

Everything you need to know about... *Becoming a Domestic Owner Builder*

To become an owner-builder in New South Wales, you will need to apply for an Owner-Builder Permit (OBP). OBPs are issued by the Office (formerly the Department) of Fair Trading, and are "project-specific".

This means that you may apply for only one OBP to complete one specific project every five years **unless** you are renovating or extending the same property, in which case you may do so as often as is practicable.

A further restriction is that owner-builders can only build or renovate a property that they either live in, or intend to live in.

There is, however, one exception to this rule. Where an owner-builder constructs a dual-occupancy, provided they live in, or intend to live in, one of the two completed dwellings, they are permitted to sell or rent out the other. To obtain an OBP, you can visit a Fair Trading Centre (Sydney plus 23 regional locations), or write to the OFT, P.O. Box 972, Parramatta 2124 and request that an application form be mailed to you. To contact any OFT centre, phone **13 32 20**.

Your Owner-Builder Permit

The process of obtaining an OBP is not complicated, but there are certain criteria that must be followed:

- To owner-build a project estimated to cost between **\$5000** and **\$12,000**, and which requires development approval or is complying development (see below), the owner simply makes an application to the Office of Fair Trading (OFT) for an owner-builder permit.
- To owner-build projects exceeding **\$12,000** value, the owner must first complete an OFT-approved course of instruction (at a TAFE or by correspondence) before being eligible to apply for an owner-builder permit.
- Where the reasonable cost of materials and labour do not exceed **\$5000**, an owner-builder permit is not required.

An owner-builder permit is NOT permission to commence building. That must be obtained, once an owner-builder permit has been issued, either from the relevant local council or from an accredited private certifier, depending on the classification of the work.

Your local council planning department will advise the classification, based on which of the following three categories your proposal falls into:

Approval to Build

- 1. Local Development.** Requires a Development Application (D.A.) to be made to the local council. Approval can be granted **ONLY** by the council. Requirements regarding what constitutes Local Development vary. Generally, designs which might adversely impact upon the streetscape(s) fall into this category.
- 2. Complying Development.** Approval can be granted **EITHER** by the council or by an accredited private building surveyor of your choice. Again, criteria as to what constitutes Complying Development varies between councils. Projects such as additions/alterations to the rear of a property may be considered to be Complying Development.

- 3. Exempt Development.** No approval required, provided that standards within council's design/build expectations are met. Exempt Development may include minor structures, e.g. patios, pergolas, garden sheds, and certain minor interior alterations to kitchens, bathrooms etc. In all cases you should verify the requirements with your local council.

Mandatory Conditions

There are conditions that prospective owner-builders must fulfill in NSW before an owner-builder permit can be issued.

- They must be aged 18 years or over.
- They must intend to live in the dwelling, or in one dwelling of a dual occupancy (a duplex or two separate dwellings on one lot).
- They must prove that they are the owner, or part-owner, of the land being built upon or the dwelling being renovated/extended.
- They must be applying for the owner-builder permit as an individual, not as a company or a partnership.
- Only ONE owner-builder permit may be obtained by an individual within a five-year period, **UNLESS** the application is in regard to alterations/additions to the same property, or the NSW Commissioner of Fair Trading grants dispensation.

An owner-builder cannot build multi-occupancy dwellings, e.g. apartments, flats, villa homes or units.

Your Responsibilities

As the owner-builder, you will be responsible for the smooth-running of the entire building operation.

You will need to hire licensed tradespeople, having negotiated prices for the work they are expected to perform, and you will need to order and schedule the on-time delivery of materials and appliances.

Owner-building is not a task for those who are unwilling to at least try to perform as if they were a reputable and competent professional builder.

This includes having regard for the law, occupational health and safety rules and regulations, neighbours' rights and expectations, and the efficient overall management of the project from start to finish.

You will need to estimate costs, call for and select tenders for labour, learn how to deal with the trades so as not to unduly upset them (or they you) and you must accept that as the owner-builder, you really are the **BUILDER**.

If anything goes wrong, it is your responsibility to arrange for it to be put right - not the subcontractor's.

Above all, you will need to acquire, if you do not have it already, a sound outline knowledge of what should happen on site during the construction of a new home or renovation/addition.

An example to illustrate the question of responsibility. Wind blows protective tarpaulins off the roof in the dead of night. It would appear that the carpenter had carelessly tied the sheets down. Whom can you blame? Answer - only yourself, as the owner-builder. Check the tie-downs; check everything.

