

Subsidence Assessment

Overview

Refer to the relevant edition of the Insurance Policy Conditions for any exclusions. For example in Policy Edition 8, "the BSA agrees to pay the cost of rectifying defects in the residential construction work that is primary building work..." therefore excluding associated building work.

- After 1 July 2000 contracts must comply with the *Domestic Building Contracts Act 2000*
- All required documents must be on file
- The definition of subsidence varies between policies

The owner's entitlement under this section is determined in accordance with the relevant policy, noting:-

- Retention
- Accommodation
- Maximum entitlement



If the Insured is registered for GST purposes refer to the Res-011 Guidance Statement and the relevant Insurance Policy Conditions

BSA's Board Policies

The functions and responsibilities of the General Manager of BSA include the issuing of directions to rectify defective or incomplete building work (s18 and s 72 of the Act). BSA takes into consideration the Rectification of Building Work Policy, as well as all other circumstances it considers are reasonably relevant, in deciding whether to give a direction to rectify building work under section 72 of the Act. The guideline policy commenced on 1 July 2010 and as of the date of commencement, the policy rescinds and replaces the two previous Board guideline policies relating to Rectification of Building Work and Rectification of Subsidence and Settlement.

BSA's previous Rectification of Building Work Policy was rescinded on 1 September 2004 by the latest Rectification of Building Work Policy. However, the Rectification of Building Work Policy – effective 1 September 2004 will continue to be taken into consideration by the BSA (as part of all the circumstances it considers reasonably relevant) in deciding whether to give a direction to rectify if either:-

- The contract for the building work was entered into prior to 1 September 2004
- The written preliminary agreement to contract for the building work was entered into prior to 1 September 2004

Time Limits

File Managers must refer to the relevant edition of the Insurance Policy Conditions applicable to the contract date.



The owner must notify BSA within 3 months of the defect becoming apparent. Notification to the contractor may be considered as notification to BSA depending on the time delay and/or prejudice to BSA

Reasons for Subsidence

There are many combinations that determine subsidence:-

- Minor cracking, levels outside Y limits i.e. M site, levels 60mm plus, is it an M site
- Minor cracking, levels equal to Y's but major slope issues in 2m
- Major cracking, levels equal or less than Y limits is this subsidence

All may or may not require further investigation i.e. Monitor, Drainage, Engineer Inspection etc. If BSA doesn't take the time to take a set of levels and cross section, BSA is unable to defend an argument that subsidence is not taking place.

Contributing Factors by Licensee

- Incorrect or non installation of articulation joints in masonry
- Non articulation of sewer/storm water lines
- Inadequate drainage and falls
- Non Compliance with BSA Policy

Contributing Factors by Owner

- Is the soil classification and slab design correct
- If the site classification changes
- Are the actions of the owners major contributing factors
- Owners may be responsible for certain works (for example a big tree planted by the owner or landscaping done by the owners)

Directions

- In subsidence claims where the contractor has been proven to not be responsible a direction will not be issued
- When the Building Inspector has determined that the contractor is responsible for the subsidence, then a Direction to Rectify will be issued to the responsible contractor
- A Direction will not be issued when:-
 - The contractor is insolvent
 - The contractor is deceased or deregistered
 - The contractor is deemed to have fully complied with the subsidence policy
- If a direction is not complied with a Failure to Rectify should be issued



The Building Inspector may determine that the original contractor is responsible for certain defects (e.g. failure to install expansion joints). If this is the case the contractor may be directed in the normal manner or a Request to Rectify letter will be issued and the work will be rectified when the initial underpinning work is completed. Should the contractor fail to rectify these defects, the defects may then be rectified under insurance in accordance with the Building Inspector's recommendations

Rectification

Most subsidence claims will be rectified in the following stages:-

- Structural rectification – including tree removal and/or plumbing rectification, underpinning and cut-off walls
- Monitoring – taking of levels at intervals recommended by the engineer
- Cosmetics – once the site has stabilised, internal damage can be rectified

Engineer's Report

The following must be considered when reading the Engineer's Report:-

- Cause of the subsidence
- How to rectify of the subsidence
- Who is responsible for the subsidence

Determining Liability

For the purposes of determining the owner's entitlement to insurance assistance and the contractor's liability, the following needs to be established:-

- Who supplied the footing design/soil test
- Did the contractor build in accordance with this design
- Is the design defective
- Have the actions of the owner contributed to or caused the subsidence

If the File Manager is unable to determine who is responsible for the cause of the subsidence, the matter should be referred to the Building Inspector for further clarification. In some cases they may need to contact the Engineer and if it continues to be unclear the matter should be referred to the Manager.

