

Information Sheet

Overseas Investment Act 2005

Version 1: Sept 2018

REINZ
REAL ESTATE INSTITUTE
OF NEW ZEALAND

Important changes to the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 relating to the purchase of **residential land** come into force on 22 October 2018.

The changes affect all purchasers of residential land, not just Overseas Persons.

It is important for overseas persons to seek legal advice as soon as possible prior to making any commitment to acquire residential property.

Residential Land Statement

From 22 October 2018, every purchaser of land that is classified as residential or lifestyle, or that includes residential/lifestyle land (regardless of whether they are an **Overseas Person** or not), will need to complete a **Residential Land Statement** advising whether they require Overseas Investment Office (**OIO**) consent to buy the property.

The Residential Land Statement is available on the REINZ website, under Advisory resources, and on the Overseas Investment Office website.

The purchaser's lawyer or conveyancer will assist them to complete their Residential Land Statement, which needs to be completed prior to settlement.

What does this mean for a purchaser of residential land?

If the purchaser requires OIO consent to purchase the property:

1. They will need to apply to the OIO for permission to do so; and
2. The sale and purchase agreement must be conditional on them obtaining OIO consent, unless they have already obtained a pre-approval from OIO.

If an Overseas Person enters a sale and purchase agreement that is not conditional on OIO consent:

- they will be in breach of the Overseas Investment Act as soon as they enter the agreement;
- they will not be able to settle the contract, even if it is otherwise unconditional, until OIO consent is granted;
- any deposit they have paid may be forfeited;
- the purchaser could be liable for penalty interest for delayed settlement pending the granting of OIO consent;
- the vendor could take action against the purchaser for any losses suffered, including a loss on re-sale of the property; and
- if the vendor or real estate agent knew OIO consent was required, they could be liable for civil penalties.

Therefore, if you are dealing with a purchaser who may require OIO consent and who does not already have pre-approval, the "OIO Consent Required" option in the Conditions box on the front of the ADLS/REINZ Agreement for Sale and Purchase must be marked "YES". This will activate clauses 10.4-10.6, making the agreement conditional upon the purchaser obtaining OIO consent. Please note, the default time frame for obtaining consent in clause 10.6 is currently 65 days. The OIO website will

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provide more information regarding the number of days an application to purchase residential land will take to be processed. The timeframes will depend on the test applied and on whether the applicant is an individual, a trust, or a company.

How do you identify whether the land is residential land?

Whether land is residential land or not is determined by the records held by the relevant Local Authority (Local Council). The chart in **Schedule 1** will help you determine whether land could be residential land. If in doubt, contact the relevant Local Authority. Alternatively, you can find this information on property websites, such as PropertySmarts under 'Category' on the property details page.

How do you identify whether the land is sensitive land for reasons other than that it is residential land?

You can find out more about what is 'otherwise sensitive land' on Land Information New Zealand's website at [link to relevant web page]. <https://www.linz.govt.nz/overseas-investment/what-you-need-do-if-you-are-selling-new-zealand-assets-overseas-investors/sensitive-land>

How do you identify whether the purchaser may be an Overseas Person?

The chart in **Schedule 2** will help you to identify whether a purchaser may be an Overseas Person and therefore require OIO consent.

An overseas person will need to satisfy one of the tests set out in **Schedule 3** to obtain OIO consent.

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Schedule 1: Does the transaction involve an interest in residential property?

Does the transaction involve:

- land that has a “residential” (R) or “lifestyle” (L) category for rating purposes (includes apartments and bare land)
- a flat in a building owned by a company where shareholders are entitled to occupy or use a specified residential flat – regardless of rating category

No

Yes

Was a transaction entered into on or after **22 October 2018**?

No

Yes

Is the transaction:

- An Agreement for Sale and Purchase of Real Estate
- An agreement relating to a fixed term lease of:
 - 5 years+ (including rights or renewal) if a residential tenancy
 - 3 years + (including rights of renewal) for other leases
- A Licence to Occupy
- An investment in a company that owns residential land
- An investment in a flat owning company

No

Yes

Residential Land Statement is required, regardless of whether purchaser is an Overseas Person or not

OIO consent is generally required if the interest is being acquired by an Overseas Person (See Schedule 2)

No Residential Land Statement or OIO consent required.

