



New South Wales

Home Building Amendment Act 1998 No 56

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Home Building Amendment Act 1998 No 56

Act No 56, 1998

An Act to amend the *Home Building Act 1989* in relation to caveatable and other interests in land under contracts to do building work or to supply kit homes, the insurance of work done under contract for owner-builders, and in other respects. [Assented to 30 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Home Building Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Home Building Act 1989 No 147

The *Home Building Act 1989* is amended as set out in Schedule 1.

Schedule 1 Amendment of Home Building Act 1989

(Section 3)

[1] Section 7D

Omit the section. Insert instead:

7D Interests in land under contract

- (1) A contract does not give the holder of a licence or any other person a legal or equitable estate or interest in any land, and a provision in a contract or other agreement is void to the extent that it purports to create such an estate or interest.
- (2) Accordingly, the holder of a licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1).
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
 - (a) the land the subject of the charge is land on which the contract work is, or is to be, carried out, and
 - (b) the charge is in favour of the holder of a licence who is a party to the contract, and
 - (c) the charge is created to secure the payment to the holder of the licence by another party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and
 - (d) in the case of a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land.

- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land so charged.

[2] Section 16DD

Omit the section. Insert instead:

16DD Interests in land under contract

- (1) A contract does not give the holder of a licence or any other person a legal or equitable estate or interest in any land, and a provision in a contract or other agreement is void to the extent that it purports to create such an estate or interest.
- (2) Accordingly, the holder of a licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1).
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
- (a) the land the subject of the charge is land on which the kit home is, or is to be, erected, and
 - (b) the charge is in favour of the holder of a licence who is a party to the contract, and
 - (c) the charge is created to secure the payment to the holder of the licence by another party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and
 - (d) in the case of a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land.

- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land so charged.

[3] Section 92 Contract work must be insured

Insert after section 92 (5):

- (6) To avoid doubt, this section extends to residential building work that is also owner-builder work.

[4] Section 98 Employees and others not required to insure

Insert at the end of the section:

- (2) Subsection (1) does not apply in the case of a person who contracts to do owner-builder work on behalf of an owner-builder. Such a person must insure that work if otherwise required to do so by section 92.

[5] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Home Building Amendment Act 1998

[6] Schedule 4, Part 5

Insert after clause 47:

Part 5 Provisions consequent on enactment of Home Building Amendment Act 1998

48 Interest of licensee in land under contract

The amendments by way of repeal and re-enactment of sections 7D and 16DD made by the *Home Building Amendment Act 1998* do not affect the validity of:

- (a) any caveat lodged in accordance with the *Real Property Act 1900*, or

(b) any provision in a contract or agreement entered into,

before the amendments commenced.

49 Insurance requirements for persons carrying out work for owner-builder

The amendments to sections 92 and 98 made by the *Home Building Amendment Act 1998* do not affect any work for which a contract was entered into before the amendments commenced.

[Minister's second reading speech made in—
Legislative Assembly on 29 April 1998
Legislative Council on 3 June 1998]