



# Purchaser of Last Resort Guidelines

## LOOSE FILL ASBESTOS INSULATION ERADICATION SCHEME

July 2022

### OVERVIEW

The ACT Government is committed to the eradication of loose fill asbestos insulation from Canberra's residential housing. To support this objective, the ACT Government has determined it will make a standing offer to purchase any remaining affected properties as a Purchaser of Last Resort. These guidelines outline how the Purchaser of Last Resort will be administered and include information about what the Purchaser of Last Resort covers, who is eligible and how to apply.

### WHAT IS THE PURPOSE OF THE PURCHASER OF LAST RESORT?

The purpose of the Purchaser of Last Resort is to provide Eligible Homeowners of a property listed on the Affected Residential Premises Register (the Register) with an option to sell the affected property to the Territory, when it has failed to sell on the open market.

The purpose of this guideline is to set out information on the Purchaser of Last Resort and will be used by the Loose Fill Asbestos Coordination Team (Coordination Team) to assess and process applications, including:

- Who is eligible for the Purchaser of Last Resort?
- What evidence must be provided that the property has been on the market?
- How is the valuation for the offer determined?
- How do you apply for the Purchaser of Last Resort?

### WHO IS ELIGIBLE FOR THE PURCHASER OF LAST RESORT?

An Eligible Homeowner is:

- the person who was the Registered Owner of an affected block at the date the property was listed on the Register; and
- remains the Registered Owner at the time of the surrender of the affected block.

Where two or more people are the Registered Owner, as tenants in common or joint tenants, they are all Eligible Homeowners of that affected block.

In addition, other persons may be considered by the Coordination Team to be Eligible Homeowners regardless of whether their interest arose before or after the property was listed on the Register. This might include

- persons who became the Registered Owner of an affected block as a result of inheritance from a deceased estate;
- trustees (including executors of deceased estates);

- persons who have become the Registered Owner of an affected block as a result of a settlement or orders made under the *Family Law Act 1975*;
- mortgagee in possession of an affected block due to default by the Registered Owner, and
- a liquidator, trustee in bankruptcy, administrator or other external administrator of Registered Owner of an affected block.

## WHAT EVIDENCE DO YOU NEED TO PROVIDE SHOWING ATTEMPTED SALE OF THE PROPERTY ON THE OPEN MARKET?

You will need to provide evidence that you have attempted to sell the affected property on the open market for a minimum of two (2) months and that no reasonable offers have been made to purchase the property.

Where applicable, evidence that is required to be submitted includes:

- Confirmation of the engagement of a licenced real estate agent including the date they were engaged, such as a signed Agreement.
- Proof of advertising including dates and listing price, such as copies of the advertisements and/or receipt for placement. If your property has been listed as 'by negotiation', your real estate agent must provide the price guide they have given potential purchasers who have enquired.
- Written confirmation from the appointed real estate agent confirming if any formal offers have been made on the property, and if so, what amounts were offered.
- Written confirmation from the appointed real estate agent confirming that a sale fell through (the sale was terminated or rescinded).
- Written confirmation from you advising if the affected property is currently occupied including under a residential tenancy agreement, i.e. rented or occupied by tenants. If the property is being rented, a copy of the tenancy agreement must be provided with your application.

## WHAT DO YOU RECEIVE?

Under the Purchaser of Last Resort, you will receive:

- the value of the affected block (house and land) as at the date a completed application is received by the Coordination Team, taking into consideration the presence of loose fill asbestos insulation as well as any presentation or condition issues of the property. That value will be determined in accordance with the valuation process set out in this guide;
- an additional \$1,000 (inclusive of GST) to cover or contribute to legal fees incurred in selling the affected property;
- other assistance offered that you may be eligible to apply for, such as the Relocation Assistance Grant.

## WHAT DO YOU GIVE UP?

You will give up certain rights in respect of the affected property:

- Your interest in the affected property is given up. You will no longer be the Crown lessee i.e. you will no longer own the house and land or be entitled to live in the house or on the land.
- You will waive your right to pursue legal action against the Territory and the Commonwealth in relation to any financial loss as a result of purchasing, living in or any other interest in the affected property. This waiver does not include any sickness or health claims that you or any other person may have as a result of living in or being exposed to contamination in the home.

## WHAT IS DIFFERENT FROM THE BUYBACK PROGRAM?

- Unlike the Buyback Program, your property will be valued taking into consideration the presence of loose fill asbestos insulation.
- Unlike the Buyback Program, a First Right of Refusal to purchase the remediated block back is not available under the Purchaser of Last Resort offer.
- Unlike the Buyback Program, a stamp duty concession on a future property purchase in the ACT is not available under the Purchaser of Last Resort offer.

## WHAT ARE YOUR RESPONSIBILITIES DURING THE APPLICATION PROCESS?

You are required to keep the affected property advertised and available for sale on the open market during the application and valuation process. The affected property is only to be removed from the open market if a contract for sale has been entered into with the Territory.

During this time, you are required to notify the Coordination Team if any formal offers are made on the affected property.

