

Fineprint

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New Licensed Building Practitioners

HOW IT WILL AFFECT HOMEOWNERS?

The construction industry has historically been fraught with disputes between tradespeople and customers regarding the quality of work and contractual obligations. In response, the government has introduced the 'Licensed Practitioner Scheme' which the Minister of Building & Housing says should ensure "a more efficient and productive sector that stands behind the quality of its work."

Since 1 March 2012 if you are undertaking any 'residential building work' relating to the design, structural integrity or weather tightness of a house or apartment building, now known as Residential Building Work (RBW), it's highly likely you will need the help of a Licensed Building Practitioner (LBP) to either complete or supervise the work. It will be an offence for RBW to be undertaken unless it is completed by an LBP.

These changes were introduced following the Building Act Review which found that not only were there weaknesses in consumer protection and a lack of accountability on behalf of property owners, designers, builders and building consent authorities, but also that the

building regulatory system was costly and inefficient. Therefore in order for the building industry to provide accountability for its work and ensure consumers are protected, the new licensed building scheme requires all significant residential building works to be completed only by those licensed tradespeople who are registered LBPs.

WHAT IS RBW?

RBW is work which is essential to the structural integrity of a residential house or a small to medium-sized apartment building, including design work and moisture penetration protection (weather tightness). Therefore any works to load-bearing walls, foundations, roofs and cladding will be included as RBW.

A house is defined as a:

- Free-standing and fully detached building consisting of a single residential unit, or a
- Single residential unit with one or more facilities, for example, a garage and shed.

A small to medium apartment building is defined as:

- Any building that has a height less than 10 metres



- Contains two or more residential units or facilities, and
- Does not contain any commercial units or facilities.

WHO IS AN LBP?

A Licensed Building Practitioner (LBP) can include designers, carpenters, site managers, roofers, external plasterers, brick and block layers, and foundation specialists. Registered engineers and architects, plumbers and gasfitters are also LBPs due to their existing professional registration and they can complete some RBW.

To be licensed by the Department of Building & Housing, tradespeople must meet a series of requirements. They must provide proof of work history, education, previous work that complies with the building code, and evidence of their knowledge and ability to meet building requirements and competencies.

LBPs are also assessed into the three following categories; these will be listed on the LBP register and the LBP's personal identification card.

- Category 1 – Undertake construction or alteration on simple dwellings
- Category 2 – Undertake construction or alteration on any building with a focus on moderately complex projects, and
- Category 3 – Undertake construction or alteration on complex multi-storey commercial buildings.

CAN I STILL COMPLETE THE WORK MYSELF?

Under the scheme, owner-builders can complete RBW without the help or supervision of an LBP. The purpose of this is to enable homeowners to build and alter their own homes.

An owner-builder is classified as someone who:

- Has an interest in the property (for example they own the property or have a right to occupy)
- They either live in the home or intend to live in the home
- Complete the work themselves or with the help of unpaid friends or family, and
- They have not undertaken RBW on another property within the previous three years.

An owner-builder who wants to complete RBW must make a statutory declaration to their local council showing compliance with the owner-builder exemption above and file this with the council. This will be kept on the property's council file so that future buyers know the work was completed by an unlicensed practitioner.

Unless an individual falls within the exemption above, all other RBW must be completed or supervised by an LBP who is skilled in the relevant area. It's important that you do get the correctly classified LBP to undertake your building work.

Since 1 March 2012, an unlicensed or unsupervised LBP can face a fine of up to \$20,000, retraining, loss of their building licence or some restriction on that licence. Similarly, if you knowingly engage an unlicensed person to carry out or supervise RBW you could be fined up to \$20,000.

IMPLICATIONS

The new requirements are intended to ensure that LBPs are competent and that property owners are informed of their contracted LBPs' abilities. Consequently this puts some responsibility on home owners to ensure they have the right tradespeople engaged for the appropriate work.

Although not required by law, it will be beneficial for homeowners to have a written contract with the LBP which sets out a full description of the building work to be completed, start and finish dates, what materials will be used and how they will be paid for, the obligations and responsibilities of each of the parties, the method by which the LBP will be paid, how any variations to the contract will be dealt with, and how a dispute will be handled should one arise.

The Building Act 2004 however does still apply; it provides homeowners with implied warranties within a building contract should your contract fail to include them. Similar to the Fair Trading Act, the Building Act ensures you are protected against those who fail to meet reasonable building standards, and exercise reasonable care and skill.

Under the new scheme, home owners may also bring complaints to the Building Practitioners Board regarding LBPs or to the appropriate complaints authority for those who hold separate licences, such as architects, plumbers, engineers and gasfitters.

