

Land Sales Update for Non-Resident Owners in Fiji

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3.11.2016

Key Points

- The *Land Sales (Budget Amendment) Act 2016* came into force in July 2016
- It allows existing non-resident land owners the opportunity to apply for an extension of time beyond the existing December 2016 deadline to complete construction on their land
- Non-resident land owners should be aware of this deadline, and how it affects their construction plans

Introduction

The *Land Sales (Amendment) Act 2014* requires non-resident owners of Fijian land to commence construction on any vacant residential land which they own by December 2016. The *Land Sales (Budget Amendment) Act 2016* came into force in July 2016. *Land Sales Regulations 2016* (“**Regulations**”), which came into force on 24 September 2016, passed pursuant to the Land Sales Act (“**Act**”).

These changes represent attempts to address the concerns raised by non-resident owners caught by the 2014 Act. Non-resident land owners now have the opportunity to apply for an extension of time beyond the December 2016 deadline to complete construction on their land.

What are the key provisions?

- The Regulations set out the composition of the self-regulated “Review Committee”, which will be responsible for considering the applications for extension by non-residents and making recommendations to the Minister. None of the members of the Review Committee “represent” the non-residents.
- Applicants must provide detailed information and supporting documents, including copies of all passport bio-data, total income for each preceding 3 years, financial statements for 3 preceding years, reasons why construction has not commenced and time required to complete construction. If the applicant is a company, details of directors and shareholders need to be disclosed.
- The application fee is \$1000 plus VAT.
- Compliance Inspectors and Valuers are appointed to assess compliance under the Act. A person who delays or obstructs the inspection commits an offence.
- Anyone who knowingly or recklessly provides false information to the Review Committee, Compliance Inspector or Valuer also commits an offence.

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- Submitting an application to the Review Committee does not automatically exempt the applicant from any penalty or fine under the Act. In other words, an applicant can still be fined under the Act even if an application for extension was lodged.
- The Regulations give the Minister the power to impose penalties for offences created by the Regulations – For an individual, maximum fine of \$50,000 or an imprisonment term maximum of 2 years or both. For a company - a maximum fine of \$100,000 and for each director of the company a maximum fine of \$50,000 or maximum 2 years imprisonment or both.
- A Compliance Inspector may issue proceedings by way of fixed penalty notice.

What does this mean for non-resident landowners in Fiji?

The Regulations, while a step in the right direction, do not go far enough to encourage non-resident investment in Fiji. While the changes to the law certainly point to the Government's recognition that construction of a residential dwelling within two years of purchase is practically impossible, the Regulations do not guarantee that an extension will be granted.

Indeed, even if an extension is granted, the Application Form suggests that the extension will simply be to complete construction, rather than to hold the land indefinitely. The details sought in the Application Form may offend some non-residents and they may choose to sell at undervalue or simply "gift" the land to a resident.

If you are looking to invest in Fiji it is vital that you are aware of the strict statutory requirements surrounding foreign land ownership and how this may affect your investment.

(This article is not intended to be a substitute for legal advice. For more information on these changes please contact **Tomasi Tuitoga, partner of Haniff Tuitoga and part of the Pacific Legal Network.**)

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