

Industry Bulletin 155

Licence lending – The risks of lending your building contractor registration to others

This bulletin provides a warning to builders about the risks associated with agreeing to allow another entity to carry out building work under their building contractor registration.

Building and Energy has undertaken a number of recent investigations into cases where registered builders have agreed to allow their building contractor registration to be used on building contracts, building permits and home indemnity insurance (HII) policies for projects that are managed and supervised by both registered and non-registered builders.

While it may not be unlawful to sub-contract building services to another registered building service provider, there are inherent risks that builders must be aware of. Enabling a non-registered entity the use of a building contractor registration is both unlawful and dangerous.

The following case studies demonstrate the risks builders take on when agreeing to allow others to use their building contractor registration.

Case study one – loaning a registration to another registered builder

Builder A is unable to undertake building works due to its HII facility being restricted or exhausted.

It enters into an arrangement with Builder B which has sufficient HII facility to be issued HII policies. Builder B has held its building contractor registration for many years and has earned a reputation for quality and reliability. Under the arrangement with Builder A, Builder B agrees to receive a fee of \$10,000 each time a building project is carried out under its name. With a total of 20 projects to be progressed in this way, Builder B received a windfall of \$200,000.

In return for the fee, Builder B understands it has to do little more than sign documents associated with building approvals, leaving Builder A to manage and supervise the whole building project.

Builder A will also receive all payments made by the owners under the contract.

Builder A commences the 20 building projects but quickly runs into financial distress and ultimately decides to place the company into external administration.

As the builder named on the contracts and building permits, Builder B is responsible for completing the building projects and is liable for any defects that may arise in the following six years. Builder B now realises that there is insufficient value left in the building contracts to deliver the remaining works required to bring the buildings to practical completion let alone to cover the cost of any future defects. Builder B must now confront the very real prospect that it may not have sufficient financial capacity to deliver the outstanding projects and must decide whether it too can remain in business.

Builder B also realises that recent law changes mean an insolvency event can lead to exclusion from future registration as building service contractor. This is because the Building Services Board now has powers to exclude persons (including individuals, partnerships and corporations) from registration as a building service contractor where an insolvency event has occurred and certain other circumstances apply. A corporation or partnership may also be declared an excluded contractor in connection with an insolvency event tied to an officer.

Case study two – loaning a registration to a private individual

Person A wants to avoid the costs of engaging a registered building contractor to build his home and does not have the time to apply for an owner builder approval.



Person A approaches Builder B and an arrangement is agreed whereby Builder B agrees to allow Person A to apply for a building permit using its registration. In exchange, Builder B receives a fee of \$10,000 from Person A and has no further involvement in the building work other than to submit the Notice of Completion at the end of the project.

Having completed the home, Person A decides to sell to Person C. Six months after occupancy, Person C engages an independent building inspector after discovering serious cracks to the walls and slab of the home.

As the builder named on the building permit, Builder B is liable for the defects. Builder B makes strenuous efforts to get Person A to fund the costs of remediation but he refuses, leaving Builder B with a \$75,000 Building Remedy Order issued by the Building Commissioner.

To make matters worse, Builder B discovers that by allowing his registration to be used in this way, he is complicit in Person A's breach of a section of the Building Services (Registration) Act 2011 that prohibits a person from carrying out building work without being a registered builder. Builder B is subsequently prosecuted by Building and Energy and is ordered to pay \$10,000 in fines in addition to having to comply with the \$75,000 Building Remedy Order.

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should

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