

Statutory management

From 1 July 2017, the *Building Act 1993 (Act)* includes provisions empowering the Victorian Building Authority (VBA) to appoint a statutory manager to a private building surveyor's business in prescribed circumstances.

A statutory manager may carry out the powers and functions of a private building surveyor in strict circumstances as set out in s83B of the Act.

The VBA will exercise this discretion as a measure of last resort.

Who should read this fact sheet?

This fact sheet should be read by private building surveyors who may be unable to carry out their functions. It ensures they are fully aware of their responsibilities, what to do, and where to get further information or advice.

What is statutory management?

A statutory manager may carry out the powers and functions of a private building surveyor in strict circumstances as set out in the Act.

How will statutory management affect my business?

If a statutory manager is appointed, the private building surveyor and any partner, officer, employee or agent of the private building surveyor cannot participate in that business, except under the direct supervision of the statutory manager.

When can the VBA appoint a statutory manager?

The appointment of a statutory manager by the VBA is a regulatory intervention measure of last resort.

The VBA may appoint a statutory manager where the private building surveyor:

- has requested the appointment of a manager
- has his or her registration under the Act has been suspended or cancelled
- has died
- is in prison

- has become a represented person within the meaning of the *Guardianship and Administration Act 1986*
- has become insolvent under administration
- has ceased to carry out the functions of a private building surveyor.

The VBA may only consider appointing a statutory manager if one or more of these circumstances arises and the VBA is satisfied an appointment is necessary to protect the interests of other persons.

The VBA will consider whether to exercise its discretion to appoint a statutory manager based on the risk based regulatory approach of the VBA. Any such considerations will assess regulatory integrity, cost and benefit to the Victorian public.

How will statutory management affect my clients?

The statutory manager of a private building surveyor's business may not exercise any of the powers conferred by the Act without client consent.

A client who does not consent to statutory management will be taken to have terminated the private building surveyor's appointment pursuant to s83H(3) of the Act.

A client that terminates the appointment of a private building surveyor under these circumstances may recover all or part of money paid to the private building surveyor in a court of competent jurisdiction.

A client who consents to statutory management may be subject to additional fees and costs associated with any new works that are identified.

How will statutory management affect liability?

A statutory manager or person acting at the direction of a statutory manager is not liable for anything done or omitted to be done in good

faith, in accordance with s83K of the Act.

Any proceedings or transactions undertaken by the statutory manager on behalf of the private building surveyor's business are undertaken in the name of the private building surveyor in accordance with s83J of the Act.