

25 August 2010

## Fact Sheet 7: How Do I Continue with Certification After an Unforeseen Event?

### **Background**

Sometimes during construction, an unforeseen event may occur that impacts on the issue of an occupancy permit. On 25 August 2010 amendments to the *Building Act* were commenced to assist owners to continue with the certification of building work in that situation.

If an unforeseen event is preventing you from obtaining certification, you may now be eligible to apply to the Director of Building Control for a certificate of exemption. This fact sheet has been developed to provide general information about this process.

### **What is an unforeseen event?**

An unforeseen event is where the person required to provide the certification has:

• Died	• Ceased to be registered (only applicable to registered building practitioners)
• Cannot be found	• Withheld certification (due to the bankruptcy or insolvency of a building practitioner)
• Become incapacitated	• The building contract has been terminated
• Become bankrupt or insolvent (excludes owner-builders)	• Certification has been destroyed or cannot be found

### **What is prescribed certification?**

Prescribed certification includes the following documents which must be provided to a building certifier under the *Building Act* prior to the issue of an occupancy permit:

• Builder's declarations	• Plumbing certification
• Inspection certificates	• Glazing certification
• Section 40 certificates	• Fire certification
• Roof truss certification	• Wet area certification
• Termite certification	• Other certification prescribed by regulation

Some documents, e.g. electrical certificates of compliance, planning approvals or consent reports required by reporting authorities can not be exempted by the Director. If you are having difficulty in obtaining any of those documents, you should speak with the relevant authority.

### **What is a certificate of exemption?**

A certificate of exemption is an exemption for a document to enable an occupancy permit to issue. The Director must be satisfied the work has been carried out materially in accordance with the building permit to maintain the safety, health and amenity of people using buildings in the Northern Territory. The process of obtaining a certificate of exemption for prescribed certification is therefore not one whereby the Director merely "signs off" once paperwork has been received.

As an example, if a building contractor died during a building project prior to the amendments, the owners would be unable to obtain an occupancy permit because the building contractor could not issue a builder's declaration. This process allows the Director to issue a certificate of exemption for the builder's declaration (see "prescribed certification" above) **if the owner can provide evidence that the work was carried out materially in accordance with the building permit.**

A certifier will then be able to rely on the certificate of exemption for the missing certification and (assuming all other matters are in order) issue an occupancy permit.

### ***Am I eligible to apply?***

To apply for a certificate of exemption all of the following criteria must be satisfied;

- There must be a current building permit (or the reason for the lapse in the permit must be solely due to a prescribed event), and
- An unforeseen event must have occurred (see "unforeseen event" above), and
- Building work must have physically commenced on the land, and
- The owner must have taken reasonable steps within a reasonable time after the prescribed event to obtain the prescribed certification.

*These amendments are not designed to overcome outstanding certification issues for old building work. Presently there is a moratorium that covers certain unapproved building work or building work with incomplete certification that was undertaken **prior to 28 April 2009**. For more information about certification of building work in those instances, please see the "Moratorium" fact sheet at [www.nt.gov.au/lands/building/moratorium](http://www.nt.gov.au/lands/building/moratorium).*

### ***What action should be taken immediately after a prescribed event?***

- You should *take all reasonable steps* to obtain certification before applying to the Director for a certificate of exemption. A certificate of exemption will only be issued as a last resort.
- You should *talk to your certifier* initially. If the prescribed event involves your building certifier, Building Advisory Services may be contacted for further advice.
- The work that has been carried out prior to the prescribed event should be *fully documented and inspected for compliance* with the building permit before any further work proceeds. If further work is carried out prior to a detailed inspection, report or investigation, it will be more difficult to assess whether the work was carried out in accordance with the building permit. This may mean that the Director would require further information (possibly through intrusive investigations) to make a decision about whether a certificate of exemption may be issued.

*Further costs may be incurred for reports or inspections undertaken by your certifier that are outside the scope of your original fee agreement. You should ask the certifier whether they intend to charge additional fees, before engaging them to perform the work.*

- You should then apply to the Director for a certificate of exemption using the approved form which is available on our website at [www.nt.gov.au/lands/building](http://www.nt.gov.au/lands/building). An application should be made as soon as possible after the unforeseen event occurs as the Director has the discretion to refuse an application if it has not been made within a reasonable time.

### ***Is there a fee?***

There is no fee to apply for a certificate of exemption. However all costs associated with obtaining the information and complying with instructions the Director may issue (such as a site inspection and or having work carried out) will be borne by the applicant.

### ***What can I expect when I apply?***

The Director will assess your application and will contact you if/when further information or action is required. The length of time required for the Director to assess your application will vary, depending on a variety of factors that may include:

- The nature of the building work;
- Whether all requested information on the application was provided;
- Whether sufficient documentation was included with the application;
- Whether the Director requested you to provide additional information including reports by qualified persons;
- Whether the Director required you to engage a qualified person to undertake intrusive inquiries or remedial work.

### ***What will the Director take into account when considering my application?***

Matters that the Director will consider are:

- Whether you took all reasonable steps to obtain the prescribed certification, including information the Director asked you to obtain;
- The opinion of qualified persons about the status and quality of the work;
- What inspections have been carried out;
- What stage the work had reached when the event occurred;
- The certificates or other documents provided to the Director in relation to the stage the building work has reached i.e. inspection certificates to date;
- The status of work after an inspection or after remedial work has been carried out as required by the Director;
- The past performance of the building practitioner;
- Whether you have complied with the requirements of the Director.

### ***What happens if my application is refused?***

If your application is refused you will be provided with written reasons and will be able to appeal to the Building Appeals Board.

**For further information about building rules and regulations contact the Building Advisory Services Branch in your region or visit our website : [www.nt.gov.au/building](http://www.nt.gov.au/building)**

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