Incomplete Works – 20% or 40% Insurance Payout?

Due to tough economic times for the construction industry, the number of home owners warranty insurance claims for incomplete works has dramatically increased.
The amendment to the Home Building Regulations 2004, effective from 17 February 2012, provides that insurance policies issued from that date can allow 20% or more of the contract value for incomplete works.

On 8 March 2012, the Home Warranty Insurance Fund issued a statement in its Claims Update number 3, which provided:

> "...*The New South Wales government has reviewed the approach to managing current claims under the home warranty insurance scheme. As a result of the review, the home warranty insurance fund will accept a higher level of liability for incomplete work for such claims. This will have the effect of increasing the non-completion cap from 20% to 40% for all Westminster and Cosmopolitan claims.*
>
> *This is intended to avoid the situation where some claimants may incur uninsured losses on some claims, depending on the stage of the progress payments at the time of insolvency of the builder. The continued existence of a cap is considered appropriate to ensure that homeowners assume some responsibility for accepting uncommercial quotes from the builder or agreeing to progress payments that do not reflect the state of works completed*..."

Claimants usually suffer a loss in excess of 20% due to the extra costs associated with a new builder taking on the risk of finishing the work, and the likely possibility that frontloading of expenses occurred.

It is understood that in some cases, homeowners with homes partly built by other builders have had their claims approved for more than 20% - and up to 40% of the contract value - as opposed to the 20% legislated cap in place previously.

Normally the insurer is entitled to recover any payouts from the builder or those who provided security for the insurance. Arguments would likely follow that the insurer failed to mitigate its loss by paying out more than it was required to do pursuant to the insurance policy.

Various discussion papers have recently been submitted to the Office of Fair Trading and it is anticipated that legislative reform in this area will occur in or before 2014.

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