

Understanding the Impact of Property Development Insolvencies

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Options on Property Insolvency

- Informal work out
- Adoption of existing sale and purchase agreement
- Mortgagee Sale
- Receivership
- Liquidation

Options on Property Insolvency

- Depends on state of development
- Type of property
- Likely realisations
- Need to “burn off” unsecured creditors

Value of Pre-Sales

- Are pre-sales likely to be enforceable
- Cancellation clauses on insolvency events
- Fictitious purchasers or buyers related to developer
- Secret side agreements

Adoption of Sales Contract

- New power under section 179 of the Property Law Act 2007
- Gives a mortgagee rights or powers of the vendor
- Allows completion of the contract without need for receivership

Tax Issues

- GST payable by receiver or liquidator on sale
- Ability of secured lender to take all sale proceeds including GST component

Support of sub-contractors

- Completing the works
- Producer statements
- Warranties
- Retention of title issues

Risk of informal work out

- Lender as deemed director
- Depends on nature of involvement
- Person whose directions or instruction support is required or accustomed to act
- Exercise of power with consent or acquiescence of the board
- Reckless trading risk
- Need for further funds