



## Home buy-back schemes

### What is a home buy-back scheme?

Home buy-back schemes are schemes where homeowners sell their homes to someone else, such as a buy-back operator or promoter. Homeowners keep living in the house and usually pay rent. They are told they can repurchase the house back in two or three years time at a specified price.

The repurchase price usually includes a large fee, which can be tens of thousands of dollars. The schemes appear to be designed in a way that the homeowner will find it very difficult to be able to repurchase the home.

Once you have sold your house under a buy-back scheme, unless a caveat is registered, the person who purchased it from you may sell it or raise a mortgage over it. If the new purchaser or the mortgage provider does not know you still have a legal interest in your home, their interest in the land may override yours. In effect, you may lose your home.

### What to look out for

A buy-back scheme is not a loan. A common problem for consumers is that they believe they are signing up to a loan or mortgage when they are actually signing up for a buy-back scheme.

Often the buyback operator will arrange legal advice and get the customer to sign that the advice was independent. The problem is that in using a lawyer arranged by the buy-back operator, the advice may not be as full and frank as if a completely independent lawyer is used.

Look out for clauses like:

I was advised to obtain independent legal advice prior to signing the loan contract ...and may have elected not to obtain such independent advice. In consideration of the lender making the loan I hereby irrevocably waive any defence or counterclaim against the lender which may arise as a consequence of me electing not to obtain independent legal advice.

Any clause that says you are waiving your rights to independent legal advice should be a warning that this is not a company that wants your rights and obligations explained to you.

Check to see what documents you are being asked to sign. In particular, look out for any document headed "Agreement for Sale and Purchase" and any documents that contain the words 'option to purchase' or 'licence to occupy' for your home.

You should be wary if you aren't given copies of all the documents to take away with you. It's not acceptable for buy-back operators to say they'll post them out later as it makes it more difficult for you to understand the arrangements and protect your property interests.

### What law covers buy-back schemes?

The operation of buy-back schemes is now covered under the Credit Contracts and Consumer Finance Act 2003. The section of the Act that relates to buy-back schemes took effect on 14 October 2003, meaning that consumers now have better protection if they are considering entering into such a scheme.

Under the Credit Contracts and Consumer Finance Act:

- You must be given a copy of all the terms of the transaction.
- The buy back operator must ensure that you obtain independent legal advice. The lawyer has to explain the scheme to you and must witness your signature on the documents. Unless the lawyer certifies that this has been done, the buy-back operator cannot sell or mortgage your home without permission from the High Court.
- You may be able to protect your home by lodging a 'caveat' under the Land Transfer Act. A caveat tells other people that you have an interest in your home, and can make it harder for someone else to take your home under a buy-back arrangement.
- The Court can cancel or reduce unreasonable fees charged by buy-back operators.
- The Court can re-open oppressive buy-back contracts, and terminate them or vary or waive any terms. If a contract is re-opened, the Court can also award compensation or damages, and can ban buy-back operators from offering financial services in the future.

The new rules about telling consumers about the terms and conditions of credit contracts, independent legal advice and unreasonable fees apply to buy-back schemes entered into after 14 October 2003. The re-opening provisions apply to all buy-back schemes, including some schemes entered into prior to 14 October 2003.

## **What should you do if you are involved in a buy-back scheme or are thinking about getting involved?**

If you're thinking about buying a home or entering into a buy-back scheme, you should always seek advice from a lawyer you have chosen before you sign anything.

Always get copies of the documents to take away with you. "We'll put them in the post" is not good enough.

If you have entered into a buy-back scheme you should seek independent legal advice immediately.

The Credit Contracts and Consumer Finance Act is enforced by the Commerce Commission and there are tough penalties for buy-back operators who break the law. If convicted, buy-back operators can be fined up to \$30,000, or may be prohibited or restricted from carrying out buy-back practices. You can report breaches of the Act to the Commerce Commission.

[Visit the Commerce Commission's website.](#)

Or telephone 0800 943 600.