

Building Compliance and the Building Act

One of the areas in which the impact of the Building Act 2004 is being felt is the sale of properties on which building work has been done. It is a standard term of sale and purchase agreements that the seller has complied with the Building Act, and buyers often require evidence that the Act has been complied with.

A key principle of the Act is that all building work must comply with the Building Code. This is regardless of whether a building consent is needed for the work. Even for minor building projects, householders need to check whether or not the Building Code is relevant and, if it is, must ensure that the work complies with the Code's requirements.

EVIDENCE OF COMPLIANCE WITH BUILDING CODE

The most common way for building owners to prove that work that requires a building consent complies with the Code is by providing the buyer with a Code Compliance Certificate (CCC). For a CCC to be issued, the owner must have applied for a building consent before beginning the building work. The building consent is crucial in ensuring that the performance standards set out in the Code are met by the finished work. The CCC effectively shows that the consent authority is satisfied on reasonable grounds that the work complies with the building consent.

A building consent will lapse if the work does not begin within 12 months after the date on which the consent was issued. However, if the work begins within that 12-month period, it seems that this preserves the consent indefinitely, so that the work does not have

to be completed by any particular date.

Sometimes a buyer will find that building work has been done without the necessary building consent and CCC. In those cases the Building Act provides that a building consent authority can issue a Certificate of Acceptance. This certifies that the authority is satisfied, to the best of its knowledge and on reasonable grounds, that the building work complies with the Building Code. However, a Certificate of Acceptance cannot be used when a building consent has been applied for but a CCC has not been issued.

Obviously this certificate conveys a lower level of quality assurance than a building consent and CCC. It replaces what was previously referred to as a "safe and sanitary" letter – issued by local authorities after an inspection. These letters certified that a building was deemed to be neither unsafe nor unsanitary, but had no legal recognition.

If you are buying a commercial building, you may need to consider whether a Building Warrant of Fitness is needed and, if so, whether this is up to date. If a building contains systems or services that need ongoing maintenance to function at the level demanded by the Building Code (such as lifts,



air conditioning and fire sprinklers) a Compliance Schedule is necessary to ensure that this maintenance is routinely carried out. The Compliance Schedule sets out the inspection, maintenance and reporting procedures required to ensure that those systems or services meet performance standards. The function of the Building Warrant of Fitness is to confirm that those procedures set out in the schedule have been complied with over the previous 12 months. There are significant fines for building owners who fail to obtain a Compliance Schedule or to display a current Building Warrant of Fitness.

The Auckland District Law Society form of Agreement for Sale and Purchase of Real Estate (7th edition(2)) has been updated to incorporate the terms of the Building Act 2004. If you need further information in relation to a specific building or a particular point mentioned in this article, then please consult us.

If you would like more information, please contact Dan Boyle, Senior Solicitor in our Wellington Office, (04) 495 8914 or Ian Lowish, Partner in our Auckland office, (09) 306 1455.