

fact sheet

Asbestos in Residential Properties - Guidance to Real Estate Agency Principals, their Agents and Property Managers

IMPORTANT

The information contained in this document is general only and is intended to provide guidance as to some of the issues which may arise in relation to the presence of asbestos in properties being offered for sale or lease by real estate agents. It does not purport to be comprehensive. Accordingly, the Australian Capital Territory and the Office of Regulatory Services expressly disclaim liability to any person relying on the contents of this document.

Further and importantly, this document is not legal advice and should not be relied or acted upon as if it were. Agents and any other persons reading this document should obtain their own legal advice about their legal and other obligations. They should not rely on this document as a substitute for doing so.

For more information on asbestos go to: www.asbestos.act.gov.au

Real estate agents have a number of obligations under various laws in relation to asbestos in residential properties. These obligations relate to their duties of care to workers and clients and acting honestly, fairly and professionally including appropriate disclosure to potential buyers and tenants.

Asbestos

It is reasonable to assume that residential premises constructed before 1985 will most likely contain asbestos products. Homes constructed between 1985 and 1990 may also contain asbestos products.

For more information on the likely locations of asbestos go to: www.asbestos.act.gov.au/page/view/2417

For more information on asbestos more generally go to:

www.asbestos.act.gov.au/about_asbestos/what_is_asbestos

Loose-fill asbestos insulation (“Mr Fluffy”)

From 1968 to 1979, pure loose-fill asbestos was sold predominantly by one local company as ceiling insulation for residential and commercial premises in Canberra. This insulation is particularly problematic because it is raw asbestos which is easy to disturb and fibres can be inhaled.



In 1988, the Commonwealth Government (as then Government for the Territory) announced a program to remove the loose-fill asbestos insulation from Canberra houses at public expense.

For more information on the removal program, including its limitations, refer to the following fact sheets:

[Loose Asbestos Insulation in the ACT](#)

[The Three Phases of the Loose Asbestos Insulation Removal Program](#)

[How Do I know if my House had Loose Fill Asbestos Insulation Removed?](#)

Any person who is concerned about the possibility of loose-fill asbestos insulation in their home, or a home they are interested in purchasing, should engage the services of a licensed Asbestos Assessor to provide specialist advice on the presence of this material and the steps required when undertaking any erection, alteration or demolition works. A list of licensed Asbestos Assessors is available on the Environment and Sustainable Development Directorate website at the following web address: www.actpla.act.gov.au.

Asbestos Management - General

Legislation imposes obligations, including but not limited to those referred to below, on certain people in relation to asbestos.

Dangerous Substances Act 2004: a person in control of a dangerous substance has various obligations to take reasonable steps to minimise risks resulting from handling the substance. Asbestos is a dangerous substance and handling includes possessing, or otherwise having custody or control of, the substance.

Work Health and Safety Act 2011: (the WHS Act) a person conducting a business or undertaking has a primary duty of care to ensure, so far as is reasonably practicable, that the health and safety of its workers and other persons are not put at risk from work carried out as part of the conduct of the business or undertaking.

This duty to ensure health and safety requires the elimination of risks to health and safety so far as is reasonably practicable and, if elimination is not reasonably practicable, the risks must be minimised so far as is reasonably practicable.

Obligations on Agents

Real estate and managing agents should exercise due diligence by having processes in place for identifying and managing the risks from asbestos in relation to properties that they manage or are engaged to sell. The following are suggestions which agents should consider. Agents should seek their own legal advice about what is necessary in order to comply with their legal obligations.

Agents should ensure standard terms and contracts with clients require open and honest disclosure about all known risks associated with homes. Policies might also be developed to encourage owners to obtain risk assessments of homes, including in relation to asbestos of all forms.

Inclusion of these reports in contracts of sale and tenancy agreements will assist in making buyers and tenants aware of risks and how they can be managed appropriately.



To facilitate the identification of asbestos or the presence of asbestos on property, real estate agents should include in their initial inspection of the property proposed for management or sale questions such as:

- the age of the property
- the date of any renovations
- whether the client is aware of the presence of asbestos products
- whether the client is aware of any asbestos assessment report for the property
- whether the client is aware of whether the property was part of the loose-fill asbestos insulation removal program.

