
Parkes Place  
CANBERRA ACT 2600  
AUSTRALIA  
Or fax to: (02) 6263 2940

# Information Guide

## FOREIGN INVESTMENT REVIEW BOARD (FIRB)

### Guide to completing the R1 Form

Further information is available at [www.firb.gov.au/firbpolicy/urbanland](http://www.firb.gov.au/firbpolicy/urbanland)

*For foreign persons acquiring property in an individual name(s) (not through the vehicle of a company or trust) the direct way to obtain such approval is to complete the Foreign Investment Review Board's Form 3 and the R1 Form.*

Form 3 is required to be provided under the Foreign Acquisitions and Takeovers Act, 1975. The R1 Form is required to be provided in terms of the policy applying to the acquisition of residential real estate.

### Entering a contract for sale and breaches of the Act

#### Entering a Contract for Sale

Foreign parties wishing to acquire Australian residential real estate need foreign investment approval **before** acquiring an interest in such real estate. All contracts by foreign persons to acquire interests in Australian real estate must be made conditional upon receiving foreign investment approval, unless foreign investment 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 a copy of the signed contract forwarded to the FIRB if successful at the auction.

#### Breaches of the Act

The Government takes very seriously breaches of legislation regarding inward foreign investment. Persons or corporations who fail to obtain prior approval to buy assets, shares or property or who fail to comply with an order to sell shares, assets or property may be prosecuted under the *Foreign Acquisitions and Takeovers Act 1975*. There are also provisions that make it an offence to provide false or misleading information, or to enter into any schemes for the purpose of avoiding the provisions of the Act.

### Who does NOT require foreign investment approval to acquire Australian residential real estate?

- Australian citizens, residing in Australia or abroad;
- Holders of Australian permanent resident visas;
- Persons entitled to hold a special category visa, for example, New Zealand citizens; and
- Australian citizens and their foreign spouse<sup>1</sup> when purchasing residential real estate in joint names as joint tenants.

<sup>1</sup> **Spouse**, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person.

**Please Note:** In situations of actual or suspected breach of the *Foreign Acquisitions and Takeovers Act 1975*, some of your information may be passed to other Government agencies for the purpose of ensuring compliance with the other relevant Government laws (ie Department of Immigration and Multicultural Affairs, Australian Taxation Office and the Australian Federal Police).

## Definition of Australian residential real estate for the purposes of the R1 Form

The R1 Form and Form 3 should be used where an individual is proposing to acquire Australian residential real estate, including established residential dwellings, dwellings under construction, dwellings purchased 'off-the-plan' or vacant land purchased with the intention of constructing a residential dwelling(s). The R1 Form should not be used for proposed acquisitions of commercial properties, motels and hotel units.

## Foreign Investment Policy approach

### Vacant Land

Acquisitions of vacant land and 'house and land packages' (where construction has not commenced), for development by foreign interests, are normally approved subject to specific conditions.

To obtain foreign investment approval in this category, the foreign person must undertake to commence continuous development on the land within 12 months of receiving foreign investment approval. Upon completion of construction, parties are required to provide the completion date and actual development expenditure. Once these conditions have been fulfilled, the developed dwelling may be rented out, sold to Australian or other eligible purchasers, or retained for the foreign investor's own use.

### Second-hand dwelling

A previously occupied or sold dwelling is considered a 'second-hand dwelling'. Acquisitions of second-hand dwellings by foreign persons are restricted. Generally, foreign investment approval is not available to foreign persons except where the foreign person(s):

- (i) holds an eligible *temporary* resident visa (such a visa would permit continuous residence in Australia for a minimum further period of more than 12 months from the time of foreign investment application); and
- (ii) is willing to undertake that the second-hand dwelling will be their principal place of residence, they will not rent or lease the dwelling and will resell the property to an Australian or other eligible person when they no longer reside in Australia, their visa expires or they no longer occupy the property.

Examples of eligible temporary resident visas include the (subclass) 410 retirement visa, the 457 employment (long stay) visa and the 560 student visa where these visas have longer than 12 months remaining before they expire. Where the visa has less than 12 months before the expiry date, approval may still be possible. In these circumstances, it is suggested that foreign persons contact the Foreign Investment Review Board.

### New dwellings

A dwelling not previously occupied or sold is considered a 'new dwelling'. Ownership of such dwellings by foreign persons may be approved where the dwelling is part of a 'development' and no more than 50 per cent of the dwellings in the development have been sold to foreign interests. For example, a unit in a block of ten units is no longer available to be purchased by a foreign person where five of the units in that block have already been purchased by foreigners as the purchase of the sixth unit would breach the 50 per cent ownership limit for that development.

Examples of 'new dwellings' include:

- partly constructed dwellings;
- house/land packages where construction has commenced;
- dwellings purchased 'off-the-plan' (even if construction has not commenced); and
- extensively redeveloped buildings where the building's use has undergone a change from non-residential (eg office, warehouse) to residential, and the cost of redevelopment is at least 50 per cent of the total acquisition cost based on purchase price or market value of the property.

New dwellings do not include developed residential real estate that has been refurbished.

## **Similar dwellings**

Where the proposed new dwelling to be purchased is a stand alone dwelling (eg a house/land package where construction has commenced) information needs to be provided detailing a similar new dwelling by the same developer. The similar dwelling must have overlapping construction dates, a similar consideration, proximal location and has been or is to be purchased by an Australian or other eligible person. If a similar dwelling does not exist foreign investment approval is not available under the category.

A new dwelling purchased under this category may be rented, sold to Australian interests or other eligible purchasers, or retained for the foreign investor's own use. When the property is sold it is treated as second-hand residential real estate and its sale is subject to the foreign investment restrictions applying to that category of residential real estate.

## **Redevelopment**

Applications to acquire existing residences for redevelopment are considered on a case-by-case basis. Proposals may be approved under this category provided that the property is at the end of its economic life (that is, generally uninhabitable) and/or the proposal provides for an increase in the number of dwellings (that is, demolish one dwelling, build two or more). It is also expected that a minimum of 50 per cent of the acquisition cost or current market value (whichever is the greater) should be spent on the redevelopment of the site.

- As the Foreign Investment Review Board needs to be convinced that the property is at the end of its economic life foreign persons need to provide a valuation of the existing structures on a depreciated replacement cost basis by a licensed valuer.
- The existing dwellings may not be occupied prior to redevelopment and must be demolished.

Once the development condition(s) have been fulfilled, developed dwelling(s) acquired under this category may be rented, sold to Australian interests or other eligible purchasers, or retained for the foreign investor's own use.

This category does not include second-hand residential real estate that has been extensively refurbished.

## **Other points to note about the application process**

The **R1 Form** has been designed for the above real estate acquisitions. It may not cover more complex issues related to less frequently occurring situations. If you believe the form does not adequately address your situation, it is suggested you contact the Foreign Investment Review Board to clarify the application process and its requirements.