Home indemnity insurance

October 2007

Home indemnity insurance protects home owners against financial loss if a builder is unable to complete residential building work or meet a valid claim for faulty workmanship because of death, disappearance or insolvency ie inability to meet outstanding debts.

What is the law?

If residential building work worth over $20,000 is to be undertaken, the law requires that a builder must take out indemnity insurance in the name of the home owner.

In most instances, the insurance policy must cover the residential building work during the construction period and for six years from the date of 'practical completion'. This is the date from which the residence, extensions or renovations are capable of being used for their intended purpose. The law came into effect on 1 February 1997.

Owner builders are not required to take out indemnity insurance before they can build, but must do so if they sell within seven years of obtaining an owner builder licence from the local government authority.

Who is responsible for obtaining the insurance?

A builder carrying out residential building work on behalf of a home owner is responsible for taking out home indemnity insurance and for giving the owner a copy of the certificate of insurance BEFORE:

- starting any residential building work; or
- asking the home owner to pay a deposit; or
- asking the home owner to pay any other money payable under a residential building contract.

If a builder owns the property to be built, extended or renovated, indemnity insurance cover must be obtained before a building licence is issued by the local government authority.

This is to ensure that, if the property is sold during construction or during the period of indemnity insurance (referred to in this leaflet as the six year insurance period), subsequent owners are covered.

Is all residential building work over $20,000 required to be covered?

All residential building work must be covered. This is defined in the law to mean:

- the construction of a new dwelling;
- the extension or renovation of an existing dwelling;
- placing a dwelling on land;

Consumer Protection Division
Forrest Centre, 219 St Georges Terrace
Perth, Western Australia 6000 (hours: 8:30am - 5.00pm)
Admin: 9282 0777 Advice Line: **1300 30 40 54**
Facsimile: 9282 0850 Email: consumer@docep.wa.gov.au
Internet: www.docep.wa.gov.au

Department of **Consumer and Employment Protection**
Government of **Western Australia**

- construction, extension or renovation of multi-unit grouped homes (except for multi-storey developments and fully leased retirement villages); or
- construction or carrying out of work associated with any of the above. Such work includes pergolas, fences, swimming pools, landscaping and similar work.

IF:

- *Building only a pergola, fence, or swimming pool, arranging landscaping, or for similar work to be done in or around an existing dwelling, and if residential construction work or placing a dwelling on land is not being undertaken* - the law does not require indemnity insurance to be taken out. This is the situation even if the value of the work exceeds $20,000.
- *Signing a "cost plus contract"* - that is one where the total price for the work is not stated, indemnity insurance must be taken out prior to the building licence being issued but the cover will apply only to the six year period following practical completion.
- *Building or buying a "Spec" home* - that is a home built by builders on their own behalf and then sold as a completed home (usually by offer and acceptance). The builder must take out indemnity insurance prior to the building licence being issued to protect purchasers and any subsequent owners during the six years following practical completion, but is not required for the construction period.
- *Placing a dwelling on land and this is the first time it has been erected* - the cover must include the cost of the residence as well as placement.
- *Relocating an existing dwelling to a new site* - indemnity insurance does not have to cover the original fabric of the dwelling. It is required to cover only work connected with the relocation and any new building work undertaken.
- *Performing residential building work, for example as a sub contractor, under a contract for another builder who is carrying out the work* - indemnity insurance is not required to be taken out. The other builder must do so.
- *Contracting to build dwellings for rental by Homeswest* - indemnity insurance is not required to be taken out before obtaining a building licence. However, if Homeswest sells during the six year insurance period, it will have to take out indemnity insurance to cover subsequent owners.

Special rules apply to multi-storey multi-unit developments and fully leased retirement villages.

When is the insurance required to be taken out?

Prior to obtaining a building licence for residential building work, a builder must prove to the local government authority that a home indemnity insurance policy is in place. This is usually done by lodging a copy of the insurance certificate with the plans and other documents, or by providing a copy of the certificate when collecting the licence.

Who pays for the home indemnity insurance and how is it obtained?

The builder must pay the insurance premium. Builders need to make provision in the contract price for the cost of the insurance policy and apply to the insurer to have the work covered. The premium is a one off payment. The policy will be in the name of the home owner. If a home owner sells the residence within the six year home indemnity insurance period, the benefit of the policy will pass to any subsequent owner(s).

Who provides the insurance and who chooses the insurer?

Home indemnity insurance is provided by private sector insurers or 'Approved Funds' who must be approved by the Minister for Consumer Protection.

The builder has the option of which insurer to select, provided that the insurer agrees to supply the cover.

Builders should contact the Department of Consumer and Employment Protection or their industry association for the names of the insurers who are approved to provide home indemnity insurance under the law.

Home owners will obtain details of the insurance company or 'Approved Fund' providing the insurance cover from the details provided on the home indemnity insurance certificate.

What if the builder cannot obtain home indemnity insurance or fails to take it out?

Builders will be able to obtain home indemnity insurance provided they satisfy an insurer that they have a sound business and apply appropriate standards of workmanship.