Subsidence Summary Reports

This document is used to document:-

- The cause and contributing factors of the movement/subsidence
- Who is responsible
- The proposed method of rectification
- Any other information that the Building Inspector may deem relevant

Exclusions

File Managers should ensure the exclusions contained in the Insurance Policy Conditions are properly considered.

Completion or Rectification without Approval

This exclusion is discretionary. File Managers should give proper consideration before declining a claim under this condition. There are several Tribunal decisions on this point and File Managers should research these decisions before applying this clause.

Insured As the Contractor or an Associate of the Contractor

There are specific exclusions if the claimant is the contractor or the claimant is an associate of the contractor.

In the case of the contractor being a company an associate may be:-

- An officer of the company
- A person who is in position to control or influence
- The spouse or child of an officer of the company

- A trustee or trust
- Another company with a majority voting interest

In the case of the contractor being an individual the following persons are not entitled to a claim under the statutory insurance scheme:-

- The spouse including a de facto spouse or child of the individual
- A trustee of the trust to which the contractor is a beneficiary
- A company whose majority voting interest is held by the individual
- A company in which the individual, individual spouse including a de facto spouse or child is in a position to substantially influence the conduct of the company



File Managers must carefully consider this clause to ensure the claimant (Insured) does not fall within these conditions

Processing a Subsidence Claim



Click here to access the [CMS Insurance Claims](#) section

Quotations

Calling Quotes

Ensure all items on the Scope of Work are RCW and claimable. Follow the CMS procedure for calling quotes.

- Building Inspector's estimate under \$15,000 for defects - owner to call 1 quote
- Building Inspector's estimate over \$15,000 - call 2 quotes and BI to arrange tender meeting
- Subsidence Structural claims - call 2 quotes and BI to arrange tender meeting



Before selecting contractors from the Tender Panel in CMS, print a blank copy of the Quote Tender Document. This will ensure all future approval letters will be automatically populated with the Scope of Work date and will allow the File Manager to edit the Scope of Work through Word

Send a copy of the Scope of Work to:-

- The owner - the Scope of Work is a reviewable decision. Stamp "COPY" on this document so it can't be reused
- The original contractor or liquidator if they are deemed responsible - the Scope of Work is a reviewable decision. Stamp "COPY" on this document so it can't be reused
- Quoting contractors - provide them with one (1) copy to send back to BSA and another for their records (stamped "COPY")



Provide copies of all relevant documentation to all parties when calling quotes

The quotation documents must be prepared at the time of the claim acceptance and posted to the contractors quoting on the work. An additional set of the quotation documents is mailed to the Insured to provide them an opportunity to review the work to be completed under their claim.

A copy of the quotation documents **MUST** also be sent to the original contractor, liquidator or administrator if they are deemed to be responsible, along with the CMS letter **Notice Debt 28 days–Defects Active** or **Notice Debt 28 days– Defects Insolvency**.



For Deceased or Deregistered builders, consult with Debt Recovery to determine if the Notice of Debt and any further letters are to be sent

Receiving Quotes

- Check that the required number of quotes has been received
- Ensure all the quotes are documented on the BSA Scope of Work
- Check to see if any amendments have been made to the Scope. If amendments have been made the quote may be void or invalid
- Check that the contractor has signed their quote and its conditions
- Confirm the date, the Schedule number and the listed items on the Scope of Work are the latest approved version
- If the quotes received do not comply, contact the quoting builder to request they amend and resubmit the approved Scope of Work
- Check the licensee's details in CMS to ensure the licence is current and he holds the appropriate licence to undertake the work included in the Scope. If the licensee uses their company details check that the company is licensed and active

The quotes are entered in CMS and if the lowest quote falls within 20% of the Building Inspectors estimate, proceed to approval.

File Managers have the delegation to accept quotes for claims where the estimate is under \$15,000 and where the lowest quote falls within a 20% variance of the Building Inspector's estimate. This discretion is given to facilitate an efficient claims process but should not be exercised if the File Manager considers the quote to be excessive. File Managers should consider

the nature of the work required and seek advice from a Building Inspector if unsure as to whether they should accept the quote.

