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## LawTalk Blog



# Does my builder have to have insurance?

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Section 34 of the *Building Work Contractors Act 1995* ("the Act") states that a builder must not perform building work unless:

a) a policy of insurance is in force in relation to that work; and

b) in the case of domestic building work, the builder has provided to the owner a certificate that evidences the taking out of that policy of insurance and complies with the requirements of the regulations.

The maximum penalty for failing to comply with that provision is \$20,000.

The requirement does not apply to minor building works (that is, work under \$12,000.00 in price) nor to work for which development approval is not required.

The insurance must insure each person who is, or may become, entitled to the benefit of a statutory warranty under the Act against the risk of being unable to enforce or recover under that statutory warranty by reason of the insolvency, death or disappearance of the builder. The insurance also covers non-completion of building works for such reasons.

The statutory warranties under the Act include:

- a) a warranty that the work will be performed in a proper manner to accepted trade standards and in accordance with the plans and specifications agreed to by the parties;
- b) a warranty that all materials to be supplied by the contractor for use in the work will be good and proper;
- c) a warranty that the work will be undertaken in accordance with all statutory requirements;
- d) if the contract does not stipulate a period within which the work must be completed, then a warranty that it will be performed with reasonable diligence;
- e) if the work consists of the construction of a house, then warranty that it will be reasonably fit for human habitation; and
- f) if the building owner has expressly made known to the builder the particular purpose for which the work is required, or the result that the owner wants it to achieve (thereby showing that the owner relies on the builder's skill and judgment), then a warranty that the work and materials will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

If any of those warranties is breached, the losses associated with that breach can be recovered from the builder by the owner. However, it may be the case that the builder is unable to pay (being insolvent) or has died or disappeared.

In that case, the insurance available under the Act can be claimed instead, however, only if the builder has complied with section 34 of the Act and obtained the insurance in the first place. It is utterly critical that before any building work is commenced that you check both the status of the builder's licence and that you have been provided with the copy of the insurance certificate by the builder.

You should check with the insurer that the insurance is in force and properly obtained.

The lowest amount that the insurance must cover is presently \$80,000.00. Accordingly, it is rare to find insurance which exceeds that sum, although you have the right to require that from the builder prior to work commencing. If you do not do so, the effect is if you have undertaken a building project and the builder has become insolvent, died or disappeared, then the most you are likely to recover is \$80,000.00 even if the amount remaining payable is considerably higher.

There are also time limits on bringing a claim against the insurance. That time limit must not be less than 90 days, and therefore the policy usually is 90 days from the date of the claimant becoming aware of any event which may trigger the application of the insurance policy.

It is very important that you seek urgent legal advice if you have undertaken a building project without having been provided with the insurance certificate. Similarly, you should obtain prompt legal advice if you are aware that your builder has become insolvent, died or disappeared, due to the time limitations on bringing a claim under the insurance policy.

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