

When Must an Insurer “Cough Up” Under the Statutory Domestic Building Insurance?

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Domestic Building Insurance is a compulsory insurance for residential building work where that building work is valued at over \$12,000 including GST. The *Building Act* 1993 (“the Act”) requires that a builder or contractor obtain insurance for the benefit of the home owner to cover for the loss caused by structural defects, non-structural defects and some incomplete work.

However, for those not *au fait* with the Act, there will be a great deal of confusion concerning the distinction between the Builder’s statutory warranties and the statutory domestic building insurance under the Act.

Put simply, the builder’s statutory warranties under the Act entitle homeowners to have all defects attributable to the builder, and all consequential damage, rectified at no cost to them, but by the builder or by others at the builder’s expense through legal action and regardless of any insurance policy.

So what role does the Domestic Building Insurance play with respect to defects that may be attributable to the builder?

In essence, this insurance has no application so long as the builder is alive, solvent and traceable. Where a builder is alive, solvent and traceable, the owners must seek redress directly from their builder.

Consequently Domestic Building insurance is really akin to last resort insurance, which allows a claim to be made where the builder or contractor has become insolvent, disappeared or died.

Where a builder or contractor is dead, insolvent or has disappeared, the insurance can have two principal applications:

1. The first is where the construction of a home is left incomplete by reason of premature termination of the contract; and
2. The second is where the building works of the contract have been completed, but there is defective or incomplete works by the builder. (Though noting that there is only limited coverage for incomplete works, as described below).

How much money will the insurer be liable for?

In the event that the construction of a home is left incomplete by reason of premature termination of the contract or by the death, disappearance or insolvency of the Builder, the insurer will usually contribute to any over-run that the costs of completing the building works will involve over and above what is the unpaid balance of the

contract price. The upper limit of this contribution is currently 20% of the original contract price.

In the event that there is defective or incomplete works by the builder, the insurer will be liable for the costs of rectifying any defective or incomplete work by the builder and for making good any consequential damage. The upper limit for this cover is \$200,000.00 in total, including any allowance for reasonable legal fees associated with a successful claim.

What is the period of Warranty cover?

The insurer's liability is also limited in its duration to six (6) years in the case of defects defined as 'structural' and two years in all other cases, running from issue of occupancy permit/certificate of final inspection or earlier contract termination.

With this in mind, if your contractor or builder is no longer alive, traceable or solvent, it is advisable that you contact a Construction Lawyer immediately to advise you about your rights with respect to domestic building insurance. Waiting too long can be costly.

For advice on all aspects of construction and building claims, please contact our office on (03) 9600 1643.

For more information about the statutory domestic building insurance please see Owners' Guide to Victorian Building Contracts (E-book link).