

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT (FINANCIAL ASSETS, RESIDENTIAL BUILDING
CONTRACTS AND OTHER MATTERS) REGULATIONS 2012

Subordinate Legislation No. [] of 2012

Table of provisions

1	Citation	2
2	Regulations amended.....	2
3	Commencement	2
4	Regulation 2 amended	2
5	Regulation 39B inserted	2
	39B Prescribed net financial assets for building contractor	
	39C Net assets certificate	
6	Regulation 41HA replaced.....	4
	41H Residential building contracts	
	41HA Standard progress payments	
	41HB Varied progress payments	
	Division 2A Offences relating to residential building contracts	
	41HC Unlawful contract	
	41HD Deposit and progress payments	
	41HE Invoice for progress payment to include declaration	
7	Part 18 inserted	9
	Part 18 Transitional matters for Building Amendment (Financial Assets, Residential Building Contracts and Other Matters) Regulations 2012	
	54 Requirement to continue to hold net tangible assets	
8	Regulations further amended	9

Schedule



NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. [] of 2012*

Building Amendment (Financial Assets, Residential Building Contracts and Other Matters) 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 2012

Administrator

By Her Honour's Command

Minister for Lands and Planning

**Prepared by the Office of the Parliamentary Counsel
Date: 22 November 2011 08:03**

CONSULTATION DRAFT

* Notified in the *Northern Territory Government Gazette* on [] 2012.

1 Citation

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

2 Regulations amended

These Regulations amend the *Building Regulations*.

3 Commencement

These Regulations commence on the commencement of the *Building Amendment (Registration and Other Matters) Act 2011*.

4 Regulation 2 amended

Regulation 2

insert (in alphabetical order)

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.

standard progress payments, under a residential building contract, see regulation 41H(f).

5 Regulation 39B inserted

After regulation 39A

insert

39B Prescribed net financial assets for building contractor

(1) For section 24B(1)(c) or (2)(c) or 24F(2) or (4)(d) of the Act, an individual or corporation (a **builder**) who applies for registration or renewal of registration as a building practitioner in the category of building contractor must, at the time of making the application:

(a) hold net tangible assets (**net assets**) to the value of at least \$50 000; and

(b) give the Practitioners Board a net assets certificate.

(2) If the Practitioners Board registers the builder or renews the

builder's registration:

- (a) the builder must continue to hold net assets to the value of at least \$50 000 during the period the registration is in force; and
 - (b) the Practitioners Board may, for section 25B of the Act, require the builder to give the Board a further net assets certificate during the period the registration is in force.
- (3) The builder may value his or her own net assets and give the valuation to the accountant who prepares the net assets certificate but, if the builder does so, he or she must substantiate the valuation in a way that satisfies the accountant.
- (4) If the builder holds net assets jointly with another person, the builder is not entitled to rely on the other person's net assets.
- (5) 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).
- (6) 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.

39C Net assets certificate

- (1) A **net assets certificate** is a document, prepared and certified by an accountant, specifying the net financial assets held by a builder mentioned in regulation 39B(1)(a).
- (2) An accountant who prepares a net assets certificate:
- (a) must do so in accordance with the Australian Accounting Standards; and
 - (b) must not use financial information dated earlier than 12 months before the date of the certificate; and

-
- (c) must take into account the matters mentioned in regulation 39B(3) to (6).
- (3) If a builder has valued his or her own net assets as mentioned in regulation 39B(3) and the valuation is not substantiated to the accountant's satisfaction, the accountant:
- (a) must request the builder for a valuation of the assets by a qualified valuer; and
- (b) must not give the builder a net assets certificate unless the accountant receives a valuation by the qualified valuer.
- (4) 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.

6 Regulation 41HA 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 its total value; and
 - (e) specifying the deposit payable to the prescribed building contractor for carrying out the work, which must be no more than 5% of its total value; and
 - (f) unless paragraph (g) applies – specifying the percentage of the total value of the work payable to the prescribed building contractor after completion of a specified stage of the work in accordance with regulation 41HA (the **standard progress payments**); and
 - (g) if the parties have agreed to a variation of the standard progress payments – specifying that progress payments are to be made in accordance with the progress payment agreement made under the contract in accordance with regulation 41HB.

41HA Standard progress payments

- (1) For regulation 41H(f), the standard progress payments are as follows:
 - (a) no more than 10% of the total value of the work, payable after completion of the work to the base stage;
 - (b) no more than 15% of the total value of the work, payable after completion of the work to the frame stage;
 - (c) no more than 35% of the total value of the work, payable after completion of the work to the enclosed stage;
 - (d) no more than 25% of the total value of the work, payable after completion of the work to the fixing stage;
 - (e) no more than 7% of the total value of the work, payable after completion of the work to the practical completion stage;
 - (f) the remaining percentage of the total value of the work, payable after completion of the work to the final completion 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
- (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 completion stage means the stage after the practical completion stage and after either of the following has occurred:

- (a) for building work on a building that requires an occupancy permit – the permit has been granted for the work and a copy of the permit has been given to the contracting owner of the building;
- (b) for building work that does not require an occupancy permit – the prescribed building contractor has made a declaration under regulation 20C and given a copy to the contracting owner of the building.

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 that do not prevent the building from being reasonably capable of being used for its intended purpose.

41HB Varied progress payments

For regulation 41H(g), 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 value of the prescribed building work that is payable to the prescribed building contractor after completion of each stage of the work; and
- (d) give details of each stage of the building work mentioned in paragraph (c).

Division 2A Offences relating to residential building contracts

41HC 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.

41HD Deposit and progress payments

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

Maximum penalty: 50 penalty units.

- (2) An offence against subregulation (1) is a regulatory offence.

- (3) A residential building contractor must not request or receive from a 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 value of the work that is specified in or under the residential building contract.

Maximum penalty: 50 penalty units.

- (4) If a court finds a prescribed building contractor guilty of an offence against subregulation (1) or (3), the court may, in addition to imposing a penalty for the offence, order the building contractor to refund to the contracting owner some or all of the amount paid for the deposit or building work.

41HE Invoice for progress payment to include declaration

- (1) When issuing an invoice requesting a progress payment under a residential building contract, a building contractor must include in the invoice a declaration 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.

7 Part 18 inserted

After regulation 53

insert

**Part 18 Transitional matters for Building Amendment
(Financial Assets, Residential Building
Contracts and Other Matters) Regulations 2012****54 Requirement to continue to hold net tangible assets**

- (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 practitioner a notice under section 25B of the Act, the Board may require the building practitioner 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) For subregulation (3), a **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.
- (5) In subregulation (4):

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

8 Regulations further amended

The Schedule has effect.

Schedule

regulation 8

To be included if required for minor drafting style amendments.

Consultation Draft