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HOME BUILDING CONTRACTS ACT 1991

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**HOME BUILDING  
CONTRACTS (HOME  
INDEMNITY INSURANCE—  
MULTI-STOREY  
MULTI-UNIT  
DEVELOPMENTS  
EXEMPTION)  
REGULATIONS 2002**



Western Australia

## **Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Regulations 2002**

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Home Building Contracts Act 1991

## **Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Regulations 2002**

Made by the Governor in Executive Council.

### **1. Citation**

These regulations may be cited as the *Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Regulations 2002*.

### **2. Commencement**

These regulations come into operation on the day after the day on which they are published in the *Gazette*.

### **3. Interpretation**

(1) In these regulations —

“**basement storey**”, in relation to a part of a building, means a storey of that part of the building that is —

- (a) below the finished ground level; or
- (b) if part of the external wall of that part of the building is on the boundary of the allotment — below the natural ground level at that part of the external wall;

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**“Building Code of Australia”** means the latest edition of the Building Code of Australia published by, or on behalf of, the Australian Building Codes Board before these regulations came into operation;

**“building contract”** means —

- (a) a residential building work contract; or
- (b) a cost plus contract that would be a residential building work contract but for the definition of “residential building work contract” in the Act;

**“building licence”** means a building licence issued under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*;

**“developer”**, in relation to a building contract for a multi-storey multi-unit development, means a person —

- (a) for whom residential building work is to be performed under the contract; and
- (b) who carries on business selling, leasing or otherwise dealing in dwelling units of multi-storey multi-unit developments with a view to making a profit or capital gain;

**“multi-storey multi-unit development”** means a building, comprising 2 or more independent dwelling units, any part of which —

- (a) has a rise in storeys of more than 3; or
- (b) has more than one basement storey;

**“rescind”**, in relation to a contract, means to avoid the contract as from its beginning;

**“rise in storeys”** has the meaning given by the Building Code of Australia;

**“sale contract”** means a contract for the sale of a dwelling unit in a multi-storey multi-unit development;

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“**settlement**”, in relation to a contract, means the time at which the obligations under the contract are completed to the extent that the purchaser is entitled to be registered as the proprietor of the dwelling unit;

“**storey**” has the meaning given by the Building Code of Australia.

- (2) For the purposes of the definition of “multi-storey multi-unit development”, a building that is attached to another building is not to be regarded as part of that other building unless it is structurally reliant upon that other building.

**4. Exemption from Part 3A of the Act — contracts entered into before building licence issued**

- (1) Residential building work for or in respect of a multi-storey multi-unit development for which a building licence is to be issued after these regulations commence is exempt from the requirements of Part 3A of the Act if, for each building contract or sale contract in respect of the building work that —
- (a) the builder has entered into before the building licence is to be issued; and
  - (b) is in force at that time,
- the builder has given a notice in the form set out in Schedule 1 to the other party to the contract.
- (2) If the builder does not give the notice to the other party to the contract before the contract is entered into and the other party is not a developer of the development, the other party (the “**purchaser**”) may rescind the contract.
- (3) To rescind the contract, the purchaser must give notice of the exercise of the right to rescind to the builder, before the earlier of —
- (a) the expiration of one month after the day on which the notice referred to in subregulation (1) is received by the purchaser; or
  - (b) settlement.

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**5. Exemption from Part 3A of the Act — no contracts entered into at the time building licence issued**

Residential building work for or in respect of a multi-storey multi-unit development for which a building licence is to be issued after these regulations commence and for which there is no building contract or sale contract in respect of the building work that —

- (a) the builder has entered into; and
  - (b) is in force at the time the building licence is to be issued,
- is exempt from the requirements of Part 3A of the Act.

**6. Exemption from Part 3A of the Act — contracts entered into after building licence issued**

- (1) The exemption under regulation 4 or 5 of particular residential building work ceases if, before entering into a building contract or sale contract in respect of the building work after the building licence for the building work is issued, the builder does not give a notice in the form set out in Schedule 1 to the other party to the contract.
- (2) Residential building work that is not exempt from Part 3A of the Act because of subregulation (1) becomes exempt again when the builder has given a notice in the form set out in Schedule 1 to the other party to each contract referred to in subregulation (1) for which the builder did not give such a notice before entering into the contract.
- (3) If the party to a contract referred to in subregulation (2) is not a developer of the development, the party (the “**purchaser**”) may rescind the contract.
- (4) To rescind the contract, the purchaser must give notice of the exercise of the right to rescind to the builder, before the earlier of —
  - (a) the expiration of one month after the day on which the notice referred to in subregulation (1) is received by the purchaser; or
  - (b) settlement.



