

Finalising building permits following the death of a private building surveyor

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The VBA has received several queries recently in relation to the requirements and processes involved in dealing with building permits issued by a private building surveyor who has since passed away.

To assist building surveyors and owners who are trying to finalise these permits following the death of a private building surveyor, the VBA has prepared the following advice on the steps involved in transferring functions to a second building surveyor.

- The owners of properties that have building permits that have not been finalised will need to appoint another building surveyor (private or municipal) to complete the functions of a private building surveyor (PBS) who was appointed as the relevant building surveyor (RBS) for the building work. The second RBS will have their own fees schedule so owners are advised to seek quotes. These owners **must** seek the VBA's written consent to terminate the appointment of the PBS before the new building surveyor can be appointed to carry out the functions as the second RBS.
- In circumstances where a municipal building surveyor (MBS) has issued the building permit, the consent of the VBA **is not** required to terminate the appointment of an MBS.
- Once the VBA has confirmed that it consents to the transfer of functions to the new PBS or MBS (which is merely an administrative function in cases where the appointed RBS has died), the owner is free to appoint the new PBS or go to the MBS.
- Owners should be made aware that they and the second PBS are breaching the *Building Act 1993* (the Act) if the second PBS is appointed before the VBA has consented to the termination of the first PBS.
- Any fees the owners (or their agent) have paid to the deceased PBS for the application of a building permit and/or inspections that have not been carried out will be a civil matter between the owner and deceased estate to resolve.
- The owners can obtain access to approved documentation and inspection information by contacting the deceased PBS' company or through the estate; otherwise the relevant Council will hold copies of the approved building permit documents where the PBS has submitted the documentation to Council in accordance with s30 of the Act.
- The second PBS, pursuant to section 80 of the Act, must notify council of their appointment.
- The second RBS is also required to include details of their appointment when reporting their building permit levy returns to the VBA.

- There is no requirement for the owner to obtain a new building permit or the second RBS to issue a new building permit if the building permit is still active. The second RBS may simply amend the existing building permit to reflect the new details if the second RBS deems it necessary.
- If the building permit has lapsed then a new building permit would be required to carry out the remainder of the building work to be completed. New fees and a levy would be applicable in this case.
- Pursuant to section 30 of the Act, if a second PBS issues an amended building permit, a checklist pursuant to s30A of the Act, including prescribed documents relating to that amendment and any other amended permit documents are required to be provided to the relevant council.
- If a building permit has already been issued and levy paid to the VBA, where the permit has not lapsed, the applicant does not need to pay the levy again.
- If an application for a building permit was made to the first PBS but the building permit had not been issued, or the building permit issued has lapsed, then a new application for building permit is required. The transfer of functions to the second RBS includes the carriage of any building permit(s), directions to fix, building orders or building notices issued by the deceased PBS.
- If the original permit is still valid, then it can be extended by the second RBS. Once appointed, the functions of the first PBS have been transferred to the second RBS and this includes extending the permit.
- It is recommended that building surveyors considering taking on functions of the first PBS, document the status of the building work already commenced. This will be important from a liability point of view, for their role of completing the unfinished building work. This documentation should be completed in conjunction with the owner and the builder; agreed to; and signed by all parties.
- Building surveyors may choose to get advice from their professional indemnity insurance provider on what considerations should be made when deciding whether to take on the functions of the first PBS.