

Do you have Building Indemnity Insurance, and does it matter?

Building Indemnity Insurance has come into the spotlight as a result of the unfortunate collapses of a number of builders in recent times, such as Felmeri Homes and 7 Star Construction.

Customers of such builders appear to have been left with unfinished or defective homes, despite having paid a lot of money towards them. A number of partly built homes have fallen into disrepair or have become badly weathered and it remains to be seen what can be salvaged, if anything. No doubt the cost of completing the build with someone else will be substantial and well over the original price contemplated.

Our Managing Partner, Felix Hoelscher, recently featured on a 7News Broadcast which focussed on the issue of Building Indemnity Insurance, which relates to such outcomes.

What is Building Indemnity Insurance?

Building Indemnity Insurance is a government legislated insurance under the Building Work

Contractors Act 1995, and is currently given by QBE Insurance.

The builder takes out the insurance, but it is for the benefit of the homeowner. Building Indemnity Insurance is intended to cover losses to the homeowner for an amount of up to $150,000 (or the contract price, whichever is the lower) if the builder becomes insolvent or disappears.

It needs to be understood that it is an insurance of last resort. What that means is that you cannot claim on the insurance just because the builder is slow to respond or there are defects or the builder owes you money. You still need to pursue the builder first, in any of those events, including by taking them to Court for any disputes.

It is only if the builder becomes insolvent (in other words, they are placed into liquidation if the builder is a company, or placed into bankruptcy if they are an individual) that you can try to claim on the insurance. That may happen while the builder is still attempting to trade but cannot continue due to lack of funds, or it might be as the result of an unfavourable Court judgment against the builder. Ultimately, the point is that an insolvency event needs to occur, before the insurance can be accessed.

Alarmingly, what we are finding is that there are an increasing number of instances where the builder has simply not obtained the insurance at all. That may be by oversight, or because obtaining the insurance requires the builder to make certain disclosures (including on the subject of solvency) which the builder wishes to avoid. As a result, they simply don't obtain the insurance. Not only are builders obligated to take out the insurance, they are obligated to give homeowners a copy of the insurance certificate.

Currently, the maximum penalty for not doing either is $20,000, although it can also be held as a licencing breach. Neither of those things are helpful to the homeowner who has not been covered by the insurance.

At Andersons, we strongly suggest that homeowners check with QBE to see whether the insurance has been taken out here: **https://www.qbe.com/au/builders-warranty/certificate-register**

If your builder has not taken out the insurance, we suggest that action be taken immediately so that further losses can be minimised. The Building Work Contractors Act 1995 contains remedies which can be sought from the Court in such circumstances and prompt legal advice on those steps should be taken.

How Can Andersons Help?

If you have any concerns or questions about your building contracts or building indemnity insurance please reach out to this article's authors **Felix Hoelscher** or **Kira Millikan**.

Our team of experienced lawyers can provide you with advice and assistance about your building contracts to ensure you get the home and services you expect.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.