

Lumley

General



Home Warranty Insurance Policy Domestic Building work by Builder (Victoria)

Lumley General Insurance Limited
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The Insurer will provide insurance cover subject to the terms and conditions set out in this policy, and in compliance with the relevant Ministerial Order issued pursuant to Section 135 of the Building Act 1993 (Victoria), and subject to the governance of the law of the state of Victoria.

SECTION A: COVERAGE

The Insurer will indemnify the Building Owner for loss or damage resulting from:

1. All or any of the following events -
 - a) domestic building work that is defective;
 - b) a breach of any warranty implied into the domestic building contract by section 8 of the Domestic Building Contracts Act 1995;

Purely as a guide, the warranties detailed in section 8 of the Domestic Building Contracts Act 1995 are:

 - i) *that the work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;*
 - ii) *that all materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;*
 - iii) *that the work will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the Building Act 1993 and the regulations made under that Act;*
 - iv) *that the work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract;*
 - v) *that if the work consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed;*
 - vi) *if the contract states the particular purpose for which the work is required, or the result which the building owner wishes the work to achieve, as as to show that the building owner relies on the builder's skill and judgement, then the work and any material used in carrying out the work will be reasonable fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.*
 - c) a failure to maintain a standard or quality of building work specified in the domestic building contract;
 - d) conduct by the builder in connection with the domestic building contract that contravenes a trade practices provision.
2. Non completion of the Works
3. Loss of the deposit (or any part of the deposit) or loss of any progress payment under the contract.
4. Costs of alternative accommodation and removal and storage costs that are reasonably and necessarily incurred subsequent to and as a result of an event referred to in clauses 1 or 2, to a maximum period of alternative accommodation or storage of 60 days, excluding any period or periods of delay attributable to the insurer.

The indemnity provided by clauses 1, 2, 3 and 4 only applies if the builder dies, becomes insolvent or disappears.

The Insurer may, at its sole option, meet its obligations or any part of them, by arranging an alternative builder to carry out or complete the Works.

The liability of the Insurer under this policy shall extend to any acts or omissions of any party contracted by the Builder to perform the Works under the contract resulting in loss or damage referred to under clauses 1 to 4.

The cover in the policy extends:

- (a) to each person who becomes entitled to the benefit of any of the warranties referred to in section 8 of the Domestic Building Contracts Act 1995; and
- (b) to the owner for the time being of the building or land in respect of which the work is or was being carried out.

SECTION B: LIMITATIONS

- 6A. This Policy only provides the indemnities referred to in clauses 1 to 4 in relation to Non-Structural Defects in respect of loss or damage occurring during the period commencing on the Commencement Day and ending two years after the earlier of:
 - (a) the Completion Date of the Domestic Building Work; or
 - (b) the date of termination of the relevant Contract.
- 6B. This Policy only provides the indemnities referred to in clauses 1 and 2 in respect of all other loss or damage, including Structural Defects, in respect of loss or damage occurring during the period commencing on the Commencement Day and ending six years after the earlier of:
 - (a) the Completion Date of the Domestic Building Work; or
 - (b) the date of termination of the relevant Contract.
- 6C. The date of termination of the relevant Contract for the purposes of clauses 6A and 6B shall be taken to be the date on which either the Builder or the Insured purported to bring the Contract to an end whether pursuant to the terms of the Contract or pursuant to the general principles of law.
- 7. The maximum aggregate liability of the Insurer shall not exceed \$200,000 for all claims in respect of any one home, including reasonable legal costs and expenses incurred by the insured (not being the builder) associated with the successful claim against the insurer.
- 8. The liability of the Insurer as a result of non-completion of the Works by the Builder pursuant to clause 2 shall be limited to the cost of completing the Works, but in any event shall not exceed twenty per cent (20%) of the Contract price
- 9. The liability of the Insurer for loss or damage resulting from the conduct of the Builder pursuant to Clause 1d) shall be limited to the cost of rectifying the relevant Works.
- 10. The Insurer shall not be liable for any additional loss or damage caused by the delay on the part of the Building Owner in notifying the Insurer or Builder of a fact or circumstance giving rise to a possible claim.
- 11. Where the Building Owner is a Developer and the Insurer incurs liability due to the non-completion of the Works under clause 2, then the liability of the Insurer shall be limited to any subsequent owner (not being a Developer) for the time being of the building or land in respect of which the Works are being carried out.
- 12. If the Works are subject to the Subdivision Act 1988 (Victoria) and a claim is payable by the Insurer in respect of common property of the property or multiple complex, then the amount of cover shall be reduced by an amount equal to the amount payable under the claim, divided by the number of homes comprising the complex.

