

## **OWNER BUILDER INFORMATION SHEET**

The law requires any owner who proposes to sell within 6½ years of undertaking any CONSTRUCTION at their property to obtain a Condition Report from a Building Surveyor in relation to the property and, if the works exceeded \$16,000.00, to also obtain Owner Builder Warranty Insurance.

Failure to provide the condition report and/or Warranty Insurance means that a purchaser can terminate the contract of sale and reclaim any deposit paid AT ANY TIME before final settlement of the sale.

The legislation imposes the obligation on an owner builder if the owner builder has undertaken any CONSTRUCTION. There is no definition of the meaning of CONSTRUCTION and it may be that even minor works fall within the meaning of that word in this legislation. Whilst it is not clear exactly what level of works will attract the obligation, it is certainly clear that any works performed pursuant to a building permit will be CONSTRUCTION and also works performed without a permit may be CONSTRUCTION.

There is no financial threshold to determine whether CONSTRUCTION has occurred. The only financial threshold relates to the liability to have insurance and copies if the works exceed \$16,000, below that amount, with or without a permit, may nevertheless be CONSTRUCTION.

There is an exception if a single trade performs work, such as a plasterer or painter but that does not apply if more than one trade performs work eg. plasterer AND painter. This exception also does not apply to general carpentry work, such as fences or cupboards. These are construction and a Condition Report is required and, if more than \$16,000, insurance. Condition Reports can be obtained from BSS Group ph. 9377 3000 and insurance from Building Industry Solutions ph. 8791 7691.

Overleaf is a FACT SHEET relating to this topic. If you have undertaken CONSTRUCTION in the last 6½ years, please provide us with full details of same, including any Building Permit, if applicable.

# Domestic Owner-Builder Information for selling your home

## WHEN ARE CONDITION REPORTS & INSURANCE REQUIRED UNDER SECTION 137B OF THE BUILDING ACT?

### IF BUILDING PERMIT DOES EXIST

#### OCCUPANCY PERMIT (OP) /CERTIFICATE OF FINAL INSPECTION (CFI): ISSUED

**Condition report** required for 6.5 years **FROM** date of OP/CFI.

**Insurance** required for 6 years **FROM** date of OP/CFI  
if works valuation <sup>(Note 1)</sup> exceeds \$16,000

#### OCCUPANCY PERMIT/CERTIFICATE OF FINAL INSPECTION: NOT ISSUED

**Condition report** required for 7 years **FROM** date of Building Permit (B.P.)

**Insurance** required for 6 years **FROM** date of BP  
if works valuation <sup>(Note 1)</sup> exceeds \$16,000

### IF BUILDING PERMIT DOES NOT EXIST

**Condition report** required for 6.5 years **FROM** Certified Date of Commencement <sup>(Note 2)</sup>.

**Insurance** required for 6 years **FROM** Certified Date of Commencement <sup>(Note 2)</sup>  
if works valuation <sup>(Note 1)</sup> exceeds \$16,000.

#### Notes:

##### 1. Works valuation:

This is based on the current replacement value of the work(s), not what it costs to carry out (i.e. what a registered builder would charge to carry out the work(s) today). Insurance is only required for works in excess of 12K.

##### 2. Certified Date of Commencement

Date certified by the owner by Statutory Declaration as the date of commencement of the work. Only applies where no Building Permit exists.

##### 3. Multiple Circumstances

It is possible for more than one of the above cases to be applicable on a property (e.g. owner obtains BP and CFI for extension, owner obtains BP for pergola but has not yet obtained CFI, owner refurbishes bathroom without a BP).

##### 4. Exemptions:

The above requirements are NOT applicable to single works packages by:-

(a) licensed registered contractor (i.e. electrician or plumber) or (b) a single contractor (e.g. painter, tiler, carpenter etc.) to carry out a single activity (e.g. painting only, tiling only, etc.) but NOT to multiple activities (e.g. one or more contractors to refurbish a bathroom as this involves plumbing, electrical, tiling, painting etc.)

##### 5. Penalties

Penalties of up to \$10,000 apply if a building is sold without the required report and/or insurance.

##### 6. Voidable Contract of Sale

If a report is required and is not included in the Contract of Sale before the contract is signed by the purchaser, the contract is voidable by the purchaser up to the date of settlement.

##### 7. Report Validity:

The date of the report must not be more than six months prior to the date of the signing of the Contract of Sale. A subsequent inspection and report would be required when more than six months has elapsed.

##### 8. Information Sources

The above is based on our interpretation of:

(a) Section 137B of the Building Act 1993, Authorised

Version No. 084, 1st January 2011 ([www.legislation.vic.gov](http://www.legislation.vic.gov)).

(b) Ministerial Order No. S98 published 23rd May 2003 in Victoria Government Gazette (Special)

#### Disclaimer:

The above information is not legal advice and you need to check with your solicitor or conveyancer to provide you with legal advice