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CONSUMER ADVICE SHEET

An owner-builder is a person in possession of an owner-builder permit and who takes on the job of managing their own residential building project. Owner-builders are permitted to do as much of the physical work themselves as they wish, with the exception of plumbing, electrical, and installation of air conditioning.

Contractual Obligations

When you engage the services of a tradesperson where the value of labour and materials involved in the job you want done exceeds **\$1000**, the tradesperson must give to you a written contract.

Once endorsed by both parties, the contract must contain the contractor's current licence number, the names of the parties, the date and signatures of the parties, a description of the work expected to be done, and the contract price, prominently displayed on the front page.

The contract also should include any Statutory Warranties applicable to the work.

If the value of the contractor's work is more than **\$12,000**, he/she must also provide a certificate of Home Warranty insurance, and this must be attached to the contract.

Until a contractor supplies to the owner-builder all of the above, no deposit can be taken, and no work should begin.

The owner-builder should read all contracts carefully before signing. It is never advisable to sign there and then. Keep the document overnight so that you have time to fully appreciate the wording and check that licence numbers and names on the licence match exactly, and are currently in force.

Failure to do so could have unwelcome legal implications both for the owner-builder and the tradesperson.

Insurance Guidelines

Unlike licensed builders, owner-builders are not legally bound to take out domestic building (warranty) insurance prior to construction commencing. Only if an owner-builder wishes to sell the property within six years of completion of the project is insurance (Owner-Builder Warranty) compulsory. This type of policy is to protect the new purchaser against defective work and/or materials, should the owner-builder disappear, die or become insolvent.

However, only the most daring of owner-builders would neglect to purchase an insurance policy to cover theft of materials, vandalism, damage by fire, storm etc, and injury to members of the public.

This type of insurance is known as a Construction and Public Liability policy (C&PL), and must be purchased PRIOR to construction work starting.

Construction and Public Liability

A C&PL policy would typically cost between \$1000 and \$2000, depending on the size and nature of the project. These policies are often not renewable. It is therefore wise to ensure that all work is completed within the period of insurance, usually 12 months.

Most C&PL policies cover malicious damage, public liability of between \$5 million (minimum)-\$10 million, theft, damage by natural causes, i.e. wind, storm, water, fire. It may be possible to obtain additional cover for injury to workers on site caused by negligence of other workers (check with insurers).

**If renovating or extending your home, you should check the terms and conditions of your house insurance policy to determine if the existing structure is covered during the construction process.*

Owner-Builder Warranty

If an owner-builder decides to sell their property within SIX years of completion of the owner-builder work, they must apply for Owner-Builder Warranty insurance to cover the new purchaser under the terms of the legislation.

Warranty insurers may require a Defects Inspection Report by a suitably qualified and insured practitioner, after which the owner-builder can apply for the insurance.

A Defects Inspection Report can cost from \$400-\$800. The cost of the warranty insurance will vary according to the amount of time remaining of the six-year period, but will likely be in the region \$500-\$2000.

Building Industry Solutions have preferred Inspection Practitioners or you can organise your own, provided the inspector has a Professional Indemnity insurance policy to cover this activity.

Contracts of Sale are required to contain certain conditions pursuant to the Home Building Act - check with your solicitor or conveyancer for details. Any owner-builder who attempts to sell within six years WITHOUT the warranty insurance in place faces fines of up to \$22,000 and risks cancellation of the Contract of Sale (prior to settlement) at the option of the purchaser.

Occupational Health and Safety

The owner-builder should contact WorkCover to ascertain his/her responsibilities for worker safety. There are obligations regarding building site hazards even on small projects, and WorkCover officers are available to give advice before work starts.

USEFUL CONTACTS

Fair Trading NSW

(Information, Dispute Resolution)

13 32 20

WorkCover NSW

(Occupational Health
and Safety advice)

13 10 50

Building Industry Solutions

(Construction & Public
Liability insurance, Owner-
Builder Warranty)

1800 244 224

Land Titles Office

(02) 9228 6666

Urban Affairs and Planning

(02) 9391 2222

Building Industry Solutions can assist the owner-builder with information about insurance and much more. We publish Consumer Advice Sheets like this one on a variety of useful topics. Call **1800 244 224** (freecall) for assistance at any time.

This advice sheet is a guide only, and is not intended to be a substitute for legal or other advice. The information is of a general nature, and may be subject to change. No responsibility is accepted for reliance on the information.

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For more information....

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