

NEWSLETTER # 170

THE RADICAL NEW LAWS FOR RESIDENTIAL BUILDING IN 2015

On 1 January 2015, assuming the Government stays true to its word, new laws are going to come into force that are going to have a bigger impact on your business than licensing did. I say "bigger" because licensing created a lot of extra paperwork for you, but it did not actually increase your liability, other than by exposing you to the risk of being disciplined by the Building Practitioners Board. These new laws, which are part of the Building Amendment Act 2013, not only increase your liability but they also increase your paperwork substantially, and for many of you they completely alter the terms on which you contract with your clients.

So what does the Building Amendment Act 2013 do? Well among other things, it does the following.

1. For all residential building work costing \$30,000 or more, if your customer is the homeowner, it will be compulsory to have a written building contract signed by your customer.
2. If your written building contract (or your quote, if that is all you have) 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.
3. If you do not get a written building contract signed at all, then you get all the Government clauses by default.
4. 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. Even if the building work is likely to cost less than \$30,000, you still have to hand this checklist over if the homeowner asks for it.
5. At the same time you also have to hand over a 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. That includes any product warranties that are likely to be issued.
6. And 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. This applies to all residential projects regardless of how much the building work cost.
7. If you don't do any of those things, then you can be spot fined \$500 on each occasion.

8. More importantly, it will most likely be something for which you can be disciplined by the Building Practitioners Board.
9. Your defects liability period will automatically be a minimum of 12 months, and if the homeowner says your workmanship or materials were defective, it is up to you to prove otherwise, failing which you have to fix it up at your expense and possibly pay damages.
10. On top of that 12 month warranty, you already give to the current and future owners of the home, a range of 10 year warranties under the Building Act. But come 1 January, if the owner establishes that your workmanship or materials weren't up to scratch, and you can't prove that you weren't at fault, then you have to fix it up at your expense and possibly pay damages. Furthermore, if the defect is serious, you might not even be given the opportunity to fix it up. Instead, the owner can get another builder to do so, and recover any additional cost from you.

These changes have been in the pipeline since as early as 2010 so it is not as if they have just been sprung on the industry. I have been writing articles and presenting conference papers on the subject for the past 5 years, and the building merchants and trade associations like Certified Builders and Master Builders have been informing their customers and members for some time. But despite that, I suspect there is a huge percentage of the residential building industry that is overwhelmed with information overload, or a bit shell-shocked by all the recent reforms, and are unaware that this is just around the corner.

What are the practical steps you can take in order to be ready for 1 January? Two things mainly – get to know your obligations under the new laws, and gather together the documents you will need to have in place by the new year. Remember that some of these requirements apply regardless of whether the building project is going to cost \$30,000 or more.

As far as learning the law is concerned, you can get plain-english, user-friendly newsletters from the websites of MBIE, your merchant, your trade association, or my firm Madison Hardy. In addition, MBIE, your merchant, and your trade association will be conducting educational meetings over the last few months of 2014, as will many of the larger building franchises and group home building companies no doubt.

As far as the documents are concerned, there are four of them, and they are:

1. The checklist you have to hand over to potential residential customers.
2. The disclosure statement you have to hand over to potential residential customers.
3. The written building contract you will have to get your residential customer to sign.
4. The “owner’s manual” comprising the insurance policies, guarantees and warranties, and maintenance requirements you have to give your customer at the end of the project.

Where do you get those from? On the MBIE website you will be able to get the checklist and the template for the disclosure statement. Your merchant, franchisor, group home building company, trade association or insurance broker should be able to help you with those, as well as the end-of-project documents. But as far as your building contract is concerned, if you don't belong to Certified Builders or Master Builders or the bigger franchises or group home building companies, don't risk it. Take it to construction law experts such as my firm Madison Hardy and make sure it is compliant once and for all.

© Geoff Hardy August 2014.

This newsletter is not intended to be relied upon as legal advice.

Level 6, Wyndham Towers, Cnr. Wyndham & Albert Streets, Auckland 1010

P. O. Box 630, Shortland Street, Auckland 1140

Phone: 09 970 9569, Fax: 09 379 0504, E-mail: geoff@madisonhardy.com, Website: www.madisonhardy.com