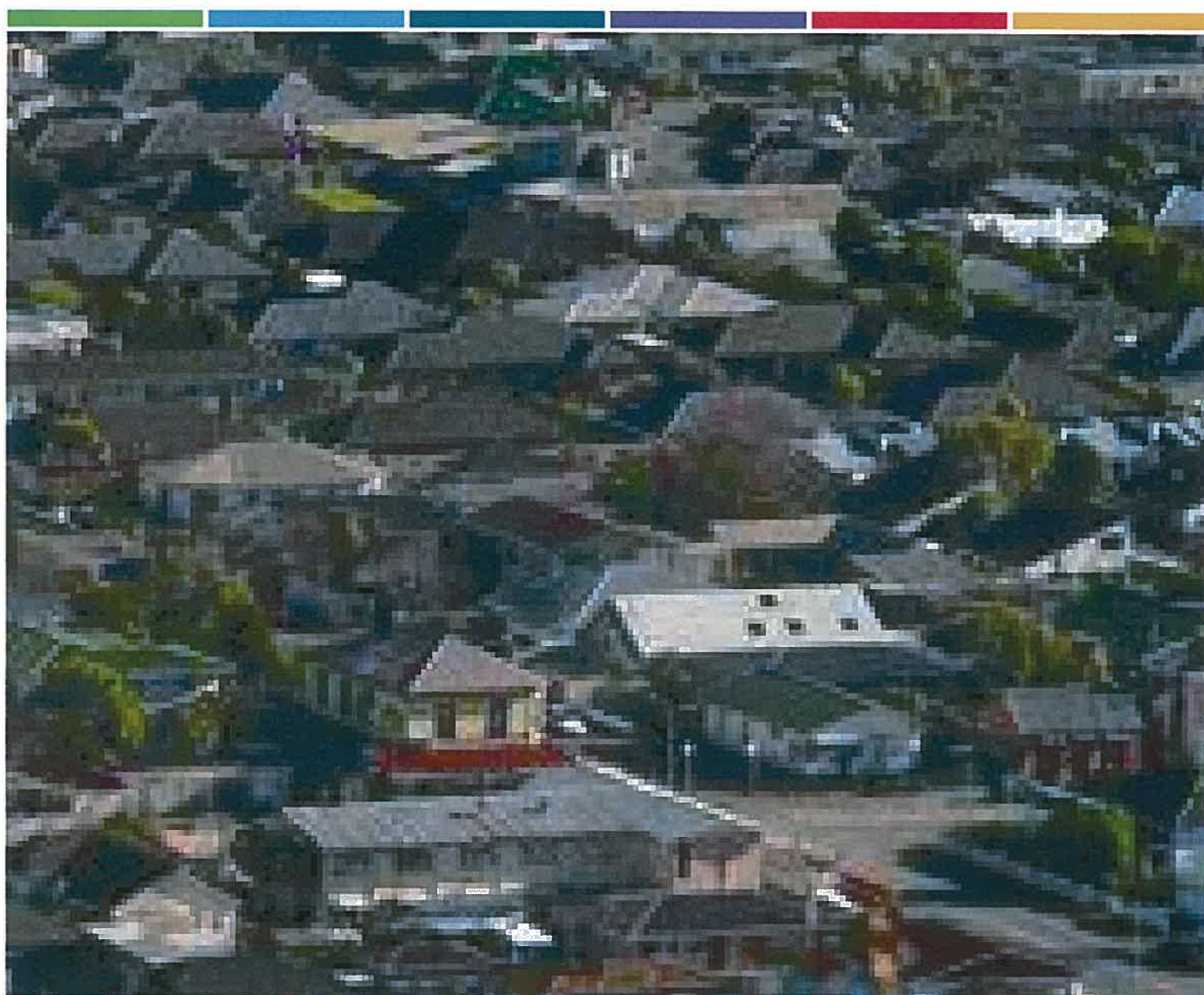


Cash Settling

Earthquake damaged residential properties in Canterbury



THIS BOOKLET WAS PREPARED BY THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT (MBIE) AND THE CANTERBURY EARTHQUAKE RECOVERY AUTHORITY (CERA) WITH INPUT FROM THE EARTHQUAKE COMMISSION (EQC), CHRISTCHURCH CITY COUNCIL (CCC) AND WORKSAFE.

DISCLAIMER

Please note the material contained in this information booklet is general in nature and is not financial or legal advice. The type of damage to the property, insurer and the insurance policy will differ greatly and it is not possible to cover every scenario in this guidance. The approaches of insurers can vary on a case by case basis depending on the circumstances of the loss. The purpose of this guidance is to highlight issues which may be relevant to a cash settlement and which may not be immediately obvious to a home owner. The document is non-binding and should not be relied upon as determinative of any parties rights and obligations under a specific insurance policy.

