

# Cannot Get Home Warranty Insurance – What Can You Do?

Anecdotally, we understand that SiCorp trading as the Home Building Compensation Fund (HBCF), the insurer who administers and underwrites insurance under the HBCF (formerly known as Home Owners Warranty Insurance) has tightened controls on the issuing of that insurance.

For those wanting residential building works to commence which are of a contract value in excess of \$20,000 this creates a problem, because the works must not commence without the relevant insurances in place.

From 4 August 2015, builders' insurance eligibility changed from an annual limit to open job limits, meaning that insurance eligibility is now affected by the number and value of jobs under construction.

## So what is happening?

- Some contractors while waiting for works in progress to finish are dragging out lead times, plan drawings, lodgement of DA's etc with a result that estimated start times at tender stage may be unrealistic.
- The commencement of works is delayed and owners are becoming frustrated, particularly, those with vacant land, tight time frames or who need to ensure construction loan facilities are in place.
- Contractors are suggesting splitting contracts to try to get under the \$20,000 threshold.
- Owners are considering "owner builder permits."

## So what should you do?

- Do not go down the path of the owner builder permit as:
  - a) you will be liable for any breach of the statutory warranties to subsequent owners for defects in the works; and
  - b) if the property is sold at any time within 7 ½ years after the issue of the owner builder certificate incoming purchasers must be notified of the owners builder works and that those works do not have insurance under the HBCF, which may affect the sale price.
- Do not split the contract to try to get under the \$20,000 threshold for reasons including:
  - a) For the builder, section 92(4) of the Home Building Act 1989 provides: "If the same parties enter into two or more contracts to carry out work in stages, the contract price for the purposes of subsection (3) is taken to be the sum of the contract prices under each of the contracts." This provision has been

applied by NCAT to find that a split contract arrangement to do works on two bathrooms, where the aggregate price of each bathroom renovation exceeded the threshold, required insurance and as a result the builder was unable to enforce the split contracts in circumstances where he hadn't obtained insurance.

- b) For the builder, the Office of Fair Trading's compliance division treat very seriously any issues regarding uninsured works and will readily prosecute non-complying contractors, even where an unforeseen variation takes the contract price over the \$20,000 threshold.
  - c) For the owner, if you go to sell your property where a contractor has performed works and the relevant home warranty insurance is not in place, even through no fault of your own, a purchaser of your property may be entitled to rescind your contract for sale of land at any time up to completion.
  - d) For the owner, you do not have the protection of the insurance in the event of a claim for losses due to the insolvency, death or disappearance of the builder where the works haven't been completed or the works are defective.
- Before you start your negotiations, make enquires about the contractor's eligibility for insurance under the HBCF and seek some sort of confirmation from the contractor or contractor's broker as to the turnaround time to obtain a policy of insurance. If timing is critical consider appropriate contract conditions.

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