



COPY OF LETTER ON IMPLIED WARRANTIES SENT TO INDUSTRY ORGANISATIONS 10 DECEMBER 2004

Building Act 2004 – Implied Warranties

I am writing to you regarding the implementation of sections 396 to 399 of the Building Act 2004. These sections commenced on 30 November 2004. They set out provisions for warranties to be included in two types of contracts, whether they are written into a contract or not:

- a) contracts providing for building work to be carried out on one or more household units¹, and
- b) sale and purchase contracts (for one or more household units) where one party is a residential property developer².

The warranties are set out in section 397. Summarised, they are:

- the completed building work will be carried out in accordance with the Building Code
- the materials used are new, unless otherwise specified in the contract, and that they are suitable for the purpose
- the building work will be carried out with reasonable care and skill, and that it is completed by the date on the contract or within the period of time specified in the contract, or within a reasonable period (if no period is specified)
- the building work is suitable for its intended purpose.

These warranties have been introduced in order to provide a greater level of consumer protection. Many have believed in the past that such warranties already exist through the Consumer Guarantees Act, but that Act does not apply to building work.

The warranties set out in section 397 are implied despite any provision to the contrary in any agreement (ie, developers can not contract out of these provisions – the section is there for the protection of homebuyers).

No additional action is required on the part of the consumer to get the benefit of these warranties. However, it is important that builders and developers are aware of these new provisions, and I am writing to you to alert you to the fact this consumer protection measure may impact on your members.

The warranties do not apply to contracts entered into prior to 30 November 2004, but will apply automatically to any new contracts from that date. We recommend that if your members are using a standard form of contract they have it reviewed by a lawyer for consistency with the warranties in the Act. Similarly, any developers,

¹ “Household unit” is defined under section 7 of the Act.

² “Residential property developer” is defined under section 7 of the Act.

volume builders or others involved in building work where individual contracts have been drawn up or amended after 30 November 2004 should contact their lawyer.

Section 398 provides that owners³ can take legal proceedings for a breach of any of the implied warranties “as if the owner were a party to the contract”. This provision expressly allows future owners of the property in question to take proceedings in contract, for breach of contractual warranty, without having been a party to the original contract.

For example:

I am a builder, and you contract for me to build your house. The contract will automatically contain the section 397 warranties. If you sell the property to another buyer and the new owner realises that I did not carry out the work in a “proper and competent manner”. The new owner can sue me for damages (under the implied warranty).

If section 398 did not say the new owner could do this, he/she would have to try and take proceedings against you in the first instance, and then you would have to join me as a party to those proceedings. Section 398 makes things much simpler for subsequent owners.

A version of this guidance (including the example) will be placed on the website for the Building Act 2004, www.building.govt.nz. This site will be used throughout the implementation of the Building Act 2004 to provide information and guidance material. I will however continue to write to you directly with matters of direct interest to your members.

If you would like to discuss this further please direct your calls to Holly Young at DDI: (04) 470 1057 or at holly.young@dbh.govt.nz.

Yours sincerely

John Ryan
General Manager, Building Controls
Department of Building and Housing

³ “Owners” are defined under section 7 of the Act.