If there are any questions and queries about rights and obligations under an insurance policy MBIE recommend that you take legal advice.

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INNOVATION & EMPLOYMENT**
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Christchurch
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Canterbury Earthquake
Recovery Authority
Te Mana Haumanu ki Waitaha

EQC
EARTHQUAKE COMMISSION
Kōmihana Rūwhenua

Cash settlement of your earthquake damaged home can be a complex process.

As a home owner thinking about cash settlement, you have many things to consider.

This booklet is designed to help you make informed decisions and guide you through the process. It will help you to ask your insurer or the Earthquake Commission (EQC), and your bank the right questions. Just as importantly, it outlines what your obligations and responsibilities are after getting a cash settlement.

Your entitlement and the process of settlement will depend on the wording of your insurance policy. There are a significant number of different policy wordings in the market. This document should not be relied upon as advice on your policy entitlement. It provides high level guidance and individual circumstances as the wording of insurance policies can vary significantly. It is important that you do seek professional legal advice as a settlement agreement has far reaching effects. Take the time to fully understand what your responsibilities and obligations are and clearly understand the risks involved. This is especially important if you are signing a full and final agreement, which shifts the risk (such as the cost of repairing any additional damage or unexpected building conditions) on to you.

Your home is a large financial commitment. Making sure you protect the value of the property now and in the future is very important. The best way you can do that is by doing some due diligence, engaging suitably qualified professionals to ensure you know the extent of damage to your home, the cost of repairing that damage or the cost of rebuilding your home, and any potential unknown factors that could lead to additional costs, and then ensuring any repairs comply with the law and are of a good standard. While it may be tempting to spend a cash settlement on something other than house repairs, you need to preserve the value of your property and imagine yourself trying to sell an earthquake-damaged property in 5 or 10 years' time.



A range of services can support you through this process. See Part 6, page x.

Right, let's begin ...

The order of this booklet reflects the different stages in the cash settlement process. You can read it all or skip to the parts that are most relevant to the stage you are at.

You are likely to have heard a lot about how some insurers are cash settling outstanding earthquake claims. What does this really mean and what do you need to know about it?

Cash settlement means that you (or your mortgage lender) are paid a sum of money to settle your insurance claim. You may then organise the repair or rebuild of your earthquake-damaged home, rather than having EQC or your insurer manage it for you. For some homeowners the thought of a cash settlement can be daunting, but it can offer some important benefits. For example, with a cash settlement, you can choose:

- when to carry out the repairs or rebuild;
- who your contractor will be;
- how much repair work and other improvements you want done at the same time. Your insurer and/or your mortgage lender may place limits on how much is possible in the terms of settlement.

There are also risks associated with this approach, including:

- that the full extent of the damage was not discovered at the time of the cash settlement;
- increased construction costs;
- scope on which the cash settlement was made was inadequate to remedy the defects in the building;
- risks around contractor performance and insolvency.

As you read this booklet, keep in mind what you are entitled to for your repair or rebuild. This will be set out in your Policy or the EQC Act.



If your settlement is 'under cap' (generally, that is, costing less than \$100,000 + GST for each event), the Earthquake Commission Act 1993 sets your entitlements.

If your insurer is settling your claim, your insurance policy sets your entitlements.

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PART 1

Getting informed

How is a cash settlement calculated?

The basis for calculating the cash settlement you receive will be determined by the policy. You need to read the policy and seek advice on your entitlement. EQC or your insurer calculates the cost based on an assessment of damage that matches what you are entitled to under the Earthquake Commission Act 1993 or your insurance policy. You can find this assessment in your scope of works (which may also be referred to as scope of damage).

What earthquake damage does EQC or your insurer cover?

Under the Earthquake Commission Act 1993, EQC provides three types of cover: Home, Land and Contents. Your insurer may cover other items that the Act does not deal with, such as fences and driveways. Check with your insurer to see what items are covered by your policy.



HOME

EQC generally insures damage up to \$100,000 + GST for each earthquake event (these claims are 'under cap').

Insurers pay for damage that exceeds the EQC 'cap' amount, generally over \$100,000 + GST for each earthquake event (these claims are 'over cap'), or the amount stated in your policy.



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EQC insures damage up to \$20,000 + GST for each earthquake event (unless your policy specifies a lower amount).

Insurers pay for damage over \$20,000 + GST for each earthquake event or the amount stated in your policy.



LAND

EQC is the only one that insures land damage.



OUT OF SCOPE

Items not covered under the EQC Act.

Insurers pay for other damage that is not covered under the EQC Act and is covered under the policy (eg to fences and driveways).