If the lowest quote is not within 20% of the estimate, the Building Inspector's recommendation should be sought with regard to the quotes. They will advise File Manager to either accept the lowest quote (they must provide reasons for the variance between their estimate and the lowest quote) or to recall tenders.



If the owner has provided a quote/s from a contractor that is not on our panel, and the quote is the lowest, it can be the successful tender amount and the basis of our approval, so long as the contractor is licensed and has completed the BSA Scope of Work

Claim Approval

Prior to approving any claim check the documents on file to confirm the Scope of Work satisfies the following BSA criteria:-

- The licensed contractor is licensed to perform the work
- Only Residential Construction Work is included
- The successful tender is signed and dated with no errors, omissions or additional inclusions

Once you are satisfied that the correct internal administrative processes have been completed correctly the approval documentation is ready to be generated.

CMS will automatically apply any retention amount that has been entered to the first approval and all subsequent approvals until the retention amount has been exhausted.

Create a Submission for Approval in CMS and enter all relevant details. If within your delegation, approve the Submission in CMS. If not within your delegation, refer to the appropriate delegation for approval. Once approved, send the approval letters to the quoting contractors. These letters cannot be edited in word so ensure the address is correct. This is particularly important as unit numbers are not populated in the construction at field. Send the approval letter to the owner and send the recovery letters to the original contractor.



If the Insured is registered for GST purposes refer to the Res-011 Guidance Statement and the relevant Insurance Policy Conditions

Variations after Approval

Any debit variations submitted by a rectifying/completing builder must be reviewed by the Building Inspector before processing in CMS (it is not necessary to refer Credit variations). The rectifying builder must provide details of the price and method of rectification / reason for credit in the variation request.

Upon receipt of a variation request, the File Manager must confirm the items relate to the existing insurance claim or if they are new complaint items. If the latter, consultation with the manager and/or Building Inspector may be required.

If the items do relate to the existing claim, a K2 task should be sent to the Building Inspector requesting a review of the variation and a recommendation for acceptance or declination.

The Building Inspector's advice should confirm the necessity and reasonable cost of the proposed variation and include a recommendation to approve the variation. If the Building Inspector is satisfied with the Scope of Work for the variation provided by the rectifying builder this may be entered for the new schedule or the Building Inspector will need to draft an adequate Scope of Work to be entered.

If the Building Inspector does not believe the variation to be necessary and/or the cost unreasonable, they must provide details of such and give their recommendation to decline the variation or further action required. For an extensive/detailed variation it may be necessary for the BSA Building Inspector to return to site and complete a minor building inspection.

If declining a variation, the File Manager must advise the builder and owner in writing giving the reason/s for the decision. Ensure the owner's letter also includes the appropriate review clause.

If the Building Inspector recommends approval of the variation, a new Schedule should be created, the **Scope of Work** entered, a **Submission for Approval** completed and the relevant letters sent, as with any claim approval.

If a Credit variation then it is only necessary to complete a Submission for Approval and amend the appropriate current Schedule to reflect the credit.

If relevant, ensure the appropriate **<Notice of Debt>** letter, along with a copy of the Scope of Work relating to the variation is sent to the contractor/liquidator/administrator in addition to the extra approval letter.

Alternative Accommodation, Removal and Storage Costs



Alternative Accommodation and removal or storage cost claims are only applicable where the completion and/or rectification works have commenced

The BSA Insurance Policy Conditions, Edition 8 states:-

"5.2 Amount of Payment

Subject to Parts 6, 7 and 8 of this Policy, the amount of the payment under this Part will be:

- (b) *where the BSA has admitted a claim for payment for loss in relation to subsidence or settlement, it may if it thinks fit, having given prior written approval, pay the Insured for the reasonable alternative accommodation of the Insured and any removal and storage costs of the Insured necessarily incurred by the Insured as a result of the need to remedy the subsidence or settlement damage and because the residential construction work is, in the opinion of the BSA, uninhabitable."*

Reimbursement Overview

This benefit is payable only when the owner of the property, who lives in the property, is unable to live there during rectification, and if the owner pays for alternative accommodation, removal and storage costs.

