

*Secretary of the Department of Finance Services and Innovation’s guideline for the building bond for the Strata building bond and inspections scheme (SBBIS).*

GUIDELINE

Building bond

for

Strata building bond and inspections scheme

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# Introduction

This document provides guidance to comply with section 207 of the *Strata Schemes Management Act 2015* (the Act).

In accordance with section 207 of the Act, the developer (not the builder) of a strata scheme must give the Secretary[[1]](#footnote-1), a building bond for building work to which Part 11 applies, before an occupation certificate is issued under the *Environmental Planning and Assessment Act 1979* for any part of a building for which the building work was done.

A building bond may be either a bank guarantee or a bond.

A developer must, when giving a building bond to the Secretary, also give the Secretary the documents and information, and administration fee as required in the Regulation.

This document does not provide details as to when amount secured by building bond is payable. For details outside the scope of this document, visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

# Overview of this Guideline

**Part 1** sets out **what** the building bond is and **how to comply** with the requirements.

**Part 2** sets out who the **parties** are to the building bond.

**Part 3** sets out the **building works** to which the building bond applies.

**Part 4** sets out the **undertakin**g details.

**Part 5** sets out the **jurisdiction** governing the building bond and **formalities** of signing the bond.

**Part 6** sets out **important notes** about the acceptance of the building bond.

**Part 7** sets out **how to lodge** the building bond

**Part 8** sets out the **suggested format of a building bond** (not bank guarantee)

**Part 9** sets out a **glossary** of key terms used in the Guideline

**Part 10** sets out the **versions** and updates to this Guideline

# Part 1: Building bond

This document provides guidance on how to comply with section 207 of the *Strata Schemes Management Act 2015* (**the Act**).

A building bond may be either a bank guarantee or a bond.

A suggested format for a form of building bond under sections 207 and 208(b) of the Act– ‘bond’ is attached to the end of this document in Schedule 1. An example for a form of building bond under section 208(a) – bank guarantee has not been attached.

In accordance with section 207 of the Act, the developer (not the builder) of a strata scheme must give the Secretary, a building bond for building work to which Part 11 applies, before an occupation certificate is issued under the *Environmental Planning and Assessment Act 1979* for any part of a building for which the building work was done.

# Part 2: The parties

The Developer (and not the Principal contractor/builder) of a strata scheme must give the Secretary a building bond for the building work.

Principal: Secretary as per section 4 of the Act.

Developer: For the purpose of Part 11 of the Act, Developer means the developer of the strata scheme by whom or on whose behalf building work to which this Part applies was carried out.

 The full name of the developer as it appears on the construction contract at time of lodgement

Issuer: Any authorised deposit taking institution (**ADI**) or general insurer authorised to conduct new or renewal insurance business in Australia listed on the Register of ADIs or the Register of General Insurers maintained by the [Australian Prudential Regulation Authority](http://www.legislation.gov.au/)  as updated from time to time.

# Part 3: Building works particulars

The building bond must be lodged before an occupation certificate is issued under the *Environmental Planning and Assessment Act 1979* (NSW) for any part of a building for which the building work was done.

Required building works particulars:

Address: The location of the strata scheme as it appears on the construction certificate or if that address has been changed – the address that will be registered at Strata Plan registration.

Staged construction: If staging is taking place, provide the stage reference.

Development application reference: Development application number

Construction certificate reference: Construction certificate number

Proposed Strata Plan: If the strata plan has been registered, provide the Strata Plan identifier.

If a proposed strata plan reference has not been provided, the plan details of the lot and deposited plan which will be subdivided to create the SP.

Unique identifier: The identification number obtained from the Strata building bond and inspections scheme portal.

Construction contract identifier: State name of all contracted parties; and

 Date contract executed

# Part 4: The undertaking of the building bond

The purpose of the building bond is to secure funding for the payment (up to the amount secured by the bond) of the costs of rectifying defective building work identified in a final report under the Act.