If the land is “sensitive land” for reasons other than that it is residential, and the purchaser is an Overseas Person, then OIO consent is required.

Exemptions from OIO consent requirement:

- Purchaser is buying from an apartment developer who holds a Transitional Exemption Certificate or an Exemption Certificate
- Purchaser is a network utility company buying land to provide network services
- Hotel lease-back arrangements

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Schedule 2: Is the interest in residential property being acquired by an Overseas Person?

If the purchaser is an individual , are they: • A NZ citizen; or • An Australian or Singaporean citizen; or • A NZ residency visa holder or an Australian or Singaporean permanent resident who: ♦ has lived in NZ for at least 183 days in the last 12 months; and ♦ is NZ tax resident	If YES No OIO Consent required*
	If NO OIO consent required

If the purchaser is a couple (married, civil union or de facto relationship), are they: • buying residential land as relationship property, and • <u>one</u> of them is a person listed above (definition for individuals)?	If YES No OIO consent required for the Overseas Person *
	If NO OIO consent required If the relationship property is acquired under the Commitment to Reside test consent is required for one of the spouses/partners

If the purchaser is a trust : Are <u>all</u> of the trustees, settlors or beneficiaries listed above (definition for individuals)?	If YES No OIO consent required*
	If NO OIO consent may be required

If the purchaser is a company : • Is the company incorporated in New Zealand, and • are at least 75% of the shares, voting rights, and director appointment rights held by persons listed above (definition for individuals)?	If YES No OIO consent required*
	If NO OIO consent required

* **Important Note:** Even if the purchaser is not an overseas person, OIO Consent will still be required if:

- The purchaser is buying the property on behalf of / as agent for an overseas person; or
- An overseas person will be nominated as purchaser

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Schedule 3: Tests to be Satisfied for Overseas Person to buy Residential Property

Test 1: Commitment to Reside in New Zealand Test (can be used for property that is residential or residential and otherwise sensitive)

Purchaser

- holds a NZ residence class visa or is an Australian or Singaporean permanent resident that has not lived in NZ for at least 183 days in the last 12 months;
- is acquiring a residential property to occupy (or build to occupy);
- commits to be present in NZ for at least 183 days in the next 12 months, and;
- commits to become a tax resident

Relationship property Exemption

In cases where:

- both spouses or partners are Overseas People
- the land is or will be relationship property

one of the spouses or partners has or will be granted OIO consent under the Commitment to reside in NZ test, then the other spouse or partner is not required to apply for OIO consent.

Notes:

All consent holders must comply with certain conditions. If not then they may need to sell the property and/or face civil penalties,

Also certain “trigger events” may require the consent holder to sell, e.g.:

- absent from NZ for 183+ days in 12 months
- ceases to be a “qualifying person”

Test 2: Increased Housing Test (can be used for property that is residential but not otherwise sensitive)

Purchaser will increase the number of residential dwellings, or the units of a long-term accommodation facility (such as a retirement village) on the land or carry out associated development works (subdivision not sufficient).

Notes:

- Purchaser must agree to sell all their interest in the land within a “specified period” after completion of the development, determined by the OIO (
- If the purchaser will be developing 20+ new dwellings, the purchaser may retain an interest as landlord, shared equity, lease-to-own
- Developers of long-term accommodation facilities do not need to sell if a long-term accommodation facility will be operated on the land
 - If the purchaser will be developing a large apartment complex of 20+ new residential dwelling they can also apply to the OIO for an Exemption Certificate. The developers or the overseas

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buyers may not occupy any of the dwellings unless they have consent under the Commitment to Reside test. Any related parties can only occupy the dwellings at "arms length terms"

Test 3: Non-residential Use Test (can be used for property that is residential but not otherwise sensitive)

The land will be used/developed for non-residential purposes associated with a business such as building a supermarket.

Test 4: Incidental Residential Use Test (can be used for property that is residential but not otherwise sensitive)

The land will be used for residential purposes associated with a business (e.g. staff accommodation when there is no reasonable alternative)

Test 5: Benefit to New Zealand Test (can be used for property that is residential or residential and otherwise sensitive)

The investment will, or is likely to, result in a "benefit" to New Zealand

Notes:

- "Benefit" assessed against factors set out in the Act and Regulations (mix of economic and non-economic)
- This test is unlikely to be widely used for land that is residential but not otherwise sensitive.