

Home Building Compensation Fund

A builder must take out job-specific insurance under the Home Building Compensation Fund (previously Home Warranty Insurance) for home building work valued at over \$20,000.

Insurance under the Fund commenced on 1 May 1997 under *Home Building Act 1989*. From 1 July 2010, the NSW Self Insurance Corporation (now trading as the NSW Home Building Compensation Fund) became the sole provider of insurance under the Home Building Compensation Fund within NSW.

Insurance policies issued before the new Government underwritten scheme remain in force. The insurer that issued the policy remains responsible for the period of cover.

If you are a home owner, check that a valid insurance certificate has been obtained for the work you want done. Do this before work starts and before paying any money. Without it, you will not be able to be compensated for defective or incomplete building work if the builder becomes insolvent, dies or disappears. The insurance can also protect you if the builder's licence is suspended for failure to comply with a tribunal or court money order in your favour.

Also, you must notify the insurer in writing once you become aware of defective work to safeguard your position under the insurance cover.

Find out more about Home Building Compensation Fund cover below, including when it is required or exempt, and what to be aware of to help you protect your rights as a home owner. For more information, refer to the Home Building Compensation Fund website: www.hbcf.nsw.gov.au

When insurance must be provided

Insurance under the Home Building Compensation Fund needs to be provided by:

- a builder or tradesperson before taking any money (including a deposit) from a home owner (including an owner-builder) under a residential building contract and before starting any work under that contract

- a 'spec' builder before starting any residential building work on a property owned by the builder
- a developer before entering into a contract for the sale of a property on which a builder is doing or has done residential building work for the developer.

From 1 February 2012, insurance under the Home Building Compensation Fund must be obtained where the contract price is over \$20,000 or, if the contract price is not known, the reasonable market cost of the labour and materials involved is over \$20,000. Before 1 February 2012, this threshold was \$12,000.

Where the contract price or the reasonable market cost of the labour and materials involved does not exceed \$20,000, there is no legal requirement to obtain insurance under the Home Building Compensation Fund.

Contractors who carry out residential building work must still hold an appropriate licence with Fair Trading where the labour and materials involved are valued at over \$5,000.

Those who contract and/or carry out specialist work (ie. electrical wiring, plumbing, gasfitting, airconditioning and refrigeration) require a licence regardless of the value of the work.

Home owners should be wary of any builder or tradesperson who says they do not need insurance if the value of work exceeds \$20,000, or who suggests you obtain an owner-builder permit while they carry out the work for you.

Certificate of insurance

The certificate of insurance under the Home Building Compensation Fund should:

- be an original issued by the insurer
- be issued for your specific project - including the name of the contractor, home owner, property address and total value of the contract
- reflect that the builder's name on the insurance certificate is exactly the same as that on the building contract and the builder's licence.

Before making any payment under a sale or building contract, check that a certificate of insurance is valid by:

- contacting the approved insurance agent whose contact details appear on the certificate, or
- using the Home Building Compensation Fund certificates register.

Important: A certificate of insurance is separate to a certificate of eligibility. A certificate of insurance is insurance cover issued specifically for your project. 'Eligibility' merely means that the builder has been assessed by an approved insurance agent and been granted the entitlement to apply for job-specific certificates of insurance.

Examples of a certificate of insurance and a certificate of eligibility can be found on our Home Building Compensation Fund web page for Tradespeople.

Minimum cover

From 1 February 2012, insurance policies under the Home Building Compensation Fund must provide cover of at least \$340,000. Between 28 February 2007 and 31 January 2012, the minimum cover was \$300,000. From 1 May 1997 to 28 February 2007 the minimum cover was \$200,000.

The cover may be subject to limitations, such as if you pay more than the legal limit for deposits or pay more than what is outlined in the contract for a progress payment. Other limitations may also be specified in the policy.

Claims for incomplete work are limited to at least 20% of the contract price (up to a maximum of the cover provided under the policy).

Multi-storey buildings

General exemption

Construction of a new **multi-storey** residential building does not require insurance cover under the Home Building Compensation Fund. To be exempt from

insurance requirements, a multi-storey building is a building that:

- has a rise of more than three storeys, and
- contains two or more separate dwellings.

Storey and *rise in storeys* has the same meaning as in the Building Code of Australia of the National Construction Code Series.

Not exempted

Construction of a new multi-unit residential development (where the rise is three storeys or less, eg. villa units, town houses, low and medium rise projects etc) requires insurance cover under the Home Building Compensation Fund. A developer must attach the certificate of insurance to the contract for sale of such dwellings.

Insurance cover must also be taken out before residential building work is done on an existing multi-storey building (eg. repairs, maintenance, alterations and additions etc).

Exemptions

Section 97 of the *Home Building Act 1989* allows the Chief Executive to grant an exemption from the requirements for insurance under the Home Building Compensation Fund contained in Part 6 of the Act, if satisfied that there are exceptional circumstances or that full compliance is impossible or would cause undue hardship. (Clause 55 of the Home Building Regulation 2014 prescribes persons entitled to apply for an exemption).

An exemption will not be considered where insurance under the Home Building Compensation Fund cannot be provided because of a contractor's financial or business circumstances or where building work has already commenced.

Residential building work done by some Government departments is automatically exempted from the insurance provisions (section 103E *Home Building Act 1989*; clauses 59 and 60 of the Home Building Regulation 2014).

Council requirements

Under the development and construction approval process, the Council or principal certifying authority must be notified of the builder for the project. A project's approval requires insurance under the Home Building Compensation Fund. Without insurance under the Fund, the Council/principal certifying authority may not be able to issue an occupation certificate for the completed building work. This may impede the sale of the property and affect its market price.

Claims on insurance under the Home Building Compensation Fund

A home owner, or subsequent purchaser, can lodge with or notify an insurer of a claim under their insurance policy if there is a loss as a result of a builder, tradesperson, developer or owner-builder (as the case may be) failing to complete or commence work and/or failing to rectify defective work. This only applies if the home owner can neither recover the financial loss nor have the work rectified or completed.

It is important for home owners to safeguard their position under an insurance policy. When a home owner becomes aware of defective or incomplete work, they must immediately notify the insurer approved under the Home Building Compensation Fund. This must be in writing and give necessary information on the nature and circumstance of the loss.

For details on making a claim, periods and types of cover, and claim notification and lodgment procedures, refer to our Home Building Compensation Fund claims web page. You will also find useful information on our Resolving building disputes web page.

Home Building Compensation Fund Board

The Home Building Compensation Fund Board oversees the operation of insurance under the Home Building Compensation Fund. The Board monitors the

scheme and examines how it may be improved for home owners and builders. For more information, refer to our Home Building Compensation Fund Board web page.

Approved insurance agents

Insurance agents authorised to provide insurance services on behalf of the NSW Home Building Compensation Fund for residential building work under the NSW *Home Building Act 1989* are; Calliden Insurance Limited and QBE Insurance (Australia) Limited. For more information go to our Approved insurance agents web page.

For information on insurers that were previously approved to sell home warranty insurance, go to our Past approved insurers web page.

Complaints against insurers

Fair Trading can investigate complaints about insurers approved to provide insurance under the Home Building Compensation Fund in NSW. For more information, refer to our Complaints against insurers web page.