

Major changes to home building laws

Apply new home building laws

If you are in the home building industry, or building or renovating your home, be aware of changes resulting from new laws.

The changes were shaped through extensive consultation with industry, home owners and key stakeholders.

Most changes commenced on 15 January 2015. Further amendments concerning contract requirements started on 1 March 2015.

The new laws outlined here help to modernise industry practices, reduce red tape and support consumer confidence and building activity across NSW. For specific details refer to our Comparison of home building laws and Frequently asked questions web pages.

Visit our Home building and renovating (for consumers) or Tradespeople web pages for more details and support on your rights and responsibilities. Tradespeople can also subscribe to our Foundations eNewsletter for email updates.

Major changes from 15 January 2015

Licensing

- The threshold for requiring a licence for building and general trade work has been raised from over \$1,000 of work to over \$5,000 (including labour and materials). Specialist work (such as plumbing, electrical and airconditioning) still needs a licence regardless of the cost of work.
- Stand-alone contracts for internal paintwork as well as work related to tennis courts, ponds and water features no longer need a licence, unless done as part of other home building work.
- Up to 12 months in prison is a new sentencing option for a second or subsequent offence for unlicensed contracting or not having the required statutory insurance.

- Licence eligibility has been tightened to stamp out 'phoenixing'; where a company closes down leaving large unpaid debts, only to re-emerge as a new company trading under a different name.
- Fair Trading needs to be notified within 7 days if a licensed builder is 'wound up'.

Owner-builders

- Owner-builders are required to name all other owners of the land on an application for an owner-builder permit. This is recorded on the permit to prevent people using this system to carry out commercial unlicensed building work. Any owners named cannot apply for another owner-builder permit for a different property for 5 years.
- Owner-builders are prohibited from getting a permit for a dual occupancy except in special circumstances.
- Owner-builders are not able to get statutory insurance although contractors working for the owner-builder still need to provide certificates for work over \$20,000. If the property is sold within the warranty period, the contract for sale must clearly state that there is no statutory insurance on the property.
- The threshold for requiring an owner-builder permit has increased to work valued over \$10,000. All owner-builders must provide evidence of having done basic work health and safety training, and for work over \$20,000 they will need to do an owner-builder course.

Home Building Compensation Fund

- The Home Warranty Insurance Scheme has been renamed as the Home Building Compensation Fund.
- Consumers are able to check their builder's or tradesperson's insurance and previous claims on a property through a new public register on www.hbcf.nsw.gov.au

Disputes, defects and statutory warranties

- The new laws help to clarify what is a major defect, which is covered by a 6-year warranty. General defects that don't meet the 'major defect test' will continue to be covered by the standard 2-year warranty.
- Major defects are defects that:
 - are in a 'major element' of the building AND
 - prevent all or part of the building from being lived in or used for its intended purpose OR threaten the collapse or destruction of the building or part of it.
- For disputes relating to defects, tribunals and courts need to consider rectification as the preferred outcome. Builders who seek to fix defects can't be unreasonably refused access to a property by the home owner.
- To prevent rectification work being stalled, NSW Fair Trading Inspectors, through a Rectification Order, can oblige consumers to pay the builder any money owed under the contract.
- The definition of completion for strata buildings has changed so that completion occurs on the issue of an occupation certificate allowing the whole building to be used and occupied.
- Licensees have a legal defence in proceedings for a breach of the statutory warranties if they reasonably relied on the written specialist advice of an independent professional engaged by the owner.
- Contracts over \$20,000 need a progress payment schedule (only authorised payments are allowed) and a termination clause.
- The mandatory *Consumer building guide*, to be provided to consumers before entering a contract, has been streamlined to provide essential information on both parties' rights and responsibilities.

Major changes from 1 March 2015

Contracts

- The threshold has been raised for the more detailed contract requirements from \$5,000 to \$20,000. Home building work under \$20,000 still needs a written 'minor works' contract.
- A cap on deposits for work over \$20,000 has been increased from 5% to 10%. Builders will only be able to request a maximum of 10% for a deposit for all projects, regardless of the value.