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**7. Giving a copy of the notice to the purchaser**

- (1) The party to whom a notice is given under regulation 4(1), or 6(1) or (2) must, before entering into a sale contract in respect of the building work, give a copy of the notice to the other party to the sale contract (the “**purchaser**”) if settlement for the sale contract is to occur within 6 years of practical completion of the building work in respect of which the notice was given.
- (2) If the party who must give a copy of the notice under subregulation (1) is a developer of the development and that party (the “**developer**”) does not give the copy of the notice to the purchaser before the contract is entered into, the purchaser may rescind the contract.
- (3) To rescind the contract, the purchaser must give notice of the exercise of the right to rescind to the developer, before the earlier of —
  - (a) the expiration of one month after the day on which the notice referred to in subregulation (1) is received by the purchaser; or
  - (b) settlement.

**8. Form of notice of exercise of right to rescind**

A purchaser may give notice of the exercise of the right to rescind to the builder or developer in the form set out at the end of the notice in Schedule 1.

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**Schedule 1** Notice of exemption

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**Schedule 1 — Notice of exemption**

[r. 4(1), 6(1) and (2)]

**Important notice about home indemnity insurance for multi-storey multi-unit developments**

*The development or dwelling unit concerned*

1. This notice is about .....

.....  
*[insert details of the development/dwelling unit]*

*Background to home indemnity insurance*

2. The *Home Building Contracts Act 1991* requires that the builder take out home indemnity insurance for residential building work costing over \$12 000, unless there is an exemption.
3. Generally, home indemnity insurance covers the person for whom the builder is doing the work against financial loss if the builder is unable to complete the work or meet a valid claim for faulty workmanship because the builder has died, disappeared or become insolvent. The insurance also covers any other person obtaining the property from that person. In most cases the insurance policy must cover the construction period and the 6 years after practical completion of the building work.
4. Residential building work done under a cost plus contract is usually only insured for faulty workmanship.

*Exemptions from the requirement to have insurance*

5. Building work on multi-storey multi-unit developments is exempt from the requirement for the builder to take out home indemnity insurance, provided that the builder gives this notice in accordance with the *Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Regulations 2002*.
6. A person who receives this notice from the builder is required by the regulations to give a copy of it to any person who intends to purchase a unit in the development from that person, before they enter into a contract for the sale of the unit.

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Notice of exemption      **Schedule 1**

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*Why did you get this notice?*

7. You have been given this notice, or a copy of it, because you may enter into a contract, or have a contract, with the person who gave you the notice. It is to notify you that the builder who is doing, or has done, the building work has not taken out home indemnity insurance for the building work.
8. That means that the person for whom the builder is doing, or has done, the building work (and any person obtaining the property from that person) is not insured against financial loss if the builder is unable to complete the work or meet a valid claim for faulty workmanship because the builder has died, disappeared or become insolvent.

*You may have the right to rescind your contract to purchase a unit in the development*

9. If you received this notice, or a copy of it, after you entered into the contract and you are not a developer of the development, you have a right to rescind the contract (in accordance with the regulations).
10. This means that —
  - (a) you may end the contract;
  - (b) you have a right to get your deposit and any other payments made to the builder or developer with whom you have the contract towards the construction, alteration or purchase of the dwelling unit back from the builder or developer; and
  - (c) the builder or developer cannot recover from you any expenses incurred by them.

*If you want to rescind the contract*

11. If you want to rescind the contract you must give the builder or developer with whom you have the contract a “Notice of exercise of right to rescind” before —
  - (a) the end of one month after the day on which you received this notice; or
  - (b) settlement,which ever is the earlier.

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**Schedule 1** Notice of exemption

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The “Notice of exercise of right to rescind” is set out below.

*For example:* you receive a copy of this notice on 21 June, the one month starts on 22 June and ends on 21 July. To exercise your right to rescind, the builder or developer must receive your Notice of exercise of right to rescind on or before 21 July, or before settlement if settlement is going to take place before the end of 21 July.

*Other matters*

12. Just because you have been given this notice, or a copy of it, does not necessarily mean that the person who gave it to you is at fault.
13. If you are in doubt about your rights, or you don't understand this notice, you should seek legal advice.

.....  
 Builder

Date .....

I acknowledge that I have read this notice:

.....  
 Person to whom the builder has given this notice

Date .....

\*I acknowledge that I have read this notice:

.....  
 Person receiving this copy of the notice

Date .....

\*Complete or delete as necessary.

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Notice of exemption **Schedule 1**

**Notice of exercise of right to rescind**

To .....  
[name of builder or developer]

\*I/We .....[insert name(s)] rescind the contract dated ..... [insert date] for the \*construction/purchase of the .....  
[insert details of the development / unit(s)]

.....  
Person rescinding the contract

Date .....

NB: You should make sure that you have some evidence of the time and date on which you sent or gave this notice.

\*Complete or delete as necessary.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

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