

Western Australia

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

As at 16 Nov 2004

Version 00-b0-07

Extract from www.slp.wa.gov.au, see that website for further information

Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002

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Regulations 2002**

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Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002

Part 1 — Preliminary

[Heading inserted in Gazette 8 Apr 2003 p. 1099.]

1. Citation

These regulations may be cited as the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002*.

[Regulation 1 amended in Gazette 8 Apr 2003 p. 1099.]

2. Commencement

These regulations come into operation on the day after the day on which they are published in the *Gazette*.

3. Interpretation

(1) In these regulations —

“basement storey”, in relation to a part of a building, means a storey of that part of the building that is —

- (a) below the finished ground level; or
- (b) if part of the external wall of that part of the building is on the boundary of the allotment — below the natural ground level at that part of the external wall;

“Building Code of Australia” means the latest edition of the Building Code of Australia published by, or on behalf of, the Australian Building Codes Board before these regulations came into operation;

“building contract” means —

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- (a) a residential building work contract; or
- (b) a cost plus contract that would be a residential building work contract but for the definition of “residential building work contract” in the Act;

“building licence” means a building licence issued under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*;

“developer”, in relation to a building contract for a multi-storey multi-unit development, means a person —

- (a) for whom residential building work is to be performed under the contract; and
- (b) who carries on business selling, leasing or otherwise dealing in dwelling units of multi-storey multi-unit developments with a view to making a profit or capital gain;

“home indemnity insurance” means —

- (a) a policy of insurance that complies with Part 3A Division 2 of the Act; or
- (b) corresponding cover;

“leased retirement village” means a retirement village in which all the dwellings are occupied under a residential tenancy agreement or any other lease or licence;

“multi-storey multi-unit development” means a building, comprising 2 or more independent dwelling units, any part of which —

- (a) has a rise in storeys of more than 3; or
- (b) has more than one basement storey;

“practical completion” has the meaning given by section 11 of the Act;

“rescind”, in relation to a contract, means to avoid the contract as from its beginning;

“residential tenancy agreement” has the meaning given by the *Residential Tenancies Act 1987*;

“retired person” has the meaning given by the *Retirement Villages Act 1992*;

“retirement village” means a complex of dwellings that are intended for occupation by retired persons;

“rise in storeys” has the meaning given by the Building Code of Australia;

“sale contract” means a contract for the sale of a dwelling unit in a multi-storey multi-unit development;

“settlement”, in relation to a contract, means the time at which the obligations under the contract are completed to the extent that the purchaser is entitled to be registered as the proprietor of the dwelling unit;

“storey” has the meaning given by the Building Code of Australia.

- (2) For the purposes of the definition of “multi-storey multi-unit development”, a building that is attached to another building is not to be regarded as part of that other building unless it is structurally reliant upon that other building.

[Regulation 3 amended in Gazette 8 Apr 2003 p. 1100.]

Part 2 — Multi-storey multi-unit developments

[Heading inserted in Gazette 8 Apr 2003 p. 1100.]

4. Exemption from Part 3A of the Act — contracts entered into before building licence issued

- (1) Residential building work for or in respect of a multi-storey multi-unit development for which a building licence is to be issued after these regulations commence is exempt from the requirements of Part 3A of the Act if, for each building contract or sale contract in respect of the building work that —
 - (a) the builder has entered into before the building licence is to be issued; and
 - (b) is in force at that time,the builder has given a notice in the form set out in Schedule 1 Form 1 to the other party to the contract.
- (2) If the builder does not give the notice to the other party to the contract before the contract is entered into and the other party is not a developer of the development, the other party (the “**purchaser**”) may rescind the contract.
- (3) To rescind the contract, the purchaser must give notice of the exercise of the right to rescind to the builder, before the earlier of —
 - (a) the expiration of one month after the day on which the notice referred to in subregulation (1) is received by the purchaser; or
 - (b) settlement.

[Regulation 4 amended in Gazette 16 Nov 2004 p. 5049.]

5. Exemption from Part 3A of the Act — no contracts entered into at the time building licence issued

Residential building work for or in respect of a multi-storey multi-unit development for which a building licence is to be

issued after these regulations commence and for which there is no building contract or sale contract in respect of the building work that —

- (a) the builder has entered into; and
- (b) is in force at the time the building licence is to be issued,

is exempt from the requirements of Part 3A of the Act.

6. Exemption from Part 3A of the Act — contracts entered into after building licence issued

- (1) The exemption under regulation 4 or 5 of particular residential building work ceases if, before entering into a building contract or sale contract in respect of the building work after the building licence for the building work is issued, the builder does not give a notice in the form set out in Schedule 1 Form 1 to the other party to the contract.
- (2) Residential building work that is not exempt from Part 3A of the Act because of subregulation (1) becomes exempt again when the builder has given a notice in the form set out in Schedule 1 Form 1 to the other party to each contract referred to in subregulation (1) for which the builder did not give such a notice before entering into the contract.
- (3) If the party to a contract referred to in subregulation (2) is not a developer of the development, the party (the “**purchaser**”) may rescind the contract.
- (4) To rescind the contract, the purchaser must give notice of the exercise of the right to rescind to the builder, before the earlier of —
 - (a) the expiration of one month after the day on which the notice referred to in subregulation (1) is received by the purchaser; or
 - (b) settlement.