BSA will also reimburse the reasonable cost of alternative accommodation for domestic pets (dogs and cats) which normally reside in the dwelling, if the owner's alternative accommodation refuses pets. Any other domestic animals (e.g. horses, ducks, goats, chickens etc.) which require alternative accommodation will NOT be paid for by BSA. BSA will NOT pay for temporary accommodation for any animals kept in the dwelling which are used for commercial breeding purposes (e.g. reptiles, fish etc.).

The maximum entitlement for alternative accommodation, removal and storage costs is \$5,000 which is included within the \$200,000 policy limit. Therefore, if BSA has already approved \$200,000.00 for a subsidence claim, there is NO available entitlement for alternative accommodation, removal and storage costs.



CMS does not recognise when the \$5,000 entitlement has been exhausted. The File Manager must ensure only the remaining entitlement is entered into CMS for approval, as CMS does not distinguish between approvals for repairs, completion, or accommodation

A Finance One creditor ID needs to be created to reimburse an owner for accommodation costs and a separate schedule must be opened each time the owner submits a reimbursement request. Often the owner will request reimbursement on more than one occasion (if rent is being paid periodically), so the File Manager must calculate the entitlement each time until the \$5,000 entitlement has been expended. The Accommodation Calculation Spreadsheet is to be utilised for this.



When approving the schedule for Accommodation/Storage costs manually enter the GST as \$ 0.00 to override CMS as Accommodation/Storage costs do not attract GST

Creating a Finance Creditor

- Enter the CMS Participant Name as the Insured's details
- Enter the CMS Participant number as the File Root number in CMS
- Where possible, obtain the EFT details from the Insured to enable BSA to pay the client electronically (it is more efficient, effective and financially better for BSA)
- Email the form to **Shandell Vescovi** in the Finance department who will process the payment request within seven (7) days

Monitoring

Once the structural rectification has been completed and all payments have been made, a letter should then be issued to the owner advising the site will be monitored for a period of time. The Building Inspector will arrange site meetings for levels to be taken during this period and at the end of the period to determine if further monitoring is required or if cosmetic repairs may be undertaken.



For the purposes of the Policy, "Subsidence or Settlement" means movement of the footing system of the residential construction work which exceed the allowable tolerances prescribed under AS2870 "Table 4.1-Maximum Design Differential Movement" and "Appendix C Note 4 Slope deviation in excess of 1/150

TABLE 4.1

MAXIMUM DESIGN DIFFERENTIAL MOVEMENT, Δ ,
FOR DESIGN OF FOOTINGS AND RAFTS

Type of construction	Absolute maximum differential footing movement, Δ , as a function of span, mm	Maximum differential footing movement Δ , mm
Clad frame	$\leq L/300$	40
Articulated masonry veneer	$\leq L/400$	30
Masonry veneer	$\leq L/600$	20
Articulated full masonry	$\leq L/800$	15
Full masonry	$\leq L/2000$	10



[Rectification of Building Work Policy](#) - Effective 1 July 2010



[Rectification of Building Work Policy](#) - Effective 1 September 2004



[Click here to access the Rectification of Building Work Policy Explanatory Notes](#)



When assessing the performance of a dwelling regarding subsidence, Board Policy effective 1 September 2004 is to be used for dwellings approved prior to 1 July 2010

Declining a Claim

The File Manager must ensure the Insured is advised of their rights of review should a claim be declined wholly or in part. This extends to reducing or denying a claim because of the BSA's assessment of:-

- The validity of the contract termination
- The amount of contract retention
- Time limits associated with termination of the contract
- Time limits associated with lodgement of the claim
- The extent of the Scope of Work
- BSA's assessment of the amount of prepayment
- BSA's assessment as to whether the contract has been underpriced
- BSA's assessment of whether an exclusion should apply

File Managers must provide full details of the reasons for their decision so the Insured is in no doubt as to why the claim has been declined. This involves quoting the relevant Policy and/or Legislation upon which the decision is based.

Reviewable Decisions

If the File Manager declines a claim wholly or in part, Section 86 of the *Queensland Building Services Authority Act 1991* (the Act) is enlivened. The appropriate rights of review must be included in all declination or partial declination letters.

Relevant Forms and Templates

Click here to access the relevant forms and templates for subsidence claims.



[New Creditor for Finance 1 Form](#)



[BSA Alternative Accommodation Claim Form](#)



[Accommodation Calculation Spreadsheet](#)