## WHAT IF YOU HAVE RECEIVED AN OFFER ON THE OPEN MARKET?

If, whilst selling the affected property on the open market, you have received a formal offer that you do not consider to be reasonable you may still apply for the Purchaser of Last Resort.

As part of your application for the Purchaser of Last Resort, your real estate agent is required to disclose if any formal offers have been made on the property, and if so, the amounts offered.

If an offer has been received, the Coordination Team will still progress your property through the valuation process (as outlined below) to determine a purchase price for the affected property.

## HOW IS THE PROPERTY VALUED?

In making an application under the Purchaser of Last Resort, you agree to the Australian Property Institute ACT Division (API) arranging for the affected block to be valued by two independent valuers.

Soon after your application is accepted, you will be contacted by two valuers to arrange a time to attend the property to value it. As the valuers will need access to the home, you will

need to arrange a time with each of them to attend and for somebody to allow access and inspection.

You should provide the valuers with any asbestos assessment report and asbestos management plans for the affected home. If the Coordination Team holds an asbestos assessment report it may provide this to the API for the information of the allocated valuers. It is possible valuers may wear personal protective equipment during the inspection of some homes.

### **The independent valuation**

The two valuations will be undertaken by experienced and qualified valuers selected by the API, an independent non-government body. The Coordination Team has no say in the selection of the valuers for each affected property. They will be selected by the API based on local area expertise and availability.

The two valuers will prepare their reports independently of one another and will provide the reports to you at the same time as they provide them to the Coordination Team. The Coordination Team will not have access to any draft reports from the valuers.

Valuers use a direct comparison method that considers location, elevation, land shape, and recent sale prices for similar land in the suburb and surrounding areas.

The valuer will take into consideration the presence of loose fill asbestos insulation, as well as any presentation or condition issues of the property. The valuation will also consider all other defects and other forms of contamination and reflect the cost to remove the affected structure and remediate the land.

## **HOW IS THE PURCHASE PRICE DETERMINED?**

After both valuations are received by you and the Coordination Team, the Coordination Team will determine a purchase price based on the average of the two valuations. Valuations are valid for six months from the date of valuation.

## **WHAT HAPPENS AFTER A PURCHASE PRICE IS DETERMINED?**

If the advertised list price for the property is higher than the Coordination's determined purchase price, you will be required to drop the advertised list price to the Coordination Team's determined purchase price.

The property must then remain advertised and on the market at the Coordination Team's determined purchase price for an additional six (6) weeks. At the completion of this time, you will be required to provide written confirmation from your real estate agent advising if any formal offers were made in this period, and if so, what amounts were offered.

Once a purchase price has been determined, the Coordination Team will review the market offer you have received against the determined purchase price.

The Coordination Team will consider the offer you received as reasonable if the amount offered was:

- Above the Coordination Team's determined purchase price; or
- Less than 10% below the determined purchase price.

For example, if the determined purchase price is \$400,000, any offer you have received equal to or above \$360,000 will be considered a reasonable offer.

If it is determined that a reasonable offer to purchase the property has previously been made, your application for Purchaser of Last Resort will be declined. If your application is declined, you can choose to reapply for the Purchaser of Last Resort in six (6) months. At this time, you will be required to show new evidence of your attempt to sell the property on the open market.

If any formal offers are more than 10% below the determined purchase price, the Coordination Team will consider this as an unreasonable market offer and the Coordination Team will send you a written offer to purchase the property at the determined purchase price.

You will have **30 working days** to decide on accepting the Purchaser of Last Resort offer.

## WHAT IS THE PROCESS FOR ACCEPTING THE PURCHASER OF LAST RESORT OFFER FOR MY PROPERTY?

### Accepting the Purchaser of Last Resort offer

If you elect to accept your offer and proceed with the Purchaser of Last Resort, the Coordination Team's solicitor will send you:

- a contract of sale; and
- a template certificate of independent legal advice.

You will need to sign the contract of sale and have a solicitor complete and sign the certificate of independent legal advice for each Eligible Homeowner of the affected block. That certificate will confirm the solicitor provided you with advice as to the nature of the contract for sale and your rights and obligations.

You or your solicitor will need to provide the signed contract for sale back to the Coordination Team within 14 working days of receiving it, otherwise your application may be rejected or lapse.

Once you have provided the documents to the Coordination Team, our solicitor will provide your solicitor with a counterpart signed contract for sale executed by the Territory. On exchange of the signed contract a deposit of 10% will be made and held in your solicitor's trust account. If you do not have a solicitor, the deposit can be held in the Territories solicitor's trust account. The determined purchase price will be paid at settlement.

Settlement will be **30 working days** from the date of the exchanged (signed) contract of sale and completed solicitor's certificate is received. If you are in a position to settle in less than 30 working days, the Coordination Team will make every effort to accommodate your request.

### Removing interests from the affected property prior to settlement

If there is a mortgage or if any other person has an interest in the affected property, you will need to arrange for those interests to be removed before the settlement date. Your solicitor will be able to advise you of the necessary steps.