[Regulation 6 amended in Gazette 16 Nov 2004 p. 5049.]

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**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.

[Regulation 7 inserted in Gazette 16 Nov 2004 p. 5050.]

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.

[Regulation 7A inserted in Gazette 16 Nov 2004 p. 5051.]

8. Form of notice of exercise of right to rescind

A purchaser may give notice of the exercise of the right to rescind to the builder or developer in the form set out at the end of Schedule 1 Form 1.

[Regulation 8 amended in Gazette 16 Nov 2004 p. 5051.]

Part 3 — Leased retirement villages

[Heading inserted in Gazette 8 Apr 2003 p. 1100.]

9. Exemption — leased retirement villages

- (1) Residential building work that relates to the construction of a retirement village is exempt from the requirements of Part 3A of the Act if —
 - (a) the owner of the retirement village intends the retirement village to be a leased retirement village; and
 - (b) before a building licence for the residential building work is issued —
 - (i) the owner has lodged with the Registrar of Titles a memorial to the effect that there is no home indemnity insurance in respect of the dwellings in the retirement village; and
 - (ii) a statutory declaration by the owner that complies with subregulation (2) has been given to the local government that is to issue the building licence.
- (2) In the statutory declaration referred to in subregulation (1)(b)(ii) the owner must verify that —
 - (a) the owner intends the retirement village to be a leased retirement village; and
 - (b) the owner has lodged a memorial with the Registrar of Titles in accordance with this regulation.
- (3) A local government may rely upon a statutory declaration referred to in subregulation (2) as proof that the memorial has been lodged.
- (4) A memorial under subregulation (1)(b)(i) is to be in a form approved by the Registrar of Titles.
- (5) The Registrar of Titles must, on payment of the appropriate fee, register the memorial against the relevant land.

- (6) The Registrar of Titles may cancel the registration of the memorial after 6 years from the day of practical completion of the leased retirement village.
- (7) This regulation does not apply to residential building work for which a building licence has been issued before this regulation commences.

[Regulation 9 inserted in Gazette 8 Apr 2003 p. 1100-1.]

10. Sale of dwellings in leased retirement village within 6 years of practical completion

- (1) If residential building work for a retirement village was exempt from the requirements of Part 3A of the Act under regulation 9(1), the owner of the retirement village must not enter into a sale contract for one or more dwellings in the retirement village, within 6 years of the day of practical completion, unless —
 - (a) a policy of insurance that complies with subregulation (2) is in force in relation to the residential building work or corresponding cover that complies with subregulation (3) is provided in relation to the residential building work; and
 - (b) the purchaser has been given a certificate, in a form approved by the Minister, which evidences the taking out of the policy or the provision of the corresponding cover.

Penalty: \$5 000.

- (2) The policy of insurance referred to in subregulation (1)(a) complies with this subregulation if —
 - (a) it insures the purchaser and the purchaser's successors in title against the risk of being unable to take advantage of an entitlement to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* by reason of the insolvency or death of the builder who carried out the residential building work or

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- by reason of the fact that, after due search and enquiry,
that builder cannot be found;
- (b) it provides that claims may be made under it at any time before the expiration of a period of 6 years from the day of practical completion;
 - (c) it provides for insurance cover of —
 - (i) at least \$100 000 or such other amount as is prescribed; or
 - (ii) the cost of the building work,
whichever is the lesser; and
 - (d) it is issued by or on behalf of an insurer who is —
 - (i) authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister.
- (3) The corresponding cover referred to in subregulation (1)(a) complies with this subregulation if the cover is provided by an approved fund and the purchaser, and the purchaser's successors in title, are in the same position that they would be if a policy of insurance that complies with subregulation (2) were in force in relation to the residential building work.

[Regulation 10 inserted in Gazette 8 Apr 2003 p. 1101-2.]

Part 4 — State Housing Commission

[Heading inserted in Gazette 8 Apr 2003 p. 1102.]

11. Exemption — State Housing Commission

- (1) Subject to subregulation (2), residential building work carried out by or on behalf of the State Housing Commission which relates to a dwelling for letting or leasing is exempt from the requirements of Part 3A of the Act.
- (2) The State Housing Commission must not enter into a sale contract for the dwelling referred to in subregulation (1), within 6 years from the day of practical completion, unless —
 - (a) a policy of insurance that complies with subregulation (3) is in force in relation to the residential building work or corresponding cover that complies with subregulation (5) is provided in relation to the residential building work; and
 - (b) the purchaser has been given a certificate, in a form approved by the Minister, which evidences the taking out of that policy.
- (3) The policy of insurance referred to in subregulation (2)(a) complies with this subregulation if —
 - (a) it insures the purchaser and the purchaser's successors in title against the risk of being unable to take advantage of an entitlement to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* by reason of the insolvency or death of the builder who carried out the residential building work or by reason of the fact that, after due search and enquiry, that builder cannot be found;
 - (b) it provides that claims may be made under it at any time before the expiration of a period of 6 years from the day of practical completion;
 - (c) it provides for insurance cover of —