There are also a number of documents in a contract of sale (and also on the building file for a property) which may relate to asbestos, such as:

- certificate of completion for asbestos removal work (loose fill asbestos insulation) - indicating that fibres may still remain in wall cavities
- the lease conveyancing enquiry report - which will state “records indicate that a form of asbestos is or has been present on this Land” if loose-fill asbestos insulation was identified under the removal program
- some building plans, applications and removal control plans
- correspondence to home owners about loose-fill asbestos insulation.

Agents should familiarise themselves with the documents present on building files/contracts of sale in relation to program homes and their meaning in order to take reasonable steps to ensure risks are identified and managed. Note that asbestos will not be covered in the building and pest inspection report for a property as these are not generally conducted by licensed asbestos assessors.

If asbestos is considered likely to be present or identified on the property, the Principal of an agency is required to consider what is “reasonably practicable” to ensure the health and safety for their workers, clients and others.

If the likelihood of asbestos exposure is high, the Principal should exclude their workers and clients from approaching the site, and should advise the owner to engage a licensed Asbestos Assessor to provide advice on eliminating or managing the risk.

If agents are involved in strata management or property management they should develop long-term strategies to manage risks. Again, the Principal should encourage the Owners’ Corporation or owner to engage a licensed Asbestos Assessor to develop an asbestos assessment report for the property. If the owner declines to undertake this task, the Principal should have other policies in place to ensure they are taking reasonable steps to identify and manage risk appropriately, such as ensuring tenants are aware of the generic asbestos advice and that maintenance on areas that are likely to contain asbestos is undertaken and requests for maintenance on these areas are managed with priority.

Specific laws relating to asbestos in residential premises

Revised asbestos laws affecting the residential sector commenced on 1 July 2006. For more information on these laws go to: www.asbestos.act.gov.au/page/view/2391

These laws are designed to ensure greater awareness and protection for the industry and the community, and include:

- **asbestos assessment reports** for residential properties: while it is not compulsory to obtain an asbestos assessment report, if an owner has a current asbestos assessment report that has been undertaken by an A class licensed Asbestos Assessor, it must be provided in a contract of sale for the property, in any residential tenancy agreements (commencement and renewal), when engaging a tradesperson or maintenance worker to undertake building work and in a building approval.
- where there is no asbestos assessment report for a property, mandatory provision of the generic **asbestos advice** (about the likely location of asbestos in residential premises built before 1985) in a contract for sale and residential tenancy agreement. Click [here](#) for a copy of this Asbestos Advice.

Duty of Disclosure

An agent has a duty to the vendor to obtain the best possible price for a property. However, that duty is subject to overriding duties set out in Schedule 8.4 of the *Agents Regulation 2003*, which provides:

- (1) An agent must act honestly, fairly and professionally with all parties in a transaction; and
- (2) An agent must not mislead or deceive any parties in negotiations or a transaction.

Additionally, there are requirements in the *Agents Regulations 2003* regarding not misleading or deceiving a vendor or prospective purchasers, and there are offences in the Australian Consumer Law regarding misleading and deceptive conduct.

All agents should be aware that not disclosing a stigma they are aware of can constitute misleading or deceptive conduct. The criminal penalties for engaging in misleading or deceptive conduct can extend to \$1,100,000 under the Australian Consumer Law. In addition to criminal penalties, an agent may lose their ability to work as an agent in the ACT. A failure to disclose important information could result in rescission of the contract and possibly civil action against the agent.

Agents should disclose the presence of asbestos to all clients (potential buyers and tenants) as it may impact the property value and its use. If the property has an asbestos assessment report then clients can be referred to this and can understand how the property can be managed.

The degree of disclosure by a vendor's agent to a potential buyer is a matter for judgment in the individual case. Agents should keep evidence of how and when the presence of asbestos has been disclosed.

As a general rule, if an agent has any doubt about whether or not to disclose something, disclosure is the safer option. In specific situations agents should seek legal advice.

Further information about the general rules of disclosure by agents is available on the Office of Regulatory Services website at www.ors.act.gov.au