13. The insurer is not liable under the policy for penalties, fines, liquidated damages or other sums, if any of these relate to delay on the part of the builder. This does not exclude or limit any increase in rectification costs caused by the effluxion of time.
14. Where the damage or loss under this Policy is also covered by any other policies of insurance or indemnity agreements, then the liability under this Policy shall only provide indemnity in excess of the amount for which the Building Owner is entitled to indemnity under such other policies or indemnity agreements.
15. The indemnity provided by the policy excludes claims for money paid to a builder that exceeds the amounts that should have been paid to the builder in accordance with section 11 and (as the case requires) section 40(2) or section 40(3) or section 40(4) of the Domestic Building Contracts Act 1995.
16. A claim under the policy for non-completion of building work, where the death, insolvency or disappearance of the builder occurs before the builder commences on the building site any domestic building work (other than the removal of vegetation) that requires the use of any tools or building materials is limited to:
 - a) any money paid in relation to the contract; and
 - b) all reasonable costs and expenses incurred by the building owner in relation to the contract.

SECTION C: CLAIMS

17. The Building Owner must:
 - a) notify either the Builder or the Insurer promptly in writing upon becoming aware of some fact or circumstance that may give rise to a claim under this Policy. The Insurer shall not be liable for any additional loss or damage caused by the delay on the part of the Building Owner in notifying the Builder or Insurer of a fact or circumstance giving rise to a possible claim, and will not be liable for any loss or damage where the Building Owner does not make a claim within 180 days of first becoming aware of the fact or circumstance giving rise to a possible claim;
 - b) comply with any reasonable directions of the Insurer in relation to the completion or rectification of the work, and take reasonable precautions to avoid or minimize loss or damage under this Policy;
 - c) not undertake or cause to be undertaken any remedial or rectification works without first notifying the Insurer, unless the works are necessary to prevent or minimise further loss or damage;
 - d) provide the Insurer or any builder or other person nominated by the Insurer with reasonable access to the building or building site for the purpose of inspection and rectification or completion of the works;
PROVIDED THAT the insured has the right on reasonable grounds (including loss of confidence in the builder) to refuse to provide the access referred to in clause 17d) to a builder nominated or approved by the insurer.
 - e) facilitate the subrogation of its rights to the Insurer and, if required by the Insurer, shall prosecute any claim for indemnity or damages to recover amounts paid by the Insurer to the Building Owner or any other party;
 - f) not admit, exclude, or limit its rights against the Builder or any other party, or settle or defend any claims without the prior written approval of the Insurer; and
 - g) allow the Insurer (at the option of the Insurer) to take full conduct of any proceedings on behalf of, or against the Building Owner, and must provide all information and assistance which the Insurer may reasonably require for such proceedings.
18. The insurer may not reduce its liability to the insured by reason of a failure on the part of the insured to comply with a requirement imposed in clause 17b), 17c) or 17d) unless and only to the extent that the insurer can prove that the failure increased the liability of the insurer under the policy.

19. The Insurer shall not be liable for any loss or damage where the Building Owner does not make a claim within 180 days of first becoming aware of the fact or circumstance giving rise to the possible claim.
20. The excess payable by the Building Owner in respect of each claim is:
- a) \$500 in respect of a claim made after three (3) months, but within three (3) years of the Completion Date;
 - b) \$750 in respect of a claim made after three (3) years, but within five (5) years of the Completion Date; and
 - c) \$1000 in respect of a claim made after five (5) years of the Completion Date.

For the purposes of this clause a claim of \$500 or more may relate to more than one defect if the amount claimed for any one or more defects is less than \$500.

For the purpose of this clause, the date when a claim is made is the earlier of:

- a) the date when the claimant first notifies the insurer of a circumstance that may give rise to a claim; and
- b) the date a claim is made.

An excess will only be applied once in relation to:

- a) any claim comprising more than one defect; or
- b) 2 or more claims that relate to the same defect.

20. If a person gives the insurer notice of a defect, that person is to be taken for the purposes of the policy to have given notice of every defect to which the defect notified is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified is settled.
21. If the insurer has not determined a written claim as to liability within 90 days of receipt of the claim, then, unless the insurer obtains an extension of time from the insured or the Tribunal, the insurer is deemed to have accepted liability for the claim.