If the building work comprises only part of the building to which a contract price applies, the amount secured is to be 2% of the part of the contract price applicable to the building work under this Scheme.

The contract price for the building work is the total price paid under all the applicable contracts for the building work.

The NSW Civil and Administrative Tribunal may make an order determining the contract price of building work for the purposes of determining the amount of the building bond.

The bond is unconditional and is payable on demand by the Secretary.

In summary:

Purpose: The building bond in compliance with Part 11 of the Act*.*

Amount secured by a building bond: The amount secured by a building bond is to be 2% of the total contract price; (s.207(2), the Act).

Contract price:

Provided by developer-

* The contract price for building work is the total price paid under all the applicable contracts for the building work as at the date of issue of the occupation certificate; cl 50(1) Strata Schemes Management Regulation 2016 (**the Regulation**).

and/or

Determined by other method-

* Quantity Surveyor:

the contract price for building work is to be the price set out in a cost report prepared by a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or the Royal Institute of Chartered Surveyors, and is not connected to the developer or the builder, if:

1. there is no written contract for the building work, or
2. the parties to the building contract are connected persons; cl 50(2), the Regulation.
* Tribunal:

make an order specifying the amount of the contract price of building work for the purpose only of determining the amount of a building bond; s.211(3), the Act.

Terms:

* The bond is unconditional and is payable on demand by the Secretary.
* The Issuer will make payment, should it receive from the Principal a demand for payment of the Bond in accordance with the Act.
* The Issuer will make payment to the Secretary or the owners corporation if required by the Secretary on demand by the Principal without reference to the developer and notwithstanding any notice given by the developer not to make any such payment.

Undertaking continues until:

Whichever first occurs:

* Issuer has paid to the owners corporation such part of the Bond amount as the Principal may require, or
* the Issuer has paid to the owners corporation the whole of the Bond amount as the Principal may require, or
* the Principal returns the original of this document to the Issuer, or
* the Principal provides written notice to the Issuer that the bond is no longer required

# Part 5: The jurisdiction and formalities

The Strata building bond and inspections scheme is a NSW Government initiative incorporated in the Act and Strata Schemes Management Regulation 2016.

The building work to which the Act applies is situated in NSW, and is governed by the laws in NSW.

In summary:

Jurisdiction**:** The building bond is governed by the laws of New South Wales.

## Formalities

Dated: This is to be dated by the Issuer on the date of issue

Signed: Authorised agent(s) of the Issuer

 Signature, name, title, division and name of Issuer.

# Part 6: Important notes about bond acceptance

A building bond will only be accepted by the Secretary if the building bond is issued by an authorised deposit taking institution (**ADI**) or general insurer authorised to conduct new or renewal insurance business in Australia listed on the Register of ADIs or the Register of General Insurers maintained by the [Australian Prudential Regulation Authority](http://www.legislation.gov.au/)  as updated from time to time.

# Part 7: Lodgement

The building bond must be lodged before an occupation certificate is issued under the *Environmental Planning and Assessment Act 1979* for any part of a building for which the building work was done.

The Secretary will process the building bond within a maximum of 10 business days of receipt of the original building bond (the weekend, NSW public holidays and 27-31 December excluded).

**In summary, how to lodge the building bond**

Instructions **All three steps must be completed:**

1. Developer must access the Strata building bond and inspections scheme portal:
	1. obtain the unique identifier for the building works to which the building bond will be lodged
	2. advise the Issuer of the unique identifier – it must be included in the building bond
2. Electronic upload of building bond
	1. Upload scanned document to the Strata building bond and inspections scheme portal
3. Original building bond
	1. Delivered by courier to: Strata building bond and inspections scheme, NSW Fair Trading, level 11, 10 Smith Street Parramatta NSW 2150, or
	2. Express Post: to Strata building bond and inspections scheme, NSW Fair Trading PO BOX 972, Parramatta NSW 2124

# Part 8. Suggested format for building bond

## Schedule 1

**The purpose of this document is to provide industry with a suggested format for a form of building bond under sections 207 and 208(b) - bond, of the *Strata Schemes Management Act 2015***

**BUILDING BOND**

**UNDER SECTION 207 OF THE STRATA SCHEMES MANAGEMENT ACT 2015 (NSW)**

This building bond is given by [**insert name of developer**] to the Secretary (“Principal”) pursuant to section 207 of *the Strata Schemes Management Act 2015* (NSW) (“**the** **Act**”) in the amount of [**insert dollar value**] (“amount secured by building bond”), being 2% of the total contract price.

