

CE301\*

Home Building Contracts Act 1991

## **Home Building Contracts (Home Indemnity Insurance Exemptions) Amendment Regulations 2004**

Made by the Governor in Executive Council.

### **1. Citation**

These regulations may be cited as the *Home Building Contracts (Home Indemnity Insurance Exemptions) Amendment Regulations 2004*.

### **2. The regulations amended**

The amendments in these regulations are to the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002*\*.

[\* *Published in Gazette 19 December 2002, p. 2103-15.*  
*For amendments to 5 August 2004 see Western Australian Legislation Information Tables for 2003, Table 4, p. 180.*]

### **3. Regulation 4 amended**

Regulation 4(1) is amended by inserting after “Schedule 1” —  
“ Form 1 ”.

### **4. Regulation 6 amended**

Regulation 6(1) and (2) are amended by inserting after  
“Schedule 1” —  
“ Form 1 ”.

**5. Regulation 7 replaced**

Regulation 7 is repealed and the following regulations are inserted instead —

“

**7. Giving a copy of the builder's notice to a purchaser — developers**

- (1) This regulation applies to a developer of a multi-storey multi-unit development who is given a notice under regulation 4(1), or 6(1) or (2) (the “**builder's notice**”).
- (2) After receiving the builder's notice, the developer must —
  - (a) before entering into a sale contract in respect of the development, give a copy of the builder's notice to the other party to the sale contract (the “**purchaser**”) if settlement is to occur within 6 years of practical completion of the building work in respect of which the builder's notice was given; and
  - (b) give a copy of the builder's notice to each person (each “**purchaser**”) with whom the developer has already entered into a sale contract in respect of the development, within 10 days after the day on which the developer received the builder's notice.

Penalty: \$5 000.

- (3) If the developer fails to comply with subregulation (2)(a) the purchaser may rescind the sale contract.
- (4) A purchaser referred to in subregulation (2)(b) may rescind the sale contract unless the developer gave the purchaser a notice in the form set out in Schedule 1 Form 2 before the purchaser and the developer entered into the sale contract.
- (5) A purchaser who may rescind a sale contract under subregulation (4) may not do so until the purchaser has received the copy of the builder's notice referred to in subregulation (2)(b) or the 10 days referred to in subregulation (2)(b) have elapsed.
- (6) To rescind a sale contract, a 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 upon which the purchaser received the copy of the builder's notice; or
  - (b) settlement.

**7A. Giving a copy of the builder's notice to a purchaser — persons other than developers**

- (1) This regulation applies to a person, other than a developer, who is given a notice under regulation 4(1), or 6(1) or (2) (the “**builder's notice**”).
- (2) After receiving the builder's notice, the person must, before entering into a sale contract in respect of the building work, give a copy of the builder's notice to the party to the sale contract if settlement is to occur within 6 years of practical completion of the building work in respect of which the builder's notice was given.

”.

**6. Regulation 8 amended**

Regulation 8 is amended by deleting “the notice in Schedule 1” and inserting instead —

“ Schedule 1 Form 1 ”.

**7. Schedule 1 amended**

- (1) Schedule 1 is amended by deleting the heading to the Schedule and inserting instead —

“

**Schedule 1 — Notices**

”.

- (2) Schedule 1 is amended by deleting “[r. 4(1), 6(1) and (2)]” and inserting instead —

“

**Form 1**

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

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**Builder's notice**

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- (3) Schedule 1 clause 9 is amended by inserting after “regulations)” —

“

unless you were given a developer's notice before you entered into the contract

”.

- (4) Schedule 1 clause 10 is amended by deleting “This means that” and inserting instead —

“ If you have a right to rescind the contract ”.

- (5) Schedule 1 is amended by inserting the following form at the end of the Schedule —

“

**Form 2**

[r. 7(4)]

***Home Building Contracts Act 1991***

***Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002***

**Developer's notice**

**Important notice about home indemnity insurance for multi-storey multi-unit developments where a developer sells off-the-plan to a purchaser before engaging a builder**

*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 (in this case, you) 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.

*Exemption from the requirement to have insurance*

4. 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 of the development gives a notice (known as a builder's notice) to the person for whom the builder is doing the work. See the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002*.
5. Once the developer engages a builder and the builder has given the developer the builder's notice, the developer must give you a copy of the builder's notice within 10 days after receiving the notice.

*Why did you get this notice?*

6. This notice is to warn you that —
  - (a) the developer has not yet engaged a builder to carry out the building work for the development;
  - (b) it is likely that the builder will not take out home indemnity insurance for the building work; and
  - (c) you may not be in a position to assess the risk resulting from the builder not having home indemnity insurance for the building work (should that be the case).
7. If the builder does not have home indemnity insurance for the building work it means that —
  - (a) the developer; and
  - (b) you, as a person purchasing the property from the developer,

are not insured against financial loss if the builder is unable to meet a valid claim for faulty workmanship because the builder has died, disappeared or become insolvent.

8. If you are in doubt about your rights, or you don't understand this notice, you should seek legal advice or contact the Department of Consumer and Employment Protection Call Centre on 1300 30 40 54 (local call).

.....  
Developer

Date .....

I acknowledge that I have read this notice:

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

Date .....

”.

By Command of the Governor,

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

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