SECTION D: EXCLUSIONS

22. The Insurer shall not be liable for any claim for loss or damage:
- a) arising from any malfunction in any electrical or mechanical equipment or appliance if the insurer can prove that the malfunction is not attributable to the workmanship of or installation by the Builder;
 - b) in respect of work performed outside the State of Victoria, or work to which the Domestic Building Contracts Act 1995 (Victoria) does not apply;
 - c) relating to landscaping, paving, retaining structures, driveways or fencing unless those works:
 - (i) are integral to the construction of the building; or
 - (ii) require the issue of a building permit under the Building Act 1993; or
 - (iii) could result in water penetration of or within a building; or
 - (iv) adversely affect the structural adequacy of a building; or
 - (v) are not completed and the builder has died, become insolvent or disappeared.
 - d) As a result of risks normally insured under a policy for public liability or contract works;
 - e) arising from any seepage, pollution, rot, mould, contamination, confiscation, war (whether declared or not), invasion, rebellion, nuclear radiation, or expropriation confiscation or nationalism by or under order of any Government, Public, State or Local authority;
 - f) arising from, or made worse by, the failure of the Building Owner to employ and maintain reasonable action or protection measures to minimize any loss or damage from termite or other pest infestation or exposure to natural timbers;

- g) arising from an act of God, or act of nature, the force of which exceeds that allowed for under any Australian standard, or good building practice;
- h) arising from any personal injury;
- i) for loss of use, or any consequential loss of any kind, except as provided in clause 4;
- j) arising from a contractual dispute between the Builder and the Building Owner, except where otherwise specifically covered under this Policy;
- k) Due to fair wear and tear of the work or the failure by the insured to maintain that work;
or
- l) Incurred as a result of asbestos contamination or removal.

This Policy does not apply to a contract for the demolition of a home or building on land zoned for residential purposes, by a person registered under Part 11 of the Building Act 1993 (Victoria).

SECTION E: GENERAL

- 23. This policy is issued in compliance with the Ministerial Order, and if any term of the policy conflicts or is inconsistent with the Ministerial Order then the Policy must be read and is enforceable as if it does comply with the Ministerial Order.
- 24. The Insurer acknowledges that section 54 of the Insurance Contracts Act 1984 (insurer may not refuse to pay claims in certain circumstances) of the Commonwealth applies or is deemed to apply to this policy.
- 25. Despite clause 24, if the person making a claim against the Insurer has notified the Insurer in writing, within 180 days after the date when the claimant first became aware, or might reasonably be expected to be aware, of the death, disappearance or insolvency the Builder, then the Insurer will not rely on section 54 of the Insurance Contracts Act 1984 to reduce its liability under the policy or to reduce any amount otherwise payable in respect of claim made by reason only of any delay in a claim being notified to the Insurer.
- 26. A Certificate of Insurance will be issued by the Insurer, in the form contained in Schedule 2 to the Ministerial Order, to the insured, evidencing the issue of a policy in compliance with the Ministerial Order, immediately on the issue of the policy, and on request by the builder or insured at any time.
- 27. The Insurer may, on the giving of 30 days notice in writing cancel the cover provided under this Policy to the Building Owner if the Building Owner:
 - a) makes a false, fraudulent or misleading claim under this Policy;
 - b) breaches its duty of utmost good faith to the Insurer; or
 - c) agrees to the cancellation following termination of the Contract that required the issue of the Policy.

The cancellation shall take effect thirty (30) days after the Insurer gives written notice.

- 28. The Insurer shall not avoid this Policy or refuse to make or reduce any payment under this Policy on the ground that:
 - a) the Builder:
 - (i) breached any duty of utmost good faith; or
 - (ii) failed to comply with any duty of disclosure; or
 - (iii) made representations to the insurer; or
 - (iv) failed to comply with a provision or requirement of the policy; or
 - (v) by act or omission of any description prejudiced the interests of the insurer; or
 - b) the premium or any instalment of the premium has not been paid.

PROVIDED HOWEVER that where the Insurer makes a payment under this Policy to which the provisions of this clause apply, then the Insurer shall be entitled to recover any such payment made from the Builder.

29. Where the Insurer has notice of the relevant proceedings before the Tribunal, the Insurer will accept as determinative of the issues any finding made by the Tribunal:
- a) as to whether any of the following events has occurred:
 - (i) the non-completion of the work;
 - (ii) an event referred to in clause 1;
 - (iii) an event referred to in clause 3 or 4; and
 - b) if so, as to the amount of loss or damage suffered by the building owner as a result of the event or events.
30. The cover provided under this Policy in respect of the Contract is not renewable.
31. The Insurer will notify the Building Practitioner's Board in the event that:
- a) the Builder is refused insurance, or ceases to be eligible to renew or procure such insurance; or
 - b) any claim is settled or paid, by agreement or otherwise.
32. Any notice to the Building Owner may be delivered or posted or sent by fax to the last known address of the Building Owner, and shall be deemed given in the case of posting by the next working day after the posting.

