



Department of  
Building and Housing

*Te Tari Kaupapa Whare*



**Building Act 2004**

# Sales by residential property developers

**Section 364**



# Overview

Section 364 of the Building Act 2004 introduces important consumer protection measures covering the sale of household units by residential property developers or 'spec' builders.

It is now an offence for a residential property developer to complete the sale, or allow a purchaser to take possession of, a household unit before a code compliance certificate (CCC) has been issued.

It does not apply to contracts for sale and purchase entered into before 30 November 2004.

Effectively, this makes it the developer's responsibility to fix any faults before sale.

A person who commits an offence under section 364 is liable to a fine of up to \$200,000. This fine applies to each household unit sold without a CCC. So, if a development included five units and each unit was sold without a CCC, the developer is liable for a fine of up to \$1 million.

## **What is the reason for this?**

People buying a residential property from a developer have a right to expect it to be completed and to comply with the Building Code. The onus for making sure a building complies with the Code is on developers – they have the control of the building process.

## **What is meant by a 'household unit'?**

A household unit is a building or group of buildings intended to be used mainly for residential purposes and by one household (eg, house, apartment or flat). It does not include a hostel or boarding house.

## **What does 'complete the sale' mean?**

'Complete the sale' means accepting final payment and transferring the title. You can accept progress payments for the job.

## **How is 'residential property developer' defined?**

A residential property developer includes any person who, in trade, builds or arranges to build a household unit for the purpose of selling it. This could include large developers, or builders or individuals building homes on 'spec'.

It also includes a person who, in trade, buys a household unit from a builder or developer with the intention of selling it on.

## **Can I get an interim CCC instead?**

No, interim code compliance certificates cannot be issued post 31 March 2005. You need to get a CCC.

## **Can you contract out of this requirement?**

The developer and purchaser may contract out of this provision but only on a form prescribed under the Building (Forms) Regulations 2004. This form (Form 1) makes the consequences of buying a property without a CCC clear to consumers. It also advises consumers to obtain independent legal advice before signing. Copies of Form 1 are available from the Building Act 2004 website

 [www.building.govt.nz](http://www.building.govt.nz)

## **What else can I do?**

People who want to start selling household units before the entire project is finished should consider making separate consent applications for each unit or group of units in advance.

For example, if you are building four townhouses you could get a separate building consent for each townhouse.

This means you will be able to get a CCC and sell each one as it is finished.

## **How will the Department of Building and Housing be involved?**

The Department of Building and Housing will monitor compliance with this section of the Building Act.

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Disclaimer:

While we have tried to make this educational information as accurate as possible, it does not cover every situation and should not be regarded as legal advice.

This document is also available on the Department's website: [www.dbh.govt.nz](http://www.dbh.govt.nz)

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