

Lumley

General



Home Indemnity Insurance Policy Building Work by Builder (Tasmania)

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The insurer will provide insurance cover to the beneficiaries, subject to the terms and conditions set out in this policy, and in compliance with the Housing Indemnity Act 1992 and Housing Indemnity Regulations 1993.

Section 1 Beneficiaries

(1) The beneficiaries under this policy are:

- (a) in the case of building work to be performed by a builder on behalf of another person under a building work contract:
 - that person; and
 - that person's successors in title.
- (b) in the case of building work to be performed by a builder on the builder's own behalf, the builder's successors in title.

Section 2 Losses Indemnified

(1) The insurer will indemnify the beneficiaries in clause (1)(a) under the policy for:

- (a) loss, other than indirect, incidental or consequential loss, resulting from non-completion of the building work; and
- (b) loss or damage resulting from the inability to enforce or recover under the statutory warranty

where the loss or inability is by reason of the insolvency or death of the builder or by reason of the fact that, after due search and enquiry, the builder cannot be found.

(2) The insurer will indemnify the beneficiaries in clause (1)(b) under the policy for:

- (a) loss or damage resulting from the inability to enforce or recover under the statutory warranty

where the loss or inability is by reason of the insolvency or death of the builder or by reason of the fact that, after due search and enquiry, the builder cannot be found.

Section 3: Limitations on liability and cover

(1) If:

- (a) the builder fails to complete the building work as a result of death or insolvency; or
- (b) the builder has failed to complete the building work and, after due search and enquiry, cannot be found

the insurer is not liable for the whole or a specified part of any payment made under the building work contract which exceeds the amount that ought to have been paid in accordance with section 20 of the Housing Indemnity Act 1992.

Section 4 Maximum Cover

(1) Except as provided in Clause (2), the maximum aggregate liability of the insurer in relation to each dwelling to which the policy relates is:

- (i) \$200,000, or such other amount as may be prescribed by the regulations; or
- (ii) the cost of the building work,

whichever is the lesser, in respect of each residential building that forms part of the work.

(2) However, where the builder has failed to complete the building work and after due search and enquiry cannot be found, the maximum cover is one-fifth of the contract price.

Section 5 Period of Cover

- (1) The policy provides cover for loss arising from non-completion of the work for a period of 12 months after the failure to commence, or cessation of, the work the subject of the contract.
- (2) The policy provides cover for other loss insured by the policy for a period of 6 years from the date of completion of the building work to which it relates.

Section 6 Misrepresentation or non-disclosure

The insurer is not entitled to refuse to pay a claim under the policy on the ground that the policy was obtained by misrepresentation or non-disclosure by the builder.

Section 7 Time Limits for notice of loss or damage

The insurer may refuse to accept a claim made more than 90 days after the time when the person who is first entitled to make that claim under the policy first becomes aware, or might reasonably have become aware, of some fact or circumstance giving rise to the claim.

If a beneficiary gives notice of a defect to the insurer, the beneficiary is taken for the purposes of the policy to have given notice of every defect to which the defect is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

Section 8 General Conditions

- (1) A beneficiary under this policy is required to give access to the relevant property to a contractor for the purpose of inspection, rectification or completion of work.

This requirement is subject to the beneficiary's right to refuse access on reasonable grounds.

- (2) The insurer is not entitled either to refuse to pay a claim under the policy in relation to work done after the policy has commenced, or to cancel the policy, on the ground that the contract for the work to which it relates was entered into before the period of insurance commenced if a certificate evidencing insurance has been given or the insurer has otherwise accepted cover.
- (3) This policy is issued in accordance with the Housing Indemnity Act 1992 and the Housing Indemnity Regulations 1993 and if any term of the policy conflicts with or is inconsistent with the Act or Regulation then the policy shall be read and be enforceable as if it is in compliance with the Act and the Regulation.

Section 9 Excess

The insurer is not liable for the first \$500, or such other amount as may be prescribed in the regulations, in respect of each claim under the Policy.

Section 10 Definitions

“**Act**” means the Housing Indemnity Act 1992 and includes regulations made pursuant to that Act.

“**beneficiary**” means a person entitled to claim a benefit provided under this policy.

“**builder**” means:

- (a) a person or firm engaged by an owner or owner's agent to manage or perform building work; or
- (b) a person or firm carrying on the business of managing or performing building work with a view to the sale or letting (whether by lease, licence or other agreement) of land or buildings improved as a result of the building work.

“**building**” includes a structure and part of a building or structure.

“building work” means work performed on, or for the purpose of, a residential building and includes:

- (a) the erection, re-erection, construction, underpinning or alteration of a residential building and the addition to, or demolition and removal of, a residential building; and
- (b) the making of any excavation, or filling for, or incidental to, the erection, re-erection, construction, underpinning or alteration of a residential building and the addition to, or demolition or removal of, a residential building; and
- (c) any other work that is prescribed by the regulations to be building work

but does not include any delivery of materials or any other work that is exempted from the application of the Act in accordance with section 6 of the Act.

“building work contract” means a contract between a builder and another person for the performance by the builder of building work, but does not include a subcontract for the performance of building work.

“claim” means a claim made under the policy by a person entitled to the benefit of the policy.

“cost of the building work” means, in relation to building work performed by a builder under a building work contract, the amount payable under that contract.

“insolvent” means:

- (a) in relation to a natural person, bankrupt or subject to a composition or deed or scheme of arrangement with, or for the benefit of, creditors; or
- (b) in relation to a body corporate, subject to external administration under the Corporations Act 2001 of the Commonwealth.

“insurer” means Lumley General Insurance Limited ABN 24 000 036 279

“materials” in relation to building work, includes goods to be supplied and fitted or installed in the course of the building work.

“owner” means a person for whom building work is, or is to be, performed under a building work contract.

“perform”, in relation to building work, includes:

- (a) cause building work to be carried out; or
- (b) manage or arrange the carrying out of building work.

“the regulations” means regulations made and in force under the Housing Indemnity Act 1992.

“residential building” means a building intended primarily for occupation as a place of residence or as an adjunct to such a building but does not include:

- (a) a building divided into a number of separate places of residence that are intended only for rental;
or
- (b) a building of a class prescribed in the regulations for the purposes of this definition.

“statutory warranty” means a warranty arising under Part 2 of the of the Housing Indemnity Act 1992.

“subcontract”, in relation to building work, means a contract for the performance of building work for a builder who is obliged to perform the work under a building work contract.

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