

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT (FINANCIAL ASSETS AND RESIDENTIAL BUILDING CONTRACTS) REGULATIONS 2012

Subordinate Legislation No. 42 of 2012

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 42 of 2012*

Building Amendment (Financial Assets and Residential Building Contracts) Regulations 2012

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Building Act*.

Dated 14 December 2012

S. G. THOMAS
Administrator

By Her Honour's Command

J. W. ELFERINK
Attorney-General and Minister for Justice
acting for
Minister for Lands, Planning and the Environment

* Notified in the *Northern Territory Government Gazette* on 14 December 2012.

1 Citation

These Regulations may be cited as the *Building Amendment (Financial Assets and Residential Building Contracts) Regulations 2012*.

2 Commencement

These Regulations commence on the commencement of the *Building Amendment (Registration and Other Matters) Act 2012*.

3 Regulations amended

These Regulations amend the *Building Regulations*.

4 Regulation 2 amended

Regulation 2(1)

insert (in alphabetical order)

net assets, see regulation 39B(1).

net assets certificate, see regulation 39C(1).

prescribed building contractor, for Part 11A, Divisions 2 and 2A, means a building contractor prescribed by regulation 41F.

prescribed building work, for Part 11A, Divisions 2 and 2A, means work prescribed by regulation 41G.

progress payment agreement, for Part 11A, Division 2, means an agreement under a residential building contract mentioned in regulation 41HB(1).

standard progress payments, for Part 11A, Division 2, means the standard progress payments under a residential building contract mentioned in regulation 41HA(1).

5 Regulation 3A repealed

Regulation 3A

repeal

6 Regulations 39B and 39C inserted

After regulation 39A

insert

39B Prescribed net financial assets for building contractor

- (1) The net financial assets prescribed for the relevant provisions of the Act are net tangible assets (***net assets***) of at least \$50 000.
- (2) For sections 24B and 24F of the Act, it is a condition of registration or renewal of registration in the category of building contractor that an individual or corporation (a ***builder***) give the Practitioners Board a net assets certificate.
- (3) If the builder holds net assets jointly with another person, the builder is not entitled to rely on the other person's share of the net assets.
- (4) If the builder is a corporation, the builder must itself hold the net assets and is not entitled to rely on the assets of any other person (including a director of the corporation).
- (5) If the builder is a director or nominee of a corporation, the builder may rely on the net assets of the corporation only if:
 - (a) the builder's registration is solely for the builder to carry out building work for the corporation; and
 - (b) there is a written agreement between the builder and the corporation that:
 - (i) the builder may rely on the net assets of the corporation; and
 - (ii) the builder's registration is solely for the builder to carry out building work for the corporation.
- (6) In this regulation:

relevant provisions means the following:

 - (a) section 24B(1)(c) and (2)(c);
 - (b) section 24F(2) and (4)(d).

39C Net assets certificate

- (1) A **net assets certificate** is a document, prepared and certified by an accountant, specifying the net assets held by a builder as mentioned in regulation 39B(1).
- (2) An accountant who prepares a net assets certificate:
 - (a) is to do so in accordance with the Australian Accounting Standards; and
 - (b) is not to use financial information relating to a period earlier than 12 months before the date of the certificate; and
 - (c) is to take into account the matters mentioned in regulation 39B(3) to (5).
- (3) In this regulation:

accountant means one of the following:

- (a) a member of the Institute of Chartered Accountants in Australia who holds a current Certificate of Public Practice issued by the Institute;
- (b) a member of the CPA Australia who holds a current Public Practice Certificate in accordance with the by-laws of CPA Australia;
- (c) a person who holds a current Public Practising Certificate issued by the Association of Taxation and Management Accountants;
- (d) a registered tax agent;
- (e) a person registered as an auditor under the Corporations Act 2001.

Australian Accounting Standards means the current Australian Accounting Standards as published by the Australian Accounting Standards Board.

7 Regulation 40 amended

- (1) Regulation 40(1), all words from "sections" to "(3)(d)"

omit, insert

the relevant provisions of the Act

(2) After regulation 40(2)

insert

(3) In this regulation:

relevant provisions means the following:

- (a) section 24(1)(c), (2)(c) and (3);
- (b) section 24F(1)(e), (3)(d) and (5).

