

Pre-sale Guarantee Scheme Legal Document Summary

Important information

The information in this summary is provided as a general overview of the legal documentation that may be required in connection with the 'Pre-sale Guarantee Scheme' established by the Western Australian Government (Scheme).

The information is intended for general informational purposes only and does not constitute legal, financial, lending or other professional advice. Applicants, developers, builders, financiers and any other persons intending to apply for, or participate in, the Scheme should obtain their own independent legal, financial and other professional advice relevant to their particular circumstances.

The documentation required for any particular application to participate in the Scheme (Application) may differ from that described in this summary. The documents required, their form and content, and the conditions applicable to participation in the Scheme may change from time to time.

Participation in the Scheme is subject to satisfaction of all eligibility criteria, approval requirements and conditions determined by Keystart and any relevant government authority. Inclusion of a document or requirement in this summary does not indicate that an Application will be approved.

While reasonable care has been taken in preparing this information, Keystart does not represent or warrant that the information is complete, accurate, current or suitable for any particular purpose. To the fullest extent permitted by law, Keystart disclaims liability for any loss or damage arising from reliance on this information.

If there is any inconsistency between this summary and the terms of any legislation, scheme rules, approval conditions or legal documentation issued in connection with the Scheme, those legislation, rules, conditions and legal documents prevail.

For further information, please contact Keystart at developmentfinance@keystart.com.au

Overview of the legal documents

The Scheme is administered by Keystart. The legal documents proposed to be entered into in association with the Scheme include a Financier Deed, Additional Special Conditions and a Deed of Rescission.

References to 'developer' in this overview mean an approved Applicant of the Scheme.

Financier Deed

It is intended that the Financier Deed will be a tripartite agreement between Keystart, the developer and the developer's lender.

The Financier Deed sets out the lender's acknowledgement of Keystart's commitments in respect of the Scheme, Keystart's acknowledgement of the lender's security and the respective obligations of each party. This includes the obligation of the developer to pay an establishment fee to Keystart, reporting requirements by the developer, notification requirements and acknowledgments by the lender and a customary standstill regime.

Additional Special Conditions

It is intended that Keystart, as purchaser, will enter into separate off-the-plan contracts for each dwelling subject to the Scheme (Sale Contract).

The Additional Special Conditions will form part of any Sale Contract and will prevail to the extent of any inconsistencies in the standard conditions or the developer's special conditions.

The key obligations in the Additional Special Conditions include the developer's obligations to actively market the property in an effort to locate another purchaser and reporting on sales activity. The Additional Special Conditions will also contain mechanisms to ensure the Sale Contract can be:

- rescinded if another purchaser agrees to purchase the dwelling (including delivery of signed counterparts to the Deed of Rescission, as further described below); or
- terminated if a developer breaches its obligations in connection with the Scheme.

The Additional Special Conditions shall also adapt as necessary any provisions contained in the developer's special conditions or the standard conditions of the Sale Contract to exclude any conditions that are unacceptable to Keystart.

Deed of Rescission

In accordance with the Additional Special Conditions, it is intended that the parties will each sign a counterpart of the Deed of Rescission for each Sale Contract at the same time as they sign the Sale Contract for each committed property. Those counterparts are then held in escrow under the terms of the Additional Special Conditions.

Once the developer has found a new purchaser, the developer must issue a rescission notice for acceptance by Keystart.

If accepted, Keystart and the developer will release their signed counterparts of the Deed of Rescission from escrow and exchange them, which (subject to the conditions and exceptions described in the Deed of Rescission) rescinds the Sale Contract from its beginning and serves to give effect to the revocable nature of the Sale Contract.

This Deed of Rescission will capture the mutual agreement of Keystart and the developer to rescind the Sale Contract and release each other from all obligations and liabilities arising from it, except for those stated therein.

Once exchanged, the developer can proceed with exchanging a contract of sale with the new purchaser, if the developer has not already done so prior to giving the rescission notice to Keystart.

Developer disclosure obligations will be a matter for the developer to consider and manage as part of its engagement with Keystart and the proposed new purchaser.

Disclosure of pro-forma documents

Keystart will provide drafts of the proforma legal documents to an approved Applicant after all necessary eligibility checks have been completed and satisfied.

By accessing or using such legal documents, Keystart will expect the Applicant to expressly agree to:

- maintain the confidentiality of all information contained within the documents;
- use the documents solely for the purpose of the Application; and
- comply with all applicable laws and obligations relating to confidentiality and privacy.

Keystart reserves all rights in relation to the content of the documents and may amend or withdraw it at any time without notice.

Use of the documents is subject to Keystart's Terms and Conditions for the Scheme, which are available here: keystart.com.au/commercial/pre-sale-guarantee, and which the Applicant shall comply with.

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