



Domestic Consumer Building Guide explained

The *Building Legislation Amendment (Consumer Protection) Act 2016* has introduced significant changes to the building industry. The changes affect building practitioners, surveyors and owner builders.

The objectives of the reforms are to enhance consumer protection through stricter industry regulation and enforcement provisions, and to improve processes under the relevant *Building Act 1993* (Vic) and the *Domestic Building Contracts Act 1995* (Vic).

The first two stages of reforms took effect in July and September 2016 with the final reforms anticipated to be implemented before July 2017.

As part of the changes, builders must now, before a contract for major domestic building work is signed, provide customers with a copy of the Domestic Consumer Building Guide (the Guide).

This article discusses the contents of the Guide, and particularly those aspects that relate to some of the recent reforms regarding domestic building practices. Builders are reminded of the importance of keeping up to date with industry reform and having systems in place to reduce risk and ensure compliance when issuing building contracts.

What's in the Guide?

The Guide has been developed to assist customers understand their rights and responsibilities, and the parties' roles when entering into a major domestic building contract. A major domestic building contract is a contract to build, renovate or extend or carry out other building works exceeding \$5,000. Accordingly, many projects will fall within this definition. Links are provided to Government authorities to assist the client check information regarding builder registration and whether a builder has been the subject of any disciplinary action.

The Guide sets out the types of work contemplated in a domestic building contract and reminds the consumer that the builder must have in place Domestic Building Insurance for works exceeding \$16,000. A copy of the policy documents must be provided to the customer before a deposit is paid.

Information about the statutory warranties pertaining to building works and the opportunity for consumers to take legal action against a builder up to 10 years after the occupancy or final inspection certificate issues, is also included.

The Guide constitutes the 'information statement' required under s 29A of the *Domestic Building Contracts Act 1995* and can be downloaded from the Consumer Affairs Victoria website.

Victorian Building Authority

The Guide refers to the Victorian Building Authority (VBA) which is the newly-appointed authority (replacing the Builder Practitioner's Board) pursuant to the recent reforms. The VBA is now charged with the licensing, regulation and supervision of building practitioners. It has direct decision-making power with respect to the requirements for registration and discipline within the industry, and is also responsible for issuing certificates of consent for owner builders.

The amending Act has introduced increased powers for the VBA to carry out its role and to implement the various changes contemplated by the reforms. It may issue a 'show cause' direction in anticipation of taking disciplinary action against builders, impose conditions on registration, or suspend a practitioner's registration.

Appointing a building surveyor

For major building work, a surveyor must be appointed before applying for a permit and starting construction. A private or council surveyor may be appointed. The Guide makes it clear that a builder of a domestic major building contract is now prohibited from appointing a private surveyor on behalf of the customer. The appointment must be made by the owner / customer.

The amendments also prevent a private surveyor from accepting an appointment if there is a conflict of interest. A conflict may arise if the surveyor is related to the builder through family, business or employment or, in circumstances where the surveyor stands to make a financial gain regarding his / her decision-making authority.

The surveyor is responsible for inspecting each relevant stage of the building works to ensure compliance with regulations, and signing off on the final occupancy certificate. The amending Act has introduced more stringent provisions requiring surveyors to give 'written directions' for builders to fix non-compliant works which must be provided to both the builder and owner.

The importance of clear documentation

Finally, the Guide emphasises that communication is key to resolving disputes. Professionally prepared contract documents and sound management systems are essential to avoiding disputes or, at least, asserting a builder's position if a dispute does arise.

We recommend that building practitioners use a written contract for all works, whether or not they exceed the \$5,000 threshold. Builders should review contract precedents to

ensure that they contain all information required under the relevant legislation. Using industry-approved contracts that prompt completion of pertinent information, and attaching the Guide to the contract will assist builders in meeting their obligations and provide evidence of the agreed scope of works.

Procedures should also be implemented to ensure that customers acknowledge having received the Guide with sufficient time allowed for customers to review the entire contract and Guide before signing.

Conclusion

The reforms have introduced many other substantial changes which will affect all building practitioners. Those involved in the industry are encouraged to acquaint themselves with these changes and to review work practice and management systems to ensure compliance.

If you or someone you know wants more information or needs help or advice, please contact us on 03 9387 2424 or email info@rrrlawyers.com.au.