8 Regulation 40A repealed

Regulation 40A

repeal

9 Regulation 41H replaced

Regulation 41H

repeal, insert

41H Residential building contracts

For section 48B(2) and (2A) of the Act, a residential building contract must include provisions:

- (a) relating to prescribed building work that is to be carried out on a single project (**the work**); and
- (b) identifying the prescribed building contractor who will carry out the work; and
- (c) specifying the prescribed building contractor's registration number entered in the register maintained under section 16 of the Act; and
- (d) specifying the extent of the work and the total contracted price for the work; and
- (e) if the contract provides for the payment of a deposit – specifying the deposit payable to the prescribed building contractor for carrying out the work, which must be no more than 5% of the total contracted price; and
- (f) unless paragraph (g) applies – specifying the percentage of the total contracted price payable to the prescribed building contractor after completion of a stage of the work in accordance with the standard progress payments; and

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- (g) if the parties have agreed to a variation of the standard progress payments or if the contract relates to the construction of a retaining wall – specifying that progress payments are to be made in accordance with a progress payment agreement made under the contract; and
 - (h) relating to dispute resolution, subject to regulation 41HC.

41HA Standard progress payments

- (1) Standard progress payments, under a residential building contract, are as follows:
 - (a) no more than 10% of the total contracted price, payable after completion of the work to the base stage;
 - (b) no more than 20% of the total contracted price, payable after completion of the work to the frame stage;
 - (c) no more than 25% of the total contracted price, payable after completion of the work to the enclosed stage;
 - (d) no more than 30% of the total contracted price, payable after completion of the work to the fixing stage;
 - (e) no more than 7% of the total contracted price, payable after completion of the work to the practical completion stage;
 - (f) the remaining percentage of the total contracted price, payable to the prescribed building contractor after completion of the work to the final stage.
- (2) In subregulation (1):

base stage means:

- (a) for a building with a timber floor with base brickwork – the stage when:
 - (i) the concrete footings for the floor are poured; and
 - (ii) the base brickwork is built to floor level; and
 - (iii) the bearers and joists are installed; or
- (b) for a building with a timber floor without base brickwork – the stage when:
 - (i) the stumps, piers or columns are completed; and
 - (ii) the bearers and joists are installed; or

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- (c) for a building with a suspended concrete slab floor – the stage when:
 - (i) the concrete footings are poured; and
 - (ii) the formwork and reinforcing for the suspended slab are installed; or
 - (d) for a building with a concrete floor other than a suspended concrete slab floor – the stage when the floor is completed.

enclosed stage means the stage when:

- (a) a building's external wall cladding is fixed; and
- (b) the building's roof covering is fixed, regardless of whether:
 - (i) for a tile roof – pointings have been done; or
 - (ii) for a metal roof – scribing and final screwing off has been done; and
- (c) the building's structural floor is laid; and
- (d) the building's external doors are fixed:
 - (i) regardless of whether they are fixed only temporarily; and
 - (ii) if a lockable door separating the garage from the rest of the building is fixed – regardless of whether or not the garage doors have been fixed; and
- (e) the building's external windows are fixed, regardless of whether they are fixed only temporarily.

final stage means:

- (a) for work that requires an occupancy permit – the stage when the permit has been granted for the work and a copy of the permit has been given to the contracting owner of the building; or
- (b) for work that does not require an occupancy permit – the stage when the prescribed building contractor:
 - (i) has made all relevant declarations required under the Act in relation to the work and has given the contracting owner a copy; and

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- (ii) has given the contracting owner a copy of all relevant certificates and documents required under the Act in relation to the work.

fixing stage means the stage when all the building's internal lining, architraves, cornice, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed in position.

frame stage means the stage when a building's frame is completed.

practical completion stage means the stage when the building work has been completed, apart from minor omissions or minor defects.

41HB Progress payment agreement

- (1) A progress payment agreement under a residential building contract must:
 - (a) be in the approved form and signed by the parties to the contract; and
 - (b) state that the parties to the contract have agreed to a variation of the standard progress payments; and
 - (c) specify the percentage of the total contracted price for the prescribed building work that is payable to the prescribed building contractor after completion of each stage of the work (up to the final stage); and
 - (d) give details of each stage of the work mentioned in paragraph (c); and
 - (e) specify the remaining percentage payable to the prescribed building contractor after completion of the work to the final stage, which must be no less than 3% of the total contracted price.