THE NEW PROCESS

Under the scheme, once an LBP has completed their part of the RBW, they must complete a Memorandum (Record of Building Work). The Memorandum sets out what RBW the LBP completed, and must be provided to you. This Memorandum is required when you apply for a code of compliance certificate (CCC).

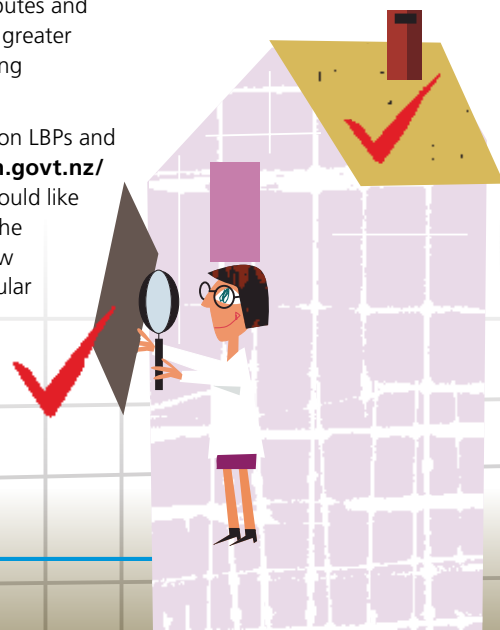
Similarly, a Design LBP must also complete a Memorandum (Certificate of Design Work) that identifies the work they have completed. However it is your responsibility to get this Memorandum from the Design LBP and attach it to your building consent application.

When applying for a building consent, it's also your responsibility to attach the final plans and design specifications and include the names of all LBPs who will be carrying out or supervising the construction of the RBW. Consequently it's also your responsibility to lodge the building consent application and notify the council if any LBPs leave, or later join, the project.

Although these changes do hold building contractors more accountable for their work, the new regime also places significant responsibilities on home owners to engage the correct LBP and keep the council informed.

It would seem that the responsibility for RBW is being shifted away from building consent authorities. Although this may mean an increase in building costs for home owners, as contractors ensure compliance with regulations and seek advice on insurance and liabilities, these changes should theoretically lead to a decrease in building related disputes and litigation, and provide greater efficiency in the building regulatory industry.

For more information on LBPs and RBW go to www.dbh.govt.nz/builditright. If you would like to know more about the implications of this new regime for your particular project please be in touch with us. ■





Using KiwiSaver to Buy Your First Home

GOOD BENEFITS AVAILABLE

If you are buying your first home, or if you fit Housing New Zealand's criteria to be in the same position as a first home buyer, your KiwiSaver scheme may help buy your property.

FIRST HOME DEPOSIT SUBSIDY

Housing New Zealand (HNZ) administers the deposit subsidy which is paid directly to us as your lawyer on your property's settlement date. You must have belonged to, and contributed to, a KiwiSaver Scheme for at least three years. The subsidy is \$1,000 for each year that you have contributed to the scheme, up to a maximum of \$5,000 if you have been contributing for five or more years. You may only receive the deposit subsidy once.

You can apply to HNZ for pre-approval for a subsidy. This pre-approval expires after 90 days but extensions are available. If you have found a property you want to buy and you have an Agreement for Sale & Purchase, you can apply to HNZ for the subsidy. You need to be organised well in advance as HNZ needs at least four weeks from submitting an application before it can pay the subsidy to us as your lawyer – it's not paid to you.

FIRST HOME SAVINGS WITHDRAWAL

Your KiwiSaver provider will administer your savings withdrawal; you must contact them to establish their requirements. HNZ will only be involved in the withdrawal of your KiwiSaver contributions if you are not a first home buyer. HNZ will assess you to determine if you are deemed to be in the same position as a first home buyer.

After three years in a KiwiSaver scheme you may be able to withdraw your savings, employer contributions and all returns, such as interest. You cannot withdraw government contributions and the \$1,000 kick-start.

CRITERIA

For the First Home Deposit Subsidy, you must:

- Be 18 years of age or older
- Not have received a deposit subsidy before
- Be a member of a KiwiSaver scheme
- Have contributed at least the minimum percentage of your income to a KiwiSaver scheme for at least three years
- Have a combined annual income of \$100,000 or less (before tax) for one or two buyers, or have a combined yearly income of \$140,000 or less (before tax) for three or more buyers

- Be buying a fee simple, stratum estate freehold or leasehold, cross-lease or leasehold property
- You must not own any other property
- You must buy within the maximum house price caps (\$400,000 for Auckland City, Wellington City and Queenstown Lakes District, and \$300,000 for all other areas)
- You must live in the house or apartment, you cannot use the subsidy to buy an investment property
- If you are buying land you must build within 12 months of purchase, and
- For the first home savings withdrawal you will need to contact your KiwiSaver provider to find out any additional requirements.

