

NEWSLETTER # 171

RESIDENTIAL BUILDING LAWS GET A SHAKE-UP ON 1 JANUARY 2015

Many builders will have kept track of the law reforms that have taken place in the building sector over the past 15 years, through attending local meetings or workshops, attending conferences, reading industry magazines, or (if you are licensed) earning CPD points in some other way. So you may know that there are two major reforms that are still in the pipeline, and they are:

1. Consumer laws that are aimed at making homeowners and residential builders more diligent about documentation and decision-making, and giving homeowners more remedies against builders.
2. Risk-based consenting that will see building consents split into four different categories, with varying degrees of Council involvement depending on the complexity of the work.

The first of those, the consumer laws, are intended to come into effect on 1 January 2015. There are two aspects to them:

1. If the project is residential, there are four different types of document you may have to hand over to your client (and for most of you, three of those will be brand new). Those documents are a pre-contract checklist, a pre-contract disclosure statement, a written building contract that says all the right things, and a post-project owner's manual. The written contract is required if the project is likely to cost \$30,000 or more. The same applies to the checklist and disclosure statement, except that the homeowner can ask for them regardless of the contract price. And the owner's manual is required for all residential projects no matter how small.
2. In addition, homeowners will have two new sets of rights and remedies to use against you. The first is a 12 month defects liability warranty. The second is a right that lasts for 10 years to get you to fix up defects in your workmanship or materials, or where those defects are serious, to get another builder to fix them up, and recover any additional cost from you.

One of the great advantages of belonging to a trade association is that you should get help with the four documents listed above. And if you are in the unfortunate position of being on the receiving end of the new rights and remedies, we at Madison Hardy can help you there. This newsletter is going to focus on the four documents, rather than the rights and remedies. The rights and remedies may sound pretty harsh, but they are not a lot different to the existing laws you are bound by, so in many respects they are superfluous.

Although the written building contract and some of the other documents may only be required for residential projects that are going to cost \$30,000 or more, you might find that they are a sensible thing to use on all projects you do. If you don't hand them over, then you can be spot

fined \$500 on each occasion. More importantly, it will most likely be something for which you can be disciplined by the Building Practitioners Board, and it will certainly count against you if you come up before the Courts or the Disputes Tribunals.

The first document is the checklist. Even before the homeowner agrees to hire you, you have to hand over a checklist that will be written for you by the Government, that will urge the homeowner to carefully consider the risks they are letting themselves in for.

By and large it looks like it will be fairly sensible, although it is likely to be ignored by homeowners who aren't that interested in reading the fine print. And it does advise them to hold out for a few things that seem a little rigid to me, such as insisting on a fixed price, requiring a fixed completion date, and never agreeing to pay any money up front. Those are out of whack with commercial reality, but fortunately they are subject to negotiation.

At the same time you also have to hand over the disclosure document, that you will have to write beforehand, that tells the potential customer all about you, your company, the insurance you carry, and the guarantees and warranties that apply to your materials and workmanship. The Government will produce a template, and some trade associations, merchants, building franchises and group home building companies may produce their own versions.

You will still have to fill in the blanks in the template, and you will need a custom-made version for each project. The challenge with this document is that you have to provide some very detailed information about the terms of your insurance policies, and all guarantees and product warranties that come with the project. Realistically only your insurance broker and suppliers can provide those to you. That is because if you get it wrong, you can be sued for it.

If you are using sophisticated standard-form building contracts, as you should be, you can be pretty sure that they will comply with the new laws. If you are using your own form of contract, or just a quote with some terms and conditions attached, then you need to get those checked out urgently. If your contract or quote does not contain all the clauses the Act requires it to contain, the gaps that are missing will automatically be filled by the Government's clauses. And if you do not get a written building contract signed at all, then you get all the Government clauses by default, and you won't like that one bit.

Perhaps the biggest challenge will be to change your contracting practices. No more projects on a handshake for friends, family or long-standing clients. And no more starting work before the contract is signed.

At the conclusion of the project, you have to provide to the customer and the Council, copies of all ongoing insurance policies, guarantees and product warranties, and the maintenance requirements for every component of the work that has a durability period. It is that last requirement that is going to require a lot of work, because in every project there are a lot of components that have durability requirements, and each have their own unique maintenance needs. In effect, what you will have to put together is a very comprehensive owner's manual, and that requirement applies to every single residential building project no matter how large or small.