If insurance is refused, builders should seek advice from their industry association. If home indemnity insurance cannot be obtained, the home owner will need to engage another builder who can obtain cover to undertake the work.

A builder who does not take out indemnity insurance as required or fails to comply with any other of the home indemnity insurance provisions of the *Home Building Contracts Act 1991* can be prosecuted and fined up to $10,000.

If a home owner should find that home indemnity insurance is not in place when a claim is needed to be made, the matter should be referred to the Builders' Registration Board (for address and contact number see section: Further information).

What does the policy cover and how long does it last?

The home indemnity insurance policy will help to ensure that the residential building work will be finished at no additional cost to the home owner if the builder dies, disappears or becomes insolvent. This component of the policy does not apply to cost plus contracts.

The policy must also cover claims for defective workmanship made during a period of six years from practical completion of that work.

What is the minimum monetary cover? Can the home owner ask for increased cover?

The law sets out the lowest level of home indemnity insurance cover that must be provided. The policy must require the insurance company or 'Approved Fund' to pay up to $100,000 or the value of the contract work, if it is less than that amount.

This is the maximum amount that the insurance company or 'Approved Fund' must agree to pay out while the policy is in force.

Whatever the total cover, the law requires insurers to pay no more than $20,000 for loss of deposit. The insurer is allowed to charge a $500 excess which means that the home owner or their successors in title may have to pay the first $500 of any claim.

Does the existence of home indemnity insurance reduce the liability of a builder during the six year insurance period?

No it does not. The policy will come into effect only if a builder dies, cannot be located or becomes insolvent. In all other cases a builder will remain responsible for claims made by a home owner or successive owners during the six year period following practical completion.

"Owner builder" requirements

Taking out an owner builder licence means that it is not necessary to engage a professional builder to carry out the residential building work but that the owner builder assumes all the responsibilities of a builder in the owner built home. In those areas covered by the *Builders' Registration Act 1939*, owner builders are not permitted to sell within three years of obtaining their owner builder licence, without permission from the Department of Consumer and Employment Protection.

Home owners should be wary of any suggestion made to them that they can reduce costs by taking out the building licence themselves, that is, becoming an owner builder. Builders who suggest this may do so because they are unable to secure home indemnity insurance.

Note: Home indemnity insurance is not required if the building licence was taken out prior to **1 February 1997**.

If the home owner does make the decision to take out an owner builder licence, home indemnity insurance will not be required in order to obtain the licence from the local government authority. However, if the residence is sold or otherwise disposed of within seven years of taking it out, indemnity insurance cover must be obtained to cover subsequent owners. The policy must cover the new home owner(s) for the remainder of the seven year period. The owner builder must also provide the purchaser with a valid certificate of insurance before entering into a contract to sell.

Owner builders and their successors in title should disclose to their licensed real estate agent or sales representative (or to prospective purchasers if the property is being sold privately), that the property contains work for which an owner builder licence was obtained within the previous seven years.

An owner builder who fails to take out indemnity insurance and/or to provide the certificate to the purchaser before selling the property is liable to prosecution and a maximum fine of $10,000.

For information about which insurers provide this type of cover, contact the Department of Consumer and Employment Protection.

If home indemnity insurance cannot be obtained, the property cannot be sold within seven years of obtaining the owner builders licence.

What if a home owner wishes to sell a residence constructed by a professional builder within the six year insurance period?

The property can be sold at any time. However, if the builder obtained a building licence after 1 February 1997, the home owner should disclose to the licensed real estate agent or sales representative (or to any prospective purchasers if selling privately), when the dwelling was built, extended, or renovated. If the builder obtained a licence after 1 February 1997, proof of home indemnity insurance will be required.

How should builders inform home owners about home indemnity insurance?

The *Home Building Contracts Act 1991* requires that before a contract for home building work is signed, the builder must provide the home owner with a copy of the *Notice for the Home Owner* which summarises the main requirements of the Act in plain English. That notice includes reference to home indemnity insurance requirements.

The builder must also provide the home owner with a copy of the insurance certificate prior to accepting any payment including a deposit.

When buying a property - how do potential purchasers know whether home indemnity insurance should be, or is, in place?

If using a licensed real estate agent, the agent or sales representative should advise potential purchasers the age of the dwelling, whether any additions or renovations have been carried out, the date at which any building work took place and whether home indemnity insurance is, or should be, in place.

The agent or representative should also inform the purchaser whether the work was carried out by a professional (usually a registered) builder or an owner builder. If not buying through a licensed agent or sales representative, purchasers should ask these questions themselves.

There is no legal requirement for home indemnity insurance to be in place, unless a building licence was issued by a local government authority on or after 1 February 1997.

If the vendor used a builder and local government approval was obtained after that date, insurance should be in place to cover the six years from 'practical completion'. This is the date from which the residence, extensions or renovations are capable of being used for their intended purpose.

If the property was constructed, extended or renovated by an owner builder and the building licence was taken out on or after 1 February 1997, the owner builder must take out home indemnity insurance cover before entering into a contract to sell.