If you are a previous home owner, you must not currently own a property and you must not have realisable assets totalling more than 20% of the house price cap for the area in which you are buying. Realisable assets are assets that you can sell to help buy a house. For example, if you are buying a house in the \$300,000 price cap area you cannot have realisable assets of \$60,000. Realisable assets include money in bank accounts, shares, stocks and bonds, investments, equity in property or land, boat or caravan valued over \$5,000, other vehicles that are not your usual method of transport, and other assets valued over \$5,000.

TIMING

If you wish to use your KiwiSaver scheme to help buy a property, before you sign an Agreement you must:

- Contact your KiwiSaver provider to find out their requirements and time frames. You need to be aware that many KiwiSaver providers require up to six weeks from when they receive all the required documentation, including the signed Agreement before the funds can be released to us as your lawyer.
- Allow at least four weeks from when you sign the Agreement to the settlement date to ensure that HNZ has sufficient time to transfer the First Home Deposit Subsidy to us before the settlement date.

Using KiwiSaver funds to help buy your first home can be a good use of capital. For more information go to <http://bit.ly/w6qu3Z> or don't hesitate to get in touch with us.

A shorter version of this article first appeared in Property Speaking, December 2011, published by NZ LAW Limited ■



Consumer law makeover

REFORM BILL INTRODUCED

Consumer law is being given a makeover with the introduction to parliament of the Consumer Law Reform Bill in February 2012. When enacted the Bill will remove some outdated stand-alone statutes such as the Door to Door Sales Act, make changes to the Fair Trading Act and incorporate e-commerce transactions.

The proposed changes may give businesses the opportunity to better manage their risk in the proposed rules which allow contracting out of the Fair Trading Act (FTA). Consumers are likely to benefit from new disclosure rules which apply to extended warranties and auctions.

CONTRACTING OUT OF THE FTA

The FTA currently says that traders must not carry on business in a way which is misleading or deceptive, or make false representations. For example, some finance companies have breached the FTA by understating the costs of refinancing packages and some telecommunications companies have broken the rules for misleading statements about the true costs of their phone and internet packages.

The changes introduced by the Bill will allow a business dealing with another business to contract out of some of the obligations in the FTA where it is fair and reasonable to do so. This change may mean that a business can reduce the risk of being held to account for statements about a product or service made to another business. This will be achieved by including wording in a contract or terms of business which make it clear that their customer makes their own assessment of the product or service.

There will be limits on what protection is available to a business. The Bill doesn't allow a business to escape responsibility for representations which are not backed up by facts, so-called 'unsubstantiated representations'. In practice this means that if a business makes a claim about a product, service or even a piece of land to be sold, it can be held to account under the FTA if it doesn't have a reasonable basis for making the claim.

For example, if a property development company advertises land for sale with development potential, it must have some evidence backing up that claim such as advice from the council or a planner. If there is no reasonable basis for the claim a buyer may have a claim against the developer for losses arising if it turns out that the zoning

of the land prevents the development that's been advertised. The moral of the story is to make sure any claims about goods, land or services are backed up by facts.

EXTENDED WARRANTIES

New rules are proposed for extended warranties. Often offered to car and home appliance buyers, an extended warranty includes a warranty where the seller agrees to repair or replace goods over a time period that is longer than the normal warranty term. The proposed rules include a requirement that the buyer must give written details of the warranty terms in plain English.

There will be an 'out' for those who sign up in the heat of the moment as the buyer can, in that circumstance, cancel an extended warranty within a period of five working days.

AUCTIONS

It's sometimes hard to tell which bids at an auction are genuine purchaser bids and which are fake bids placed by the seller; these are known as 'vendor bids'. The Bill proposes the auctioneer will say at the start of the auction whether bids by the seller are allowed and which bids are the seller bids.

If property is passed in without being sold and if the final bid was a seller bid, that bid will not be allowed to be referred to as the bid at which the property was passed in.

People who attend auctions for homes will appreciate the added transparency that will be provided by the new rules.

E-COMMERCE

Current legislation was enacted well before electronic auction sites (such as Trade Me) became a regular part of our lives. Under the proposed new consumer laws, sales by professional traders using online auctions will have to offer refunds on any unsatisfactory new and second-hand goods.

