

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 "domestic building works" as an owner builder (ie the total project was not the subject of a Contract with a Registered Builder, who provided a separate Warranty Policy), and those works were completed[#] within the last 6 years 6 months, then you may be required to provide certain statutory warranties, reports and domestic building (warranty) insurance for the benefit of the purchasers (refer s137B of the Building Act 1993).

Note: 'Completion' is defined as the date of issue of the Occupancy Permit (for new dwellings), or the Certificate of Final Inspection (for additions/renovations etc). Where an Occupancy Permit or Certificate of Final Inspection is not issued, or is not required to be issued, the 'prescribed period' reverts to 7 years from 'commencement' date.

What works are defined as 'domestic building works'?

The Domestic Building Contracts Act (DBC Act) applies to the erection or construction of a home, including:

- any associated work including, but not limited to, and the erection or construction of any building or fixture associated with the home (such as retaining structures, fencing, garages, carports, workshops, swimming pools or spas); and
- the renovation, alteration, extension, improvement or repair of a home;
- any work associated with the construction or erection of a building -
 - on land that is zoned for residential purposes under a planning scheme under the Planning and Environment Act 1987; and
 - in respect of which a building permit is required under the Building Act 1993.
- any work that the regulations state is building work for the purposes of this Act.

What works are exempted from complying with the mandatory inspection and insurance requirements of the legislation?

The Regulations exempt certain works where they are carried out under a contract that only

applies to one of the following:

- attaching external fixtures (including awnings, security screens, insect screens and balustrades) •
- draining and plumbing work as defined •
- electrical work •
- glazing •
- installing floor coverings •
- insulating •
- painting •
- plastering •
- tiling.

Note: Separate legislation requires that any plumbing work such as sewerage, gas, water, septic tanks and storm water drainage must be undertaken by a plumber licensed or registered with the Plumbing Industry Commission.

Any electrical work must be undertaken by an electrician licensed with the Office of the Chief Electrical Inspector.

The Act also exempts any work in relation to a farm building, to a building intended to be used only for business purposes, or to a building intended to be used only to accommodate animals. (Refer DBC Act s6 for full wording).

When do owner builders need to obtain an Inspection Report and who is authorised to undertake them?

Owner Builders must obtain an Inspection Report for any owner built (managed or arranged) domestic building works, regardless of value, prior to entering into a Contract of Sale. Failure to do so may result in purchaser voiding contract prior to completion. This report is required to be undertaken by a 'prescribed practitioner', as defined in the Building Act, which include building surveyors and inspectors, engineers, architects and other persons authorised under the previous HCG Act legislation.

It is recommended that prior to engaging a 'prescribed practitioner', that owner builders verify that the practitioner has a Professional Indemnity Policy that specifically covers these types of inspections (ie s137B Owner Builder Inspection Reports). Not all prescribed practitioners carry the required Professional Indemnity Insurance to undertake these reports.

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

The provisions of the revised Ministerial Order (S98 dated 23rd May, 2003) that cover the insurance provisions under the Act, require that an insurance policy is issued prior to entering into a contract to sell the property. **It is no longer possible to include a conditional clause.**

It is therefore imperative that a policy is put in place prior to signing the contract of sale. The policy does not commence until the contract of sale is signed, and if the property doesn't sell, you may be able to cancel the policy and obtain a refund of the

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premium. Failing to provide the required insurance could attract a \$10,000 fine.

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 contract of sale period (6 years from completion), then the owner builder must provide the insurance (similar to registered 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 three warranties that an owner builder must include in a Contract of Sale.

1. The owner builder must warrant that all domestic 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.
2. The owner builder warrants that all materials used in that domestic building work 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 domestic 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.

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

Changes to the Building Act and Regulations effective from 14th June 2005 introduced new restrictions and requirements for Owner Builders.

From this date, an Owner Builder is only permitted to undertake one dwelling per 3 years, with the intention of living in the works. The Building Practitioners Board (BPB) administer these requirements, and are responsible for the issue of Certificate of Consent prior to the issue of an Owner Builder permit. The BPB have an information booklet

available, which can be requested on 1300 360 320.

There are no restrictions on how many projects or dwellings can be sold within the insurable period (6 years), so this legislation does not affect past projects.

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 is a registered building practitioner and enters into a Major Domestic Building Contract (refer s137E of Building Act 1993).

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 an inspection report is provided, and 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?

The Sale of Land Act and Building Act both have specific requirements for owner built situations, but unless the right questions are asked, it can be difficult to comply properly.

Owner Builders or Renovators should tell their solicitor or conveyancer about any "domestic building works" undertaken on the property, even if a building permit was not required or issued, and identify works by a registered 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 "domestic building works" can lead to the contract being voided at any time prior to settlement, if the required inspection report and insurance are not obtained prior to entering a contract of sale

Other Consumer Advice Sheets in this series

- Construction & Public Liability Insurance
- Protection of Adjoining Properties
- Risk & Cost Reduction Strategies during construction

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