



Residential Property Developers and Code Compliance Certificates for New Residential Houses under the Building Act 2004

Are YOU a residential property developer? Do you:

- build residential properties; or
- arrange for residential properties to be built

with the express purpose of on-selling the property as soon as possible?

If so, then you are a residential property developer. You may complete large developments, be a builder, build/have built individual properties "on spec", or be in the trade of buying properties from these people to on-sell.

If you are a residential property developer then you need to know how the Building Act 2004 affects you.

The Building Act 2004 now makes it an offence for a residential property developer to complete the sale of a household unit*, or to allow a purchaser to occupy a household unit, if there is no code compliance certificate ("CCC") issued. This applies to all sale agreements entered into after 30 November 2005. You, as a residential developer, can be fined up to \$200,000.00 per household unit for each offence (eg a 5 unit development in breach of the Act could cost you up to \$1,000,000).

What is the impact for you?

No Interim CCC

As interim code compliance certificates have been abolished, you, as a residential property developer, should consider whether building consents should be staged, particularly for terraced housing developments, if you already hold building consents under the 1991 Act. However, if an existing building consent is later staged, you, will lose the benefit of having the CCC issue under the old legislation.

If you have an existing interim code compliance certificate for a household unit, this does not exempt you from the application of s364, because a CCC must be obtained for all work carried out under the consent. If you breach the Act, ie settle without a CCC, this will have a significant impact on cashflow and funding costs for you.

Settlements for Existing Agreements

Any existing agreements that require settlement and possession on practical completion and the issue of a new title should be varied so that settlement and possession take place on the later of practical completion, title issuing, or the issue of a CCC. Alternatively, you can approach purchasers to see whether they wish to sign an agreement to contract out of the Act.

Rented Units

It is not an offence to rent a household unit without a CCC, unless the tenant is the purchaser.
How can you contract out of the CCC requirement?

Developers and purchasers may contract out of the requirement to obtain a CCC prior to settlement of the sale or transfer of possession of a household unit, but only by using the prescribed form ("Form 1: Agreement Between Residential Property Developer and Purchaser" found at www.building.govt.nz).

This form can only be signed after the developer has obtained a building consent for the household unit. A developer cannot apply pressure on a purchaser to sign the contracting out agreement, as it is optional.

The form of the contracting out agreement contains a warning that purchasers should obtain independent legal advice. It also warns a purchaser to consider:

- whether the purchaser will be able to:
 - insure the unit;
 - drawdown mortgage finance to complete the purchase;
 - to sell the unit;
- whether the purchaser may have to pay a development contribution to obtain the CCC instead of the developer; and
- the extent of the work required to obtain the CCC.

Most purchasers' lawyers will advise their clients not to contract out of the requirement for a CCC prior to settlement or possession because of the warnings.

What to do I do now?

For existing agreements you need to arrange for the purchaser to agree to vary the agreement to change the possession and settlement date until after the issue of a CCC, or arrange for the purchaser to contract out of the Act. For new projects, think about whether you should have separate consents for different stages, and ensure that your sales agreement complies with the Act.

*. A household unit is defined under the Act as a building or group of buildings (or part) that is"

- used or intended to be used only or mainly for residential purposes; and
- occupied, or intended to be occupied exclusively as the home or residence of not more than one household.

For more information and advice on the Building Act 2004 and its implications for residential property developers please contact [Jo Pidgeon](#), Partner in the Commercial Property team at Hesketh Henry.