Submissions on the Bill closed in late March and it's expected that it will be passed into law by the end of 2012.

The enactment of this proposed legislation will allow businesses to change their terms of business to take advantage of the new contracting out rules. Consumers are also likely to be better informed when it comes to participating in auctions, dealing with extended warranties and making e-commerce transactions. ■

The Feed Wedge

ENSURING YOU'VE ENOUGH FEED ON YOUR NEW RURAL PROPERTY

When you're buying a rural property, the general rule is that sufficient feed is left on the property. Due to the way the 'feed wedge' is calculated, however, you could be left short of sustenance for your stock.

Frequently in rural property sales a standard clause is included in the Agreement for Sale & Purchase that defines the average grass cover that the seller is to leave on settlement.

WHY HAVE THAT CLAUSE?

The purpose of such a clause to ensure that the arriving farmer has some degree of confidence in the quantity of feed available as often the Agreement for Sale & Purchase has been drafted months before.

Some more elaborate feed clauses provide for the situation where feed isn't available and include a mechanism where any feed shortage will be remedied by the departing party providing additional grain or dry feed to compensate for the shortfall.

The underlying concept is that the 'feed wedge' for the property is maintained. The feed wedge is a diagrammatic view of the average grass length in each field plotted out in a bar graph format. The resulting graph ideally displays a range of grass length from the most recently grazed, and therefore field with the shortest grass, to that field which has remained un-grazed the longest, and is due to be grazed next. The principal behind this is that stock are rotationally grazed through the property's fields allowing each grazed field to be rested to ensure the maximum period of recovery for grass to re-grow.

As the combined measurements are given as an average, it's possible to compensate for an unduly short field by leaving grass longer in others.

PROBLEMS CAN ARISE

Two problems can theoretically arise from the feed wedge calculation:

1. Additional feed can be eaten off by leaving all fields at the same length; this disturbs the grazing rotation, or
2. One or two paddocks are sacrificed due to feed or weather conditions to allow the remaining fields to remain undamaged.

The issue with the second problem is that while the overall grass cover meets the Agreement's requirements, the incoming farmer has a situation where the affected fields may be so badly damaged from pugging or compaction that growth is retarded for the coming season.

The standard protection for such a situation is the insertion of a clause such as the good husbandry provision that the farmer should follow usual farming practices; this test can, however, be difficult to quantify and enforce.

A more certain alternative is to have us flesh out your Agreement to provide that no individual field should have grass cover less than a minimum value and that there should be no excessive pugging or compaction in any field. This will provide you with a known, measurable and enforceable position. ■



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Postscript

Having your say on MMP

Now that New Zealanders have voted to retain MMP, there is now an opportunity for you to give the Electoral Commission some feedback on how it works. You can make a submission on anything about the way MMP works; the only things that are outside the review's scope are the overall size of Parliament (120 MPs) and the Maori seats.

Submissions must be made by 31 May 2012.

To make a submission, or to find out more about the review, visit www.mmpreview.org.nz or call 0800 36 76 56. ■

Freephone number for help on loan problems

With the launch in February 2012 of 0800 LOAN STRESS consumers will have better access to services to help them clearly understand their rights and resolve disputes with finance companies

Since December 2010, all loan providers have belonged to an independent dispute resolution scheme; this is free for their customers to use.

The 0800 number is toll-free (even from mobiles), the service is free and is confidential. ■

What do you do if you've been scammed?

Fineprint has previously written of the dangers of being persuaded by smooth talking operators who are only too ready to get you to part with your money in what appears to be a genuine scheme. Remember, if the returns seem too good to be true, they probably are.

If you do get sucked into a scam, act very quickly to protect yourself.

In New Zealand: Contact the police to make a complaint; the scammers may be criminals who can be found and prosecuted. You may want to call us to get more advice on what to do.

If you're a New Zealand resident, you can report the scam on SCAMwatch www.consumeraffairs.govt.nz/report_scam

Overseas: Sadly, there's probably little chance of getting your money back. You can follow up with the relevant authority of the area from which the scam originated, see <https://icpen.org/> ■

SuperGold Card discounts

The SuperGold Card is a discounts and concessions card for seniors and veterans in recognition of their contribution to New Zealand society.

The SuperGold Card provides discounts and offers from a range of businesses, government concessions (such as free off-peak transport) and discounted services from your local council.

Amongst the many services offered to cardholders are discounts from a number of funeral celebrants, funeral directors, crematoriums and monumental masons which may be good news if you're planning a funeral. Conditions apply to most of the offers.

For more information, go to www.supergold.govt.nz ■



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