SECTION F: DEFINITIONS

"Builder" means the builder specified in the Certificate of Insurance.

"builder", "building", "building site", "domestic building work" and "home" have the same meaning as defined in Section 3 of the Domestic Building Contracts Act 1995 (Victoria).

"Building Owner" means the person for whom the domestic building work is being, or is about to be, carried out as named in the Certificate of Insurance, and specifically excludes the Builder, and Owner/Builder, and/or a Building Owner that is related to the Builder (within the meaning of the Corporations Act 2001).

"claim(s)" means, where the context permits, a claim made by the Building Owner under this Policy.

"completion date" means:

- a) the date of issue of the occupancy permit in respect of the building (whether or not the occupancy permit is subsequently cancelled or varied); or
- b) if an occupancy permit is not issued, the date of issue under Part 4 of the Building Act 1993 of the certificate of final inspection of the building work for construction of the building; or
- c) if neither an occupancy permit or certificate of final inspection is issued or required to be issued, the date of practical completion of the work.

"construct" in relation to a building means:

- a) build, rebuild, erect or re-erect the building; or
- b) make alterations to the building; or
- c) enlarge or extend the building; or
- d) cause any other person to do anything referred to in paragraph a), b) or c) in relation to the building; or
- e) manage or arrange the doing of anything referred to in paragraph a), b) or c) in relation to the building.

"Contract" means the domestic building contract entered into between the Builder and the Building Owner for the carrying out of Works, and is referred to in the Certificate of Insurance.

"defective" in relation to domestic building work includes:

- a) a breach or any warranty listed in section 8 of the Domestic Building Contracts Act 1995;
- b) a failure to maintain a standard or quality of building work specified in the relevant contract.

“Developer” means any Building Owner or other person for whom three (3) or more homes are being, or are proposed to be built, on any one building site, or on more than one building site but under one domestic building contract.

“Disappears” means cannot be found after due search and inquiry.

“insolvent” means:

- a) in the case of a natural person, insolvent under administration as that expression is defined in the Corporations Act 2001; or
- b) in the case of a body corporate, subject to external administration under the Corporations Act 2001.

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

“Ministerial Order” means the Ministerial Order made on 23rd May 2003 which took effect 1st July 2003 pursuant to section 135, 137A and 137D of the Building Act 1993 (Victoria).

“non-structural defect” in relation to a building, means a defect in building work other than a structural defect.

“Occurrence” means an event (including continuous or repeated exposure to the same general conditions) which results in Personal Injury or Property Damage not expected nor intended by the Builder or Building Owner.

“Personal Injury” means bodily injury, death, sickness, shock, fright, mental anguish, false arrest or imprisonment, wrongful eviction, wrongful detention, malicious prosecution, humiliation, libel, slander, or assault or battery.

“Policy Period” means the period specified in clause 6A or 6B as appropriate.

“Property Damage” means physical injury to or destruction of tangible property including the loss of use of the property, and/or loss of use of tangible property which has not been physically injured or destroyed, provided that the loss of use has been occasioned by an Occurrence.

“Structural Defect” in relation to a building, means any defect in a structural element of the building that is attributable to defective design, defective or faulty workmanship or defective materials (or any combination of these) that:

- a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used; or
- b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building; or
- c) results in, or is likely to result in:
 - (i) the destruction of the building or any part of the building; or
 - (ii) physical damage to the building or any part of the building; or
- d) results in, or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part of the building.

“Structural Element” in relation to a building, means:

- a) any internal or external load-bearing component of the building that is essential to the stability of the building or any part of it, including (but not limited to), foundations, floors, walls, roofs, columns and beams; or
- b) any component (including weatherproofing) that forms part of the external walls or roof of the building.

“Tribunal” means the Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administration Tribunal Act 1998 (Victoria).

“Works” means the domestic building work required pursuant to the Contract.

All sections of this policy are constructed as one document.

Headings are for reference only and do not affect the meaning of any provision of the policy. Any reference to the headings is to be constructed as a reference to the provisions of that section of the policy.

Words in the singular include the plural; in any gender include the other gender; and person includes any incorporated or unincorporated entity.

BROKER

Every notice or communication to the Insurer shall be in writing and sent by mail or facsimile to the office of the Broker:

and shall not be deemed to be notice to or with the knowledge of the Insurer unless so given.

If the address of the Broker above ceases to be its address, then such replacement address as is published by the Broker will be the new address for notification or communication to the Insurer.