

## Owner Builder Selling Checklist/Disclosure Form

# Owner Builders. Are you selling your home?

If so, ask yourself the following questions:-

- Did you build, extend or renovate the home/unit?
- Did you do or manage any of the work?
- Is the value of all works you did worth \$12,000 or more?
- Has any of the work been finished for less than 7 years?

If you answered yes to **any** of these questions, you need to read the following information.

## Owner Builder Selling - Legal Obligations Questions and Answers

### 1. What works do owner builders have to insure?

You will need insurance if:

- You have built a dwelling and wish to sell it within 6½ years of completion, or
- You have renovated or extended a dwelling or built an in-ground pool where the combined total market value of ALL works undertaken is in excess of \$12,000 and the property is being sold within 6½ years of the works completion. The \$12,000 relates to any one job or combination of jobs completed in the 6½ years prior to sale and includes jobs that do not have building permits.

**It is essential to ensure your insurance is arranged and paid for before the contract is signed or a deposit is taken.**

**The simple test of what must be insured is:...**

Add up the current market value of ALL works, big or small, undertaken at the property in the last 6½ years, including those that did not require permits. If the TOTAL aggregate value of the work undertaken exceeds \$12,000, you will require collective insurance under one policy.

### 2. What works do not have to be insured?

Work undertaken more than 6½ year ago does not require insurance.

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## 3. Who and what does the insurance cover?

### The policy covers:

- The purchaser and successors in title against the cost of repairing defects, caused by the owner builder, as long as the defects arise after the new owners move in.

### The policy does not cover:

- The owner builder or any person connected to the owner builder,
- (a) any defects or (b) problems that are symptoms of defects or (c) incomplete work or (d) secondhand materials as identified in the expert's report,
- any incomplete works and any defects in the house/unit not caused as a result of the Owner Builder's work,
- any commitment in the contract of sale by the Owner Builder to finish/fix any works or to supply any materials or services or any commitment that the fixtures or fittings will operate or perform to particular standards,
- any other matters exempted from cover, refer to the policy wording.

## 4. Can the insurer refuse to offer insurance?

The Insurer will assess each application on its merits. If illegal building work has been undertaken or the standard of work is considered poor, the Insurer is unlikely to offer cover.

## 5. What can happen if I don't provide the insurance?

- If you do not obtain the expert's report and insurance before your contract with the purchaser is signed or before the deposit is taken, the contract is voidable at the option of the purchaser, at any time before the completion of the contract.
- You can be fined up to \$10,000
- Not having insurance still leaves you liable to fix defects plus you leave yourself open to be sued.

## 6. How long does cover last?

Period of cover is calculated in one of two ways:

- Either 6 1/2 years from the date of the final inspection/occupancy certificate; OR
- If there is no final inspection by a Building Surveyor, 7 years after the commencement of the work.
- These requirements are subject to variations in different states.

## 7. How can an Owner/Builder obtain insurance?

### The Insurer requires that owner builders must supply the Insurer with the following:

- An expert's report that is not more than 6 months old, **and**
- a copy of title of land and a current rates notice to show that the owner builder owns the property which is now for sale, **and**
- all building permits, final inspection certificates and certification in relation to all plumbing and electrical work, **and**
- a statement in relation to use of secondhand materials, **and**
- a statement in relation to incomplete works, **and**
- a completed insurance proposal form and payment of the quoted premium.

## 8. Can the owner builder be held liable to fix defective work?

Yes. Legislation and/or policies hold the owner builder liable for breaches of the statutory warranties (as listed below, where these apply). If the Insurer receives a claim, the owner builder will be contacted, where possible, and will be given the opportunity to fix. If the owner builder does not fix within a stipulated time, the Insurer will have to meet its obligations and arrange for the appropriate repairs. The cost of the repairs will become a debt payable by the owner builder. The Insurer will then pursue the owner builder for recovery of monies paid. In some states, claims will only be paid where the owner builder is dead, has disappeared or is insolvent. In essence, the owner builder always remains liable to fix defects. The Insurer should only need to pay where the owner builder is deceased, disappeared or insolvent. This situation is the same as that which applies for licensed builders, i.e. the builder buys the insurance for the benefit of his client and subsequent purchasers but goes back during the period of insurance to fix defects.

## 9. Conditions that must be written into your contract – *Statutory warranties (Victoria Only)*

The following warranties must be part of every contract of sale of property by an owner builder where the owner builder home warranty insurance applies, as per Section 137B of the Building Act 1993 (Victoria):-

- (a) the vendor warrants that all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
  - (b) the vendor warrants that all materials used in the 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; and
  - (c) the vendor warrants that all domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, the Building Act 1993 and the regulations.
- Check your State.