

Important changes to Home Building Act Insurance Requirements

From 1 January 2004 amendments to the Home Building Regulation 1997 will take effect.

Currently in New South Wales all residential building work carried out by builders and developers needs to be covered by "Home Warranty Insurance" before the work starts.

When selling a property within 6 years of completion of the residential building work, developers and owner builders must give a certificate of Home Warranty Insurance to the purchaser of the property when entering into a contract for sale.

As a result, it has been essential for owner builders and developers and financiers of owner builders and developers to ensure that Home Warranty Insurance is in place before the commencement of a project.

From 1 January 2004, the Home Building Act Amendment (Insurance Exemptions) Regulation 2003 exempts residential building work carried out on multi storey buildings and land sold by developers on which residential work for that purpose has been or is to be done from the insurance requirements under the Home Building Act.

The regulation defines a multi storey building as a building that has a rise in storeys of more than 3 and that contains two or more separate dwellings. Rise in storeys has the same meaning as it has in the Building Code of Australia.

The amendments only apply to residential building work commenced after 1 January 2004.

In the case of off the plan sales it is common for developers to enter into contracts to sell units in residential building projects before the work on the project has been commenced. Currently these developers are exempt from having Home Warranty Insurance at the date that the contract is entered into provided the contract contains a clause informing the purchaser that the developer is required to insure the residential building work, requiring the developer to provide a certificate of insurance to the purchaser within 14 days after the contract of insurance is made and enabling the purchaser to rescind the contract if the Certificate of Insurance is not provided within that timeframe.

There will be many un-completed off the plan contracts in existence as at 1 January 2004 where the actual work on the project has not commenced. For these projects, developers are no longer legislatively required to effect insurance if the projects relate to multi storey buildings. However, developers are required to notify the purchasers of the land in writing that the provision in the contract requiring insurance to be taken out no longer has effect and

RICHARD J W d'APICE, A.M. • WILLIAM R d'APICE • ALEXANDER KOHN • STEWART J ROBERTS
NANCY A BRAMLEY-MOORE • JOHN R BAXTER • GRAHAM MARTIN • VERA M VISEVIC • NORMAN DONATO
CONSULTANT • ANTHONY F McDONALD ASSOCIATE • ROSEMARY CARRERAS

LEVEL 12 • 135 KING STREET • SYDNEY 2000
GPO BOX 495 SYDNEY 2001 • DX 296 SYDNEY
TELEPHONE (02) 9233 7788

FACSIMILE (02) 92331550 • EMAIL mail@makdap.com.au
ABN 83 586 046 478

of the exemption of the development from the requirements of Part 6 of the Home Building Act 1989.

It is important for developers of multi storey buildings to undertake a review of their un-completed off the plan sale contracts so that they can comply with this requirement where necessary.

For financiers it will be no longer necessary to obtain evidence of Home Warranty Insurance in connection with multi storey developments prior to drawdown of construction funds where the work commences after 1 January 2004.

Clearly the forthcoming change to the insurance requirements removes a level of protection to consumers. Therefore to protect consumers further legislative amendments have been proposed to ensure better quality construction in residential high rise buildings. These measures include:

- \$1.1 million fines and 2 year jail terms for building certifiers guilty of improper conduct and for those who attempt to corrupt a certifier.
- The introduction of mandatory inspections for all classes of buildings (as defined in the Building Code of Australia) beginning 1 January 2004 for high rise buildings.
- The introduction of clearer provisions governing the role and responsibilities of principal certifying authorities.
- Ensuring compliance with development applications before an occupation or subdivision certificate can be issued.
- Requiring the principal contractor and principal certifying authority to place a sign (or signs) on development sites giving their name and contact telephone number.

If you are a financier, developer or owner builder and have any questions concerning the new insurance provisions please contact Nancy Bramley-Moore on 9233 9009 or send an email to nbramleymoore@makdap.com.au.

Nancy Bramley-Moore
Partner
Makinson & d'Apice
Solicitors