

What are the implications of building defects for owner-builder work?

In a Nutshell

Owner-builder work is presumed to have been completed within 18 months after an owner-builder permit is issued, or earlier if an occupation certificate is issued within that period.

Owners of land where owner-builder work has been performed need to be aware of this completion date to manage the expiration of statutory warranty periods and ensure that home warranty insurance claims are made within the period of insurance for any notifiable events.

A public register of owner-builder permits issued in the last 10 years is maintained by NSW Fair Trading and can be searched online, see: [NSW Fair Trading Owner-Builder Permit Search](#)

1. Completion of owner-builder work

Determining when completion of residential building work occurs under the Home Building Act 1989 (“**the Act**”) is a key concept for statutory warranty periods and home warranty insurance periods with respect to defective building work.

Completion of owner-builder work occurs on ‘practical completion’, namely when a dwelling is capable of being used for its intended purpose, even if there are omissions and defects in the dwelling.

There is a presumption in the Act that owner-builder work reaches ‘practical completion’ at 18 months after the issue of the owner-builder permit for the work. ‘Practical completion’ can occur earlier if an interim occupation certificate or a final occupation certificate is issued within 18 months from the date of the owner-builder permit.

Accordingly, owners of dwellings that have been constructed by owner-builders should be aware that the consumer protections contained in the Act (such as statutory warranties and the current requirement for home warranty insurance) may be foreshortened by the presumption that owner-builder work is complete at 18 months after the owner-builder permit is issued or upon the issuance of an interim occupation certificate or a final occupation certificate within 18 months from the date of the owner-builder permit.

2. Statutory Warranties

While there are a number of different periods for statutory warranties under the Act, it is important for the owners of dwellings constructed by owner-builders to note that warranty periods will generally start to run from a much earlier date when compared to other residential building projects, given the above comments concerning completion.

Currently two statutory warranty regimes operate in tandem. A 7 year warranty period for pre 1 February 2012 owner-builder works ("Pre 1 February 2012 Works"), and 6 year major defects and 2 year non-major defects warranty periods for post 1 February 2012 owner-builder works ("Post 1 February 2012 Works"). Warranty periods commence from completion. For more information see our article: [Construction Update on Commencement Proclamation of the Home Building Amendment Act 2014](#)

Action Required:

- For Pre 1 February 2012 Works that are the subject of building defects, investigate when the owner-builder permit was issued to determine when the 7 year warranty period expires (i.e. 8.5 years after the owner-builder permit was issued or earlier if an occupation certificate was issued within 18 months of the owner-builder permit)
- For Post 1 February 2012 Works that are the subject of building defects, investigate when the owner-builder permits was issued to determine warranty expiration dates for major defects and non-major defects (i.e. for non-major defects – 3.5 years after the owner-builder permit was issued, and for major defects – 7.5 years after the owner-builder permit was issued. Those periods will be reduced if an occupation certificate was issued within 18 months of the owner-builder permit)

3. Insurance

The Home Building Amendment Act 2014 amendment to the Home Building Act 1989 removed the ability for owner-builders to enter into a contract for home owners warranty insurance. Instead, the owner of land where work has been performed must include a consumer warning on any contract for the sale of the land to the effect that an owner-builder permit has been issued and the owner-builder work was not required to be insured.

The Act provides that there is no need to provide the consumer warning if:

1. The land is sold more than 7 years and 6 months after the owner-builder permit was issued;
2. The market cost of the labour and materials for the owner-builder work didn't exceed \$20,000
3. The owner-builder work is of a class prescribed by the regulations (noting that there is currently no class prescribed that does not require a consumer warning).

The amendments that were made to the Home Building Act 1989 by the Home Building Amendment Act 2014 do not apply where:

1. A contract of insurance or a contract for the sale of land is entered into before 15 January 2015; or
2. A contract for the sale of land is entered into after 15 January 2015 if a contract of insurance is in force when the contract is entered into.

Conclusion

Owners of dwellings constructed by owner-builders should be aware that completion of those dwellings is presumed to have occurred either 18 months after the owner-builder permit was issued or possibly earlier.

With statutory warranty periods commencing from completion, owners of dwellings built by owner-builders should consider investigating defects and commencing proceedings prior to the expiration of the 7 year warranty period for Pre 1 February 2012 Works, or the relevant warranty period for Post 1 February 2012 Works.

Key takeaways

- Owner-builder work is presumed complete 18 months after the permit is issued, affecting warranty periods.
- Statutory warranties for owner-builder works vary based on the date of the permit and completion.
- Homeowners must be aware of the completion date to manage warranty claims effectively.

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