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- (2) For subregulation (1), **final stage** has the same meaning as in regulation 41HA(2).

41HC Dispute resolution

- (1) For regulation 41H(h), a provision of a residential building contract that provides for dispute resolution is of no effect to the extent to which the provision purports to:
- (a) restrict or remove the rights of a person in relation to access to a dispute resolution process available under any law in force in the Territory; or
 - (b) require a dispute in relation to the contract to be referred to an arbitrator, expert or other third party for a final and binding decision.
- (2) This regulation does not prevent the parties to a residential building contract from entering into an agreement, after a dispute has arisen under the contract, about the manner of resolving the dispute.

Division 2A Offences relating to residential building contracts

41HD Unlawful contract

- (1) A prescribed building contractor must not enter into a residential building contract that does not comply with regulation 41H.

Maximum penalty: 100 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

41HE Deposit and progress payments

- (1) A prescribed building contractor who has entered into a residential building contract must not request or receive a deposit from the contracting owner of more than 5% of the total contracted price of the prescribed building work specified in the contract.

Maximum penalty: 50 penalty units.

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- (2) A prescribed building contractor must not request or receive from the contracting owner:
- (a) a payment for carrying out prescribed building work except as a progress payment after completion of the stage of work to which the progress payment relates, as specified in or under the residential building contract for the work; or
 - (b) more than the percentage of the total contracted price that is specified in or under the residential building contract.

Maximum penalty: 50 penalty units.

- (3) An offence against subregulation (1) or (2) is a regulatory offence.
- (4) It is a defence to a prosecution for an offence against subregulation (1) or (2) if the defendant establishes a reasonable excuse.
- (5) If a court finds a prescribed building contractor guilty of an offence against subregulation (1) or (2), the court may, in addition to imposing a penalty for the offence, order the contractor to refund to the contracting owner some or all of the amount paid for the deposit or prescribed building work.

41HF Invoice for progress payment to include declaration

- (1) A prescribed building contractor who issues an invoice requesting a progress payment under a residential building contract must ensure the invoice includes a declaration by the contractor that the prescribed building work to which the invoice relates has been completed.

Maximum penalty: 50 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.
- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

10	Part 18 inserted
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After regulation 53

insert

Part 18	Transitional matters for Building Amendment (Financial Assets and Residential Building Contracts) Regulations 2012
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54	Requirement to continue to hold determined net financial assets
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- (1) This regulation applies in relation to a building contractor mentioned in section 187 of the Act.
- (2) If the Practitioners Board gives the building contractor a notice under section 25B of the Act, the Board may require the building contractor to give the Board a net assets certificate.
- (3) However, if anything in regulation 39B or 39C is inconsistent with a repealed determination provision, the repealed determination provision prevails to the extent of the inconsistency.
- (4) In this regulation:

repealed determination provision is a provision of a determination made by the Minister under repealed section 24G of the Act that is relevant to net financial assets required for continued registration of a building contractor.

repealed section 24G means section 24G of the Act as in force immediately before the commencement of section 187 of the Act.

11	Regulations further amended
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The Schedule has effect.

Schedule Regulations further amended

regulation 11

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulation 20B(3), penalty provision	whole penalty provision	Maximum penalty: 80 penalty units.
regulation 20B(4), penalty provision	whole penalty provision	Maximum penalty: 8 penalty units.
regulation 20C(2), penalty provision	whole penalty provision	Maximum penalty: 80 penalty units.
regulation 20C(3), penalty provision	whole penalty provision	Maximum penalty: 8 penalty units.
regulations 20D(4) and 20E(3), penalty provision	whole penalty provision	Maximum penalty: 80 penalty units.
regulation 20F	whole penalty provision	Maximum penalty: 8 penalty units.
regulation 42	A	Subject to a contrary intention, a
regulation 42, penalty provision	whole penalty provision	Maximum penalty: 80 penalty units and an additional penalty, not exceeding 8 penalty units, for each day during which the offence continues after the day the offence is committed.