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OWNER-BUILDERS: KNOW THE ROPES

Tackling your own building work can be a satisfying experience – provided you survive the frustrations that go along with it! You just can't buy that sense of pride and accomplishment when you can look at your shed or your house, knowing you created it.

With the glow of achievement, however, come real obligations, particularly if you are selling your property. Section 137B of the Building Act 1973 lays down the rules for Owner-Builders, as a way of protecting purchasers from faults in workmanship and materials that may arise.

It pays therefore, to know your obligations as an Owner-Builder, so you can avoid not only the disappointment of that precious sale contract being voided, but also the heavy penalties for failing to comply with the regulations.

So Who Is An Owner-Builder?

An Owner-Builder is defined as someone who “constructs or renovates a domestic building on his or her own land, and who is not in the business of building”.

Genuine Owner-Builders are not intending to sell or rent the property immediately. They must reside, or intend to reside, in the home upon completion of the works.

An Owner-Builder must also be the owner of the property, i.e. he/she must be the registered proprietor on the certificate of title.

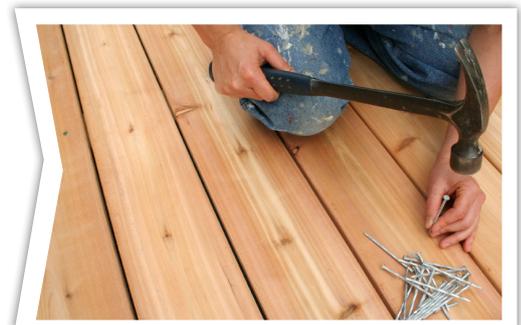
What Does Being An Owner-Builder Mean?

Being an Owner-Builder means you have a number of responsibilities, as you are effectively taking on the role of a registered builder. Some of the key obligations are outlined here but we recommend that you explore the websites we list at the end of this article, so you have all the essential advice you require.

Basically, as an Owner-Builder, you need to:

- obtain written approval from the Building Practitioners Board, in the form of a Certificate of Consent, to carry out domestic building work valued at over \$16,000. You can source the **application kit** from the Building Commission (refer website details on page 2). The Certificate of Consent is required before you can apply for your building permit, which is a separate application process. Be aware that a Certificate of Consent is not a guarantee that you will be issued with a building permit.
- obtain a building permit and any relevant planning permits. Overlook these at your peril, as you may be compelled to demolish illegal buildings if you commence building work without the correct permits in place. Note too that you can get only one Owner-Builder permit for a single home and associated work on that property, once every five years.

- carry out work yourself and supervise the work of others, where you don't have the necessary registration (e.g. licensed tradespeople such as an electrician or plumber).
- enter into major domestic building contracts with builders and tradespeople for work over \$5,000, or where the work will affect the structural integrity of the building. This is mandatory and will reduce your risk.
- have the correct workplace and public safety insurance policies in place. You may also consider insurance for fire and theft. If you are building close to the boundary, protection work may be required, so you will need insurance for adjoining property protection during construction, and for 12 months following completion.
- where relevant, learn about the risks associated with asbestos, termites, building in a bushfire prone area, swimming pools etc.
- abide by WorkSafe regulations and occupational health and safety standards to protect workers, site visitors and the public
- ensure that the work meets building regulations, standards and any other relevant laws



- arrange for mandatory building inspections at particular stages of the building work
- obtain an occupancy permit or certificate of final inspection from the relevant building surveyor on completion of the job.

The application kit for Owner-Builders provides a fuller breakdown of the responsibilities, covering permits, insurance and taxation obligations as well as the potential risks you will face. There are also handy tips for dealing with contractors, should you engage them. This is essential reading before you begin your project.

What Happens When You Want To Sell The Property?

If you are selling your house within six years of completing the work as an Owner-Builder, you have two legal obligations before you enter into any contract of sale.

1. Defects Report

You must engage a building practitioner to prepare a Defects Report (also known as a 137B Report), which will identify any defects in workmanship or materials, as well as the condition and status of any incomplete work. The Defects Report must be not more than six months old when you come to sell, and should cover all work regardless of value, including extensions, renovations, garages, decking, swimming pools, etc.

The Report forms part of the Section 32, Contract of Sale documentation and must be prepared if the building work is less than 6.5 years of the Occupancy Permit/Final Certificate being issued.

Prior to the Defects inspection being carried out by the building practitioner, it is useful to collate your house plans, soil reports, any mandatory inspection approvals that were issued during the construction process, any structural engineering reports, and your occupancy permit and final certificate. These can then be reviewed as part of the inspection.

2. Owner-Builder Warranty Insurance

You must obtain Warranty Insurance if the value of the domestic work is over \$16,000 and if the property is being sold within six years of completion. Amounts of less than \$16,000 require only a Defects Report.

The warranty policy will exclude any incomplete work or defects listed in the Defects Report and you, as the Owner-Builder, will remain liable for these. At the same time, a buyer of your home who finds defective building work, which did not appear on the Defects Report, can make a claim against you for breach of statutory warranties. Known defects are deemed to be acceptable to the purchaser.

The period of warranty is for six years from the date of the Occupancy Permit or Certificate of Final Inspection. This protects the purchaser, and any successive purchasers for the balance of the six year period. The cover becomes effective once the contract of sale is signed. The purchaser can only use the insurance when the Owner-

Builder has died, becomes insolvent or has disappeared. Costs are covered to fix structural defects for six years and non-structural defects for two years.

If you had a major domestic building contract with a registered building practitioner, the building work should be covered by their domestic building insurance, but you will also need your own insurance to cover the work completed by you.

What Happens If You Don't Comply?

Under the Building Act, it is an offence to sell your property within the six year time-frame, without the required Defects Report and insurance. Hefty penalties of up to \$12,000 apply. Furthermore, if you fail to produce the documentation, your hard-won purchaser has the right to pull out of the sale agreement without incurring penalties.

You are also liable for penalties if you sell an incomplete project, where it was intended that the works be completed prior to settlement of the sale contract.

Know The Ropes

Much can be gained from an Owner-Builder experience. There is immeasurable satisfaction from getting stuck-in yourself and using your own skills, not to mention the valid excuses you would have for continual trips to your local D.I.Y. store! However, becoming an Owner-Builder does have its demands and legal obligations. You need to be aware of the responsibilities you are taking on. So before you dive into that toolbox or dust off that store card, check out what's required and save yourself unnecessary headaches down the track.

And when you need assistance with your final Defects Report, call SPI Property Inspections on 1300 721 032 and we would be happy to help you.

REFERENCES/RESOURCES

Building Commission:
www.buildingcommission.com.au

Consumer Affairs Victoria:
www.consumer.vic.gov.au

Owner Building Solutions Australia Pty Ltd:
www.ownerbuilding.com.au

Australian Owner-builders:
www.ownerbuild.com.au

Workcover:
www.workcover.vic.gov.au

Australian Taxation Office:
www.ato.gov.au