

DOMESTIC BUILDING INSURANCE

Legal fact sheet

What is Domestic Building Insurance?

Sometimes referred to as “Home Warranty Insurance”, Domestic Building Insurance (“DBI”) protects an owner in the event that the builder or tradesperson cannot complete the building works or fix defective workmanship because they have either:

- Died
- Become insolvent
- Disappeared
- Failed to comply with a VCAT or court order where the certificate of insurance was issued on or after 1 July 2015

(“trigger events”).

When is DBI required?

Builders who enter into a contract to carry out domestic building work exceeding \$16,000 (previously \$12,000) are required to take out DBI for the owner under the *Building Act 1993* (Vic) (“Building Act”). These contracts are sometimes referred to as “insurable domestic building contracts”.

A builder’s obligation to have the appropriate insurance, including DBI, is also part of a builder’s registration requirements. In Victoria, this means a domestic builder needs to obtain a “letter of eligibility” from the insurance provider as evidence they have complied with this requirement.

Builders’ eligibility requirements

Obtaining “eligibility” involves the insurance provider making an assessment of the builder by

reviewing various factors, such as the builder’s business history and past building performance. The insurance provider then determines whether to issue any insurance and, if so, impose any conditions under which the eligibility is granted.

A builder’s eligibility is generally subject to review by the insurance provider. As such, builders should ensure that their eligibility is current. Non-compliance with this requirement may lead to a builder’s registration being suspended.

Applying for a DBI policy

Builders must ensure:

- The DBI policy covers the building work to be carried out under the contract; and
- The building entity (e.g. sole trader, partnership or company) named on the contract matches the name on the certificate of insurance.

The builder must provide the certificate of insurance to the owner immediately after the policy has been issued.

Entering into a contract before a DBI is issued

Builders can enter into an insurable domestic building contract prior to obtaining a DBI policy, but are restricted from:

- Taking any money from the client, including the deposit;
- Carrying out any works; and
- Enforcing any provisions of the contract until the DBI policy is issued.

The builder must provide the owner with a copy of the DBI policy within 7 days of the date the policy is issued.

If the builder does enter into an insurable domestic building contract prior to obtaining a DBI policy, the contract must specify the above restrictions. Specific wording describing these restrictions is included at general condition 5.4 of the Master Builders New Homes Contract (HC-7) and Home Improvements Contract (HIC-6).

Terms of a DBI Policy

Terms are as set out by the insurance provider in a policy document but must comply with the minimum requirements set by the Ministerial Order No. S 98 (as amended). A full explanation of these requirements is outside the scope of this fact sheet. When reviewing a DBI policy, always seek professional advice from the insurance provider or your broker.

What does a DBI policy cover?

If a trigger event has occurred, a DBI policy covers the building owner in respect of certain loss or damage resulting from:

- Non-completion of the domestic building work;
- Domestic building work that is defective; and
- Breach of the builders warranties (described in section 8 of the *Domestic Building Contracts Act 1995* (Vic)).

The total amount claimable under a DBI policy issued after 1 July 2014 for any one home is limited to \$300,000 (for policies issued before 1 July 2014, claims are limited to \$200,000).

What is not covered by a DBI policy?

DBI policies typically exclude:

- Delay costs;
- Excessive payments by owner to builder; and
- Claims by developers for non-completion of building works.

DBI policies typically limit claims for:

- Landscaping, paving, retaining structures, driveways or fencing; and
- Non-completion costs (where owner is not developer).

How long does a DBI policy provide cover for?

When a DBI policy is issued, the period of cover starts from the earlier of:

- The date that the contract is entered into; or
- The date the building permit is issued.

The DBI policy runs for two years (for non-structural defects) and six years (for all other loss and damage that occurs, e.g. structural defects) from the earlier of:

- The date the building work is completed; or
- The date contract is terminated.

Builder beware

There is a common misconception that since it is the builder who must purchase DBI, the policy relieves the builder from its obligations to fix or complete works under the contract. However, the correct understanding of the DBI scheme is that it benefits the owner as a policy of last resort. Unless one or more of the trigger events apply, a builder is still liable to fix or complete the works or pay any costs awarded as required by its implied warranties under law.



Working with owner builders

Builders working for an owner builder still have an obligation to take out DBI. The requirement to take out DBI is tied to the value of the work, so if the labour and/or materials of the project exceed \$16,000, then DBI must be purchased. Note: Certain single trades are exempt from this requirement and the exempt trades are listed in regulation 7 of the *Domestic Building Contracts Regulations 2017* (Vic).

Multi-storey residential building exemption

Builders carrying out domestic building work under a major domestic building contract for the construction of a multi-storey residential building are exempt from taking out DBI under the above Ministerial Order and the *Building Interim Regulations 2017* (Vic). A multi-storey residential building is defined in these regulations as a building with a rise of more than 3 storeys, which contains at least 2 separate dwellings. Note: not all spaces of the building are included when calculating rise in storeys.

Disclaimer

This fact sheet gives commentary and general information only. You should not rely upon this fact sheet as legal advice or a substitute for legal advice. Legal advice should be sought for your particular situation. Master Builders Association of Victoria accepts no liability or responsibility for any errors or omissions contained in this fact sheet. Members of the Association can request advice from the Legal Department on (03) 9411 4548.

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