If you do not make these arrangements, the Territory may not be able to settle on the scheduled day and you may have to arrange another date for settlement. You may be charged a fee, in line with normal conveyancing practice, reflecting the Territory's legal costs if you fail to settle within five working days following the scheduled date for settlement.

### What if the sales process is not completed on the scheduled date?

If you do not complete the sales process on the scheduled date, the Coordination Team may notify you to complete within a further **10 working days**. If you fail to complete settlement of the affected property by that time, the Coordination Team may terminate the sales contract.

You will also have a right to terminate if the Territory does not comply with its obligations under the contract for sale.

### Home contents

The valuation will not take into consideration any removable goods and personal belonging, even if they are contaminated and are left behind on surrender.

Apart from the Relocation Assistance Grant, the ACT Government is not providing assistance to remediate, compensate or reimburse for any household goods or possessions.

You or your tenants should make enquiries with your home contents or landlord insurer in relation to the scope and coverage of the insurance policy in relation to household goods and personal belongings.

## WHAT ARE MY RESPONSIBILITIES PRIOR TO THE SETTLEMENT DATE?

You are still the owner of the affected property until the date of settlement. This means you still have legal obligations to ensure that it is safe and does not pose a risk.

### Insurance

The Coordination Team strongly encourages you to keep the affected property insured until the date of settlement. While some insurance policies exclude asbestos contamination, insurance is still required, for example, to cover damage as a result of storms, fire, break and entry, theft and vandalism.

### General maintenance and hazards

You are required to manage the property and undertake essential maintenance and safety works only. You should also take prudent steps to minimise potential hazards, including if the property is vacant. You should:

- ensure your warning sticker tag is attached to the switchboard and meter box as required by law;

- ensure an Asbestos Management Plan is displayed in the approved display case at a prominent location near the main entrance to your house;
- undertake routine checks on the property, particularly following storms or high wind;
- ensure that the grass is mowed, and gutters are cleared to minimise fire risks;
- securely lock the premises to deter thieves, vandals, squatters and other uninvited persons;
- secure swimming pools and other water features;
- ensure that you or other people do not dump waste, garbage or other materials on the affected block, and
- remove any goods you wish to take with you, consistent with the Surrender Process: Fixtures and Fittings information sheet and guidance from the Contents and Soft Furnishing information sheet.

On the date of settlement, you are required to hand over a reasonably clean site (save for asbestos contamination and household items you have left behind). The Coordination Team may not accept the property if the block contains other waste or is unsafe. If settlement needs to be rescheduled because of the condition of the property (for example, excessive waste) or safety issues, you may be required to pay additional fees.

You are free to leave any household items that you consider potentially contaminated safely inside the affected property, provided such items were part of the contents of the affected block prior to settlement. The Coordination Team will dispose of these as part of the decontamination process.

## HOW TO APPLY FOR THE PURCHASER OF LAST RESORT

1. Read these guidelines to assess and understand what the Purchaser of Last Resort provides and the eligibility requirements.
2. If you are eligible for the Purchaser of Last Resort, you can contact the Coordination Team to request an application form
3. Send the completed and signed application form, along with any supporting documents, to the Coordination Team email at [loosefillasbestos@act.gov.au](mailto:loosefillasbestos@act.gov.au) or via post to:
 

Loose Fill Asbestos Coordination Team  
GPO Box 158  
Canberra City ACT 2601
4. The Taskforce will assess the application in accordance with these guidelines and provide written approval.

## TERMS USED IN THIS GUIDE

**Affected Property** - a property listed on the Affected Residential Premises Register (the Register) established under the *Dangerous Substances Act 2004*.

**Affected Residential Premises Register** - the register of residential premises that contain or have contained loose fill asbestos insulation, known as the Affected Residential Premises Register, established under the *Dangerous Substances Act 2004*.

**Contract of sale** - Formal contract by which a seller agrees to sell and a buyer agrees to buy, under certain terms and conditions spelled out in writing in the document signed by both parties.

**Determined purchase price** - Purchase price determined by the Taskforce based on the average of the two valuations, or the result of a 'Presidential Determination'.

**Reasonable offer** - a formal offer to purchase the affected property that is above or within 10% below the Taskforce's determined purchase price.

**Registered Owner** - the lessee(s) stated on the Crown lease for the Affected Property.

**Settlement date** - the day on which the seller must deliver what was sold and purchaser must pay for what was bought.

## ENQUIRIES

Call Access Canberra on 13 22 81 and ask to speak with the Loose Fill Asbestos Coordination Team, or email [loosefillasbestos@act.gov.au](mailto:loosefillasbestos@act.gov.au)

## ACCESSIBILITY

The ACT Government is committed to making its information, services, events and venues as accessible as possible. If you have difficulty reading a standard printed publication and would like to receive this publication in an alternative format, such as large print, please phone 13 22 81 or email [loosefillasbestos@act.gov.au](mailto:loosefillasbestos@act.gov.au).



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