



Master Builders Fidelity Fund Advisory Note

Introduction

This Advisory Note is to assist homeowners understand the purpose and limitations of the Fidelity Fund in the ACT.

It is an introductory guide only and should not be relied on as a primary source of information or legal advice. For a comprehensive understanding, please refer to the *Building Act 2004* (ACT) and the *Building (General) Regulation 2008* (ACT).

This information was produced by the Master Builders Fidelity Fund.

What is a Statutory Warranty?

Section 88 of the *Building Act 2004* (ACT) defines a builder's statutory warranties. Pursuant to the statutory warranties, a builder warrants that the works will:

- be carried out in accordance with the Act;
- be carried out in a proper and skilful way;
- be in accordance with the approved plans;
- have been constructed from good and proper materials;
- have been carried out with reasonable promptness when no completion date is specified; and
- reasonably meet the requirements expressly made known by the owner.

Note: For complete wording of the above, please refer to the Building Act 2004 (ACT).

What is a Fidelity Fund Certificate?

A Fidelity Fund Certificate is required under the *Building Act 2004* (ACT) and is taken out by a licensed builder for the benefit of the owner. It is also referred to as Home Owners Warranty Insurance.

In 2002, ACT Government legislated to enable Fidelity Funds to be established in the ACT. The principal purpose of the Fidelity Fund is to provide consumers with protection against financial loss suffered as a result of a builder's death, insolvency or disappearance.

Who provides this cover?

Fidelity Fund Certificate providers are required to be approved under the *Building Act 2004* (ACT). Currently the Master Builders Fidelity Fund is the only approved provider of Fidelity Fund Certificates in the ACT.

When is a Fidelity Fund Certificate Required?

A certificate is required before a Commencement Notice can be issued and before building works can commence on site. The Building Certifier is required to verify the authenticity and validity of the certificate. Commencing building work before obtaining a Commencement Notice from a Building Certifier is an offence under the *Building Act 2004* and under the *Construction Occupations (Licensing) Act 2004*.

1. **New residential buildings**

Fidelity Fund Certificates are required for the construction of all sole occupancy residences in the ACT and includes both separate dwellings and those attached to other dwellings by party walls. This includes:

- multi-residential units up to 3 storeys in height constructed over separate ground floor (car parking, commercial offices and/or shops);
- garages that are an integral part of the new building (i.e. under the same roof as the residence).

2. **Additions and alterations to residences**

Fidelity Fund Certificates are required for building work valued at \$12,000 or more and requires Building Approval. This includes alterations that form part of the structural integrity of the building:

- excavations that will affect the structure; and
- the removal of internal walls, being either load bearing or acting as bracing units.

Note: some internal renovations in excess of \$12,000 that do not require building approval, such as kitchen and bathroom upgrades, do not require a Fidelity Fund Certificate.

Are minor structures such as garages, carports and pergolas covered by the Fidelity Fund?

Carports, garages that are not structurally integral with the house, retaining walls, driveways, pools, attached decks and pergolas are defined as Class 10 structures in the National Construction Code and do not require a Fidelity Fund Certificate in the ACT. Even where a Class 10 structure is part of a larger project which requires cover, they Fidelity Fund Certificate will not cover these structures.

What is the amount of cover provided by a Fidelity Fund Certificate?

Fidelity Fund liabilities are specified in the *Building Act 2004* (ACT) and in the *Building (General) Regulations 2004* (ACT). The maximum sum covered under a Fidelity Fund Certificate, in respect of each dwelling that forms part of the work, is \$85,000 or an amount equal to the cost of the work, whichever is the lesser. The Fidelity Fund is not liable for the first \$500, being the excess payable on a claim.

Under the *Building (General) Regulation 2004*, the owner is entitled to:

- claim up to a maximum of \$10,000 for the loss of a deposit paid to a builder.
- recover payments made to the builder which do not exceed the value of the work completed such as payments in advance of the works being completed.

How long does a Fidelity Fund Certificate protect the owner?

The Fidelity Fund Certificate insures an owner for a period of 5 years. This is stipulated in reg 40 of the *Building (General) Regulation 2008* (ACT).

What is the completion day for building work?

The completion day for residential building work is defined in the *Building Act 2004* (ACT) as the day work is completed, or the day the contract relating to the work ends, whichever is the later. The work is considered completed no later than the date the Certificate of Occupancy, if any, is issued for the work.

If practical completion has been reached in accordance with the definition under the Master Builders Home Building Contract or another contract used by the parties, the owner will then pay the balance of the contract sum and sign a Completion Notice for the builder to provide to the Fidelity Fund.

The Completion Notice is also the mechanism that:

- ends the builder's insurance on the site;
- commences the Maintenance Liability Period (usually 90 calendar days); and
- prompts the owner to take out their own home insurance.

It does not release the builder from their contractual obligations, such as the maintenance liability period, or its statutory warranties under the *Building Act 2004* (ACT).

It is unlawful for an owner to occupy a building, (or part thereof), without a Certificate of Occupancy.

Is an owner-builder required to obtain a Fidelity Fund Certificate?

No. Under the *Building Act 2004* (ACT), owner-builders are not required to take out a Fidelity Fund Certificate on their own home. The reason being is that the Fidelity Fund was established to provide consumers with protection against financial loss resulting from a builder's death, insolvency or disappearance.

Although the statutory warranty in Part 6 of the *Building Act 2004* (ACT) does not apply to owner-builders, the remainder of the Act does. For example, the Construction Occupations Registrar can issue the owner-builder with a Rectification Order. Other ACT legislation and common law may also be applicable.

What is the procedure for making a claim against a Fidelity Fund Certificate?

A Fidelity Fund claim may only be made in circumstances of a builder's death, insolvency or disappearance.

Disappearance does not mean merely uncontactable. Apart from providing a builder's last known address, the Master Builders Fidelity Fund cannot provide any personal information of the builder which it may have in its possession or otherwise assist a claimant locate their builder.

Upon becoming aware of the existence of the grounds for a Fidelity Fund claim, the owner must lodge their claim within 90 days. The Owner should contact the Fidelity Fund to request a claim application form. All claims must be submitted along with a payment of \$500.00 for the excess.

On receipt of a claim, the Fidelity Fund will, as soon as practicable, review the claim. A building consultant may be required and engaged by the Fidelity Fund to inspect the building works and supply a written report to the Fidelity Fund.

Once a decision on the claim has been reached by the Fidelity Fund, the claimant will be contacted regarding the outcome.

A claim may take up to 90 days to be reviewed. In circumstances where the claim will take longer than 90 days to be determined, the claimant will be notified accordingly.

When could a claim be deemed invalid or result in a reduction in the amount to be paid out?

You should carefully read the conditions under which a Fidelity Fund Certificate was issued for building work. The following are some scenarios, but not exhaustive, that may make a claim invalid:

- If, for whatever reason, another party, including the owner, has tried to rectify or continued with the building work after the death, insolvency or disappearance of the builder and in doing so concealed, contributed to, created or exacerbated defective works.
- Where the Fidelity Fund claim is a claim for defects which relate to materials supplied by, or items of work carried out by the owner or are exclusions under the building contract.
- The Fidelity Fund is not responsible for an owner's contributory negligence. For example, where an owner has failed to maintain their property.

Where do I get further information regarding the warranty insurance and Fidelity Fund Certificate?

You should read the relevant sections of the *Building Act 2004* (ACT) and *Building Regulations 2008* (ACT). Further details can also be obtained from the Access Canberra website.