This building bond is given in relation to the development at:

Address: [**location of the strata scheme**]

Staged construction: [**If staging is taking place, provide the stage reference**]

Development Application reference: [**Development application number**]

Construction Certificate reference: [**Construction certificate number**]

Proposed Strata Plan: [**If the strata plan has been registered, provide the Strata Plan identifier.**

**If a proposed strata plan reference has not been provided, the plan details of the lot and deposited plan which will be subdivided to create the SP].**

Unique Identifier: [**The identification number obtained from the Strata building bond and inspections scheme portal**]

Construction Contract Identifier: [**State name of all contracted parties**] and

 [**Date contract executed**]

[Name of Issuer], [ACN], (“Issuer”), of [Address], will make payment, should it receive from the Secretary a written notice that requires payment from this building bond made in accordance with the Act.

It is agreed that the Issuer will make payments to the Secretary under and in accordance with this undertaking forthwith without any reference to the Developer and notwithstanding any notice given by the Developer not to make any such payment or payments.

This undertaking is to continue until:

Whichever first occurs:

* Issuer has paid to the owners corporation such part of the Bond amount as the Principal may require, or
* the Issuer has paid to the owners corporation the whole of the Bond amount as the Principal may require, or
* the Principal returns the original of this document to the Issuer, or
* the Principal provides written notice that the Bond is no longer required.

The whole or part of the amount secured by a building bond may be paid from the Issuer directly to the owners corporation, if the Principal so requires.

This undertaking is governed by the laws of New South Wales.

Dated at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ this ………………. Day of ………………………………… 20 ….

Signed for and on behalf of

**\*\*\* Insurance Company Limited**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name Name

Title Title

Surety/other Division Surety/other Division

# Part 9. Glossary

**Definitions as per *Strata Schemes Management Act 2015***

***Building bond*** means the same as in the *Strata Schemes Management Act 2015 –* section 207(1)

***Building work*** means the same as in the *Strata Schemes Management Act 2015* – section 190(1)

***Developer*** means the same as in the *Strata Schemes Management Act 2015* – section 189

**Final report** means a report prepared under section 201 of the *Strata Schemes Management Act 2015*

***Occupation certificate*** means the same as in the *Environmental Planning and Assessment Act 1979*

**Owners corporation** means the same as in the *Strata Schemes Management Act 2015* – section 4

***Secretary*** means the same as in the *Strata Schemes Management Act 2015* – section 4

# Part 10. DOCUMENT CONTROL

## 10.1 Document Approval

|  |  |  |
| --- | --- | --- |
| Approving authority  | Signature | Date |
| Manager: Strata building bond and inspections | Melanie Schwerdt | 20/12/2017 |
| Secretary: A/ED Building & Construction Service  |  |  |

## 10.2 Document version control

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Version | Status | Date | Prepared by | Comments |
| 1.0 | Draft | May 2017 | Melanie Schwerdt |  |
| 2.0 | Draft | October 2017 | Melanie Schwerdt | Technical workshopFair Trading website |
| 3.0 | Draft | November 2017 | Melanie Schwedt | Fair Trading website |
| 4.0 | Final | December 2017 | Melanie Schwerdt | Legal Services  |

## 10.3 Document review date

This guideline will be reviewed when the Act or Regulations are amended and annually based on commencement of regime for first two years, and assessed thereafter.

1. The "Secretary" as per the definition in section 4(1) of the *Strata Schemes Management Act 2015*. [↑](#footnote-ref-1)