

## Everything you need to know about... *Selling a Domestic Owner Built Property*

### What obligations do owner builders have when selling?

If you are selling a property on which you constructed, managed or arranged "residential building works" as an owner builder (ie the total project was not the subject of a Contract with a Licensed Builder, who provided a separate Warranty Policy), and those works were completed within the last 6 years, then there are certain implied statutory warranties, and you may be required to provide residential building (warranty) insurance for the benefit of the purchasers (refer S 95 of the Home Building Act 1989).

### What works are defined as 'owner builder works'?

The Home Building Act 1989 (HB Act) defines owner-builder work as residential building work where the reasonable market cost of the labour and materials exceeds the prescribed amount (ie \$5,000) and, relates to a single dwelling-house or a dual occupancy where that work requires a Development Consent or is a Complying Development (within the meaning of the Environmental Planning & Assessment Act 1979) and, where an Owner-Builder Permit has been issued by the Office of Fair Trading.

Residential building work means any work involved in (including co-ordinating and supervising) the construction, alteration, addition, repair, renovation, decoration or protection treatment of a dwelling, which includes verandas, garages, carports, fences, retaining walls etc.<sup>#</sup>

<sup>#</sup> (Some exemptions apply pursuant to clause 8 of the Home Building Regulations 1997.)

### Does an owner builder need to obtain the insurance cover prior to the contract of sale?

The provisions of the HB Act require that a Certificate of Insurance and Contract of Insurance is issued **prior to** entering into a contract to sell the property.

The policy does not commence until the contract of sale is signed, so if the property doesn't sell, you may be able to get a refund of the premium.

**Failing to provide the required insurance can attract a \$20,000 fine for each breach of s 95 of the Act.**

### Do owner builders need to obtain an Inspection report and who is authorised to undertake them?

All insurers require the Owner Builder to obtain an Inspection Report for any residential building works, over \$12,000 in value prior to obtaining the required insurance. This report may be required to be undertaken by a nominated practitioner, as determined by the insurer.

It is recommended that prior to selecting an insurance provider, that owner builders verify that the practitioner is acceptable to the selected Insurer, and has a Professional Indemnity Policy that specifically covers these types of inspections. Not all practitioners carry the required Professional Indemnity Insurance to undertake these reports.

### Who does the insurance policy benefit?

This type of mandatory insurance is for the benefit of the purchaser (ie the consumer), not the owner builder. The legislation only allows owner built works without the required warranty insurance where the property is not being sold within the insurable period.

Where a sale occurs within the insurable period (6 years from completion), then the owner builder must provide the insurance (similar to licensed builders) for the consumer, which in the case of an owner builder is the purchaser (and successors in title).

### What Statutory Warranties does an owner builder have to give?

There are several implied warranties that an owner builder is accountable for under s18B of the HB Act, and include but are not limited to:

1. The owner builder warrants that all residential building work carried out in relation to the construction by or on behalf of the owner builder of the home was carried out in a proper and workmanlike manner and in accordance with the plans and specifications.

2. The owner builder warrants that all materials used were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new.

3. The owner builder warrants that residential building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the Act and the regulations.

The Contract of Sale must:

- include a note that an Owner Builder Permit was issued in relation to the work; and
- that this work required Home Warranty Insurance; and
- that the Certificate evidencing the Home Warranty Insurance is attached.

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## How much does the insurance cost?

The premiums will vary between the approved insurance providers, depending on the value of the works and the age of the project (taken from the final inspection approval date).

Owner Builders could expect to pay between \$800 for smaller projects to over \$3000 for larger type dwellings, and it is advised that you confirm premium details before organising inspection reports (where required) so that you know exactly what the total cost will be.

## Are there limits on how many owner builder projects can be built or sold within a certain time?

Currently, there are no limits on the number of projects that an owner builder can sell, but an owner builder is only permitted to build up to two dwellings under an Owner Builder Permit, and only permitted to obtain one permit every five years (unless special circumstances exist).

## Can an owner builder sell an incomplete project?

An owner builder may be able to sell an incomplete project, but several factors must be considered.

An owner builder cannot sell off the plan, or during construction, if it is anticipated that the project will be completed by the owner builder between the contract of sale date and settlement date, unless the owner builder has a Contract of Insurance in place prior to entering into the Contract of Sale.

If an owner builder intends to sell an incomplete dwelling 'as is' and does not intend to finish or undertake any of the outstanding works prior to settlement, then providing the required warranty insurance is able to be obtained, the owner builder can enter into a Contract of Sale.

## What information should you provide your solicitor or conveyancer?

Owner Builders and Renovators should tell their solicitor or conveyancer about any "residential building works" undertaken on the property, and identify works by a licensed builder, single tradesperson or personally, regardless of value, so that the solicitor or conveyancer can determine what requirements exist, in order to comply with the current legislation.

Failure to properly identify owner built works can lead to the contract being voided at any time prior to settlement, if the insurance is not obtained prior to entering into a Contract of Sale.

## Other Consumer Advice Sheets in this series

- Construction & Public Liability Insurance
- Risk & Cost Reduction Strategies during construction
- Becoming a Domestic Owner Builder

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