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- (i) at least \$100 000 or such other amount as is prescribed; or
 - (ii) the cost of the building work,whichever is the lesser; and
- (d) it is issued by or on behalf of an insurer who is —
 - (i) authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister.
- (4) Where the policy of insurance referred to in subregulation (2) relates to work described in paragraph (b) of the definition of “home building work” in section 3 of the Act, the cost of the building work for the purposes of subregulation (3)(c)(ii) is only the cost of —
 - (a) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and
 - (b) any building work to the dwelling after placement.
- (5) The corresponding cover referred to in subregulation (2)(a) complies with this subregulation if the cover is provided by an approved fund and the purchaser, and the purchaser’s successors in title, are in the same position that they would be if a policy of insurance that complies with subregulation (3) were in force in relation to the residential building work.
- (6) In this regulation —

“State Housing Commission” means The State Housing Commission continued under the *Housing Act 1980*.

[Regulation 11 inserted in Gazette 8 Apr 2003 p. 1102-4.]

Schedule 1 — Notices

[Heading inserted in Gazette 16 Nov 2004 p. 5051.]

Form 1

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

Home Building Contracts Act 1991

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

Builder's notice

**Important notice about home indemnity insurance for multi-storey
multi-unit developments**

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 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.
4. Residential building work done under a cost plus contract is usually only insured for faulty workmanship.

Exemptions from the requirement to have insurance

5. Building work on multi-storey multi-unit developments is exempt from the requirement for the builder to take out home indemnity insurance,

Schedule 1 Notices

provided that the builder gives this notice in accordance with the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002*.

6. A person who receives this notice from the builder is required by the regulations to give a copy of it to any person who intends to purchase a unit in the development from that person, before they enter into a contract for the sale of the unit.

Why did you get this notice?

7. You have been given this notice, or a copy of it, because you may enter into a contract, or have a contract, with the person who gave you the notice. It is to notify you that the builder who is doing, or has done, the building work has not taken out home indemnity insurance for the building work.

8. That means that the person for whom the builder is doing, or has done, the building work (and any person obtaining the property from that person) is not insured 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.

You may have the right to rescind your contract to purchase a unit in the development

9. If you received this notice, or a copy of it, after you entered into the contract and you are not a developer of the development, you have a right to rescind the contract (in accordance with the regulations) unless you were given a developer's notice before you entered into the contract.
10. If you have a right to rescind the contract —
- (a) you may end the contract;
 - (b) you have a right to get your deposit and any other payments made to the builder or developer with whom you have the contract towards the construction, alteration or purchase of the dwelling unit back from the builder or developer; and
 - (c) the builder or developer cannot recover from you any expenses incurred by them.

If you want to rescind the contract

11. If you want to rescind the contract you must give the builder or developer with whom you have the contract a “Notice of exercise of right to rescind” before —
- (a) the end of one month after the day on which you received this notice; or
 - (b) settlement,
- which ever is the earlier.

The “Notice of exercise of right to rescind” is set out below.

For example: you receive a copy of this notice on 21 June, the one month starts on 22 June and ends on 21 July. To exercise your right to rescind, the builder or developer must receive your Notice of exercise of right to rescind on or before 21 July, or before settlement if settlement is going to take place before the end of 21 July.

Other matters

12. Just because you have been given this notice, or a copy of it, does not necessarily mean that the person who gave it to you is at fault.
13. If you are in doubt about your rights, or you don’t understand this notice, you should seek legal advice.

.....
Builder

Date

I acknowledge that I have read this notice:

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

Schedule 1 Notices

Date

*I acknowledge that I have read this notice:

.....
Person receiving this copy of the notice

Date

*Complete or delete as necessary.

Notice of exercise of right to rescind

To
[name of builder or developer]

*I/We[insert
name(s)] rescind the contract dated [insert date] for the
*construction/purchase of the
.....
[insert details of the development / unit(s)]

.....
Person rescinding the contract

Date

NB: You should make sure that you have some evidence of the time and date
on which you sent or gave this notice.

*Complete or delete as necessary.

[Form 1 amended in Gazette 8 Apr 2003 p. 1104; 16 Nov 2004
p. 5051.]

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

[Form 2 inserted in Gazette 16 Nov 2004 p. 5052-3.]

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

Notes

- ¹ This is a compilation of the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Regulations 2002</i> ²	19 Apr 2002 p. 2103-15	20 Apr 2002 (see r. 2)
<i>Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Amendment Regulations 2003</i> r. 1-9	8 Apr 2003 p. 1099-104	9 Apr 2003 (see r. 2)
<i>Home Building Contracts (Home Indemnity Insurance Exemptions) Amendment Regulations 2004</i>	16 Nov 2004 p. 5049-53	16 Nov 2004

- ² Now known as the *Home Building Contracts (Home Indemnity Insurance Exemptions) Regulations 2002*; citation changed (see note under r. 1).