The home indemnity insurance policy must cover the remainder of the seven years from the issue of the owner builder licence and will protect the subsequent owners if the owner builder dies, cannot be found or becomes financially insolvent and is unable to meet a claim made while the insurance policy is in force.

The licensed real estate agent, sales representative, (or the vendor, if an agent is not being used), should inform potential purchasers if an owner builder has undertaken work for which a building licence was obtained on or after 1 February 1997.

When buying a property which may have been built, extended or renovated after 1 February 1997, whether by a builder or an owner builder, potential purchasers may wish to ask their settlement agent or conveyancing lawyer to ensure that proof of home indemnity insurance is provided at settlement. In any event, a settlement agent/ conveyancer who finds that home indemnity insurance cover appears to be applicable but is not in place, should advise the purchaser accordingly.

If a potential purchaser receives such information, legal advice should be sought prior to settlement.

What if a claim by a home owner is disputed by the insurer?

The home owner should seek clarification from the insurance provider and then, if necessary, contact the Insurance Council of Australia Ltd or the Department of Consumer and Employment Protection for advice.

Where can further information and assistance be obtained?

The *Home Building Contracts Act 1991* sets out what is legally required of builders and home owners entering into a contract for residential home building work. Copies of this Act can be purchased from State Law Publisher, Ground Floor, 10 William Street, Perth 6000.

If you need further information or advice about home indemnity insurance, contact the Department of Consumer and Employment Protection. An industry association, insurer or 'Approved Fund' may also be able to assist.

BUILDERS AND HOMEOWNERS CHECKLISTS

Builders

Before carrying out residential building work worth more than $20,000 for themselves or another person (except as a subcontractor to another builder) builders must:

- contact their insurer and arrange home indemnity insurance cover;
- provide a copy of the insurance certificate to the local government authority in order to obtain a building licence; and
- give the home owner the insurance certificate before asking for any money or performing any work under the contract.

Owner builders

Home owners who have obtained an owner builder licence from the local government authority on or after 1 February 1997 and then wish to sell their property within seven years of that licence being taken out must:

- tell their real estate agent or prospective purchaser that their residence was built, extended or renovated by an owner builder;
- take out a home indemnity insurance policy covering the remainder of the seven year period, prior to selling or otherwise disposing of their property;
- provide the purchaser with a valid insurance certificate; and
- ensure that they do not sell if they are unable to obtain home indemnity insurance.

Home owners

When employing a builder to carry out residential building work worth more than $20,000, home owners should know that:

- a builder must give them a certificate of home indemnity insurance before undertaking any work under the building contract;
- they are not required to give the builder any money payable under the building contract (including a deposit) until they get that certificate;
- the policy must cover the residential building work for claims made within six years of practical completion; and
- they must provide proof of home indemnity insurance if selling the property within the six year insurance period.

Real estate agents/sales representatives

Before listing a property for sale, and in checking pertinent facts, agents and sales representatives should:

- ask the vendor to disclose whether a local government authority building licence was obtained on or after 1 February 1997 to build, extend, or renovate the residence and if so:
- determine whether a builder was engaged or an owner builder licence was taken out;
- be satisfied that home indemnity insurance is in place if required; and
- ensure that an owner builder who is required to take out home indemnity insurance prior to entering into a contract to sell has done so.

Settlement agents/conveyancers

Before finalising settlement where a building licence may have been issued on or after 1 February 1997, settlement agents and conveyancers should:

- enquire of the home owner or, if necessary, from the local government authority whether a building licence covering the property was issued on or after 1 February 1997 to a builder or owner builder, and if so;
- obtain proof from the home owner or, if necessary, from the local government authority that home indemnity insurance is in place to cover the remainder of the six year insurance period (seven years from the issue of a building licence where an owner builder has been involved);
- inform the purchaser of the existing home indemnity insurance details for future reference; and
- advise the purchaser and/or vendor in writing to seek legal advice before settlement if home indemnity insurance is required but is not in place.

Further information

For further advice contact the Consumer Protection Advice Line on **1300 30 40 54** (cost of a local call from anywhere in the State).

Other useful contact numbers:

Builders' Registration Board/Building Disputes Tribunal
18 Harvest Terrace
West Perth WA 6005
Tel: (08) 9476 1200
Fax: (08) 9476 1299

Housing Industry Association Limited
28 Walters Drive
Osborne Park WA 6017
Tel: (08) 9244 3222

Master Builder's Association of Western Australia
35-37 Havelock Street
West Perth WA 6005
Tel: (08) 9322 5133

Insurance Council of Australia Ltd
Level 9, 256 Adelaide Terrace
Perth WA 6000
Tel: (08) 9325 6033

State Law Publisher
Ground Floor
10 William Street
Perth WA 6000
Tel: (08) 9321 7688

Several of these organisations have other publications relating to the building industry. For copies, contact the above numbers.

This publication is available on request in other formats to assist people with special needs.

DP098768 / 5000