Get informed

STEP 1. Understand the scope of the works to your property

EQC or your insurer will give you a copy of its assessment of damage to your home. Read it through, carefully checking that it covers all earthquake damage to your property. If your home has structural damage, ask EQC or your insurer to give you a copy of the report on its investigations into this damage. You can also request a full copy of the scope of works for your property from EQC under the Official Information Act, and/or the Privacy Act

If you are unsure about whether the assessment includes all earthquake damage to your home, get an independent assessment. For more information on independent advice and assessors, [see page x](#).



QUESTIONS TO ASK EQC OR YOUR INSURER

- Is the cash settlement offer based on the most recent scope of works?
- May I have a copy of the costed scope of works? (N.B. if you have trouble getting a copy, you can get one from EQC by making a request under the Official Information Act 1982 or from your insurer by making a request under the Privacy Act 1993.) If EQC is still considering managing your repairs it is not required to give you its repair cost estimate until it has either entered into a contract for the repair of your property or it has decided to cash settle your building claim.
- May I have a copy of any reports that you (EQC or your insurer) have for my property, including technical reports?
- Does this cash settlement include an amount for any land damage, or is that separate?
- Is it a full and final settlement? What happens if I later discover further damage or the costs are higher than the amount I get in the cash settlement?

STEP 2. Read your insurance policy

The basis for calculating the cash settlement you receive will be determined by the extent of the damage to your home and other items not covered by EQC that are covered under the policy. You should read the policy and seek advice on any entitlement.

If you don't have a copy of your insurance policy and schedule, ask your insurer to give you the relevant policy that applied at the time of the earthquake.

As you read it, **make sure you understand what you are entitled to under the policy that you had at the time of the damage.** For example, does your policy include project management and other expert fees, stress benefits, accommodation allowance, storage costs and/or a landscaping allowance? Any settlement offer should list the various amounts that your policy entitles you to. It should cover professional fees if they are required and not already incurred. Your policy may, depending on the extent of the damage to your insured property, allow for the cost of:

- geotechnical and structural engineers
- land surveyors and quantity surveyors
- architects and draughtsmen – design fees
- project management
- building and resource consents.

QUESTIONS TO ASK YOUR INSURER

- May I have a copy of my policy and policy schedule that were in place at the time my home was damaged?
- Is it a full-replacement policy, sum insured, or something else?
- Is my home safe to live in?
- Do I have to cash settle?
- Does the cash settlement include other entitlements under my policy? For example, does it cover professional fees if required? Does it cover accommodation costs and, if so, for what length of time?
- Will you do more invasive testing if I am concerned about what may be behind a wall or my foundations? (If you are concerned that assessments carried out to date have not picked up all the damage to your home, it is important to ask this question because the cash settlement is based on what is assessed.)
- Does the cash settlement include foundation repair costs or can you work out these costs later after the rebuild or repair has started?
- What obligations do I have under the terms of settlement? (For example, if you are getting a total rebuild, ask, “Do you require the home to be demolished? If so, who has salvage rights?”)
- What insurance cover can I get if I agree to the cash settlement but I do not go ahead with the repair or rebuild?

Talk to your legal advisor or Residential Advisory Service (RAS) if:

- you are unsure of what you are entitled to under your insurance policy. They can also tell you how the courts have interpreted policies in recent cases.
- your insurer has ever offered you an insurer-managed build and you would still like that option.

STEP 3. Check with your insurer about insuring your home in future

Once you cash settle, your insurer will review the insurance policy on your current house and may change policy or policy condition as part of the final settlement. Talk to your insurer about ongoing insurance for your home and about contract works insurance to cover risks during the repair or rebuild. This will particularly apply if the repairs are not carried out in accordance with the Building Act.

? QUESTIONS TO ASK YOUR INSURER

- If my repair or rebuild is not completed by the next time my insurance policy is due for renewal, what will my position be?

STEP 4. Talk to your bank or mortgage lender

It is important to talk to your mortgage lender as they have an interest in your property. They will want to be sure that your property keeps its value and that the standard of repairs is good, or that you have enough equity in your property to carry out a rebuild.

If your bank is using your home as security for a loan, it must consent to the cash settlement with your private insurer as they have an interest in the property. Depending on your individual circumstances, your bank can advise about your loan obligations. You can also discuss with them your options, including whether you can borrow any additional funding if you need it.

*Talk to
your bank
early*

? QUESTIONS TO ASK YOUR BANK

- Are you using my earthquake damaged property as security for my lending?
- If I repay my home loan with a cash settlement, will that make it more difficult for me to borrow again when I repair or rebuild?
- Will I have to pay any fees or charges if I pay off my home loan?
- What information does the bank need and when?
- If my home loan balance is lower than the cash settlement, what happens to the rest of the money when I repay my loan?
- How do I receive the money from my settlement?
- If I want to do some renovations or improvements at the same time as the repair or rebuild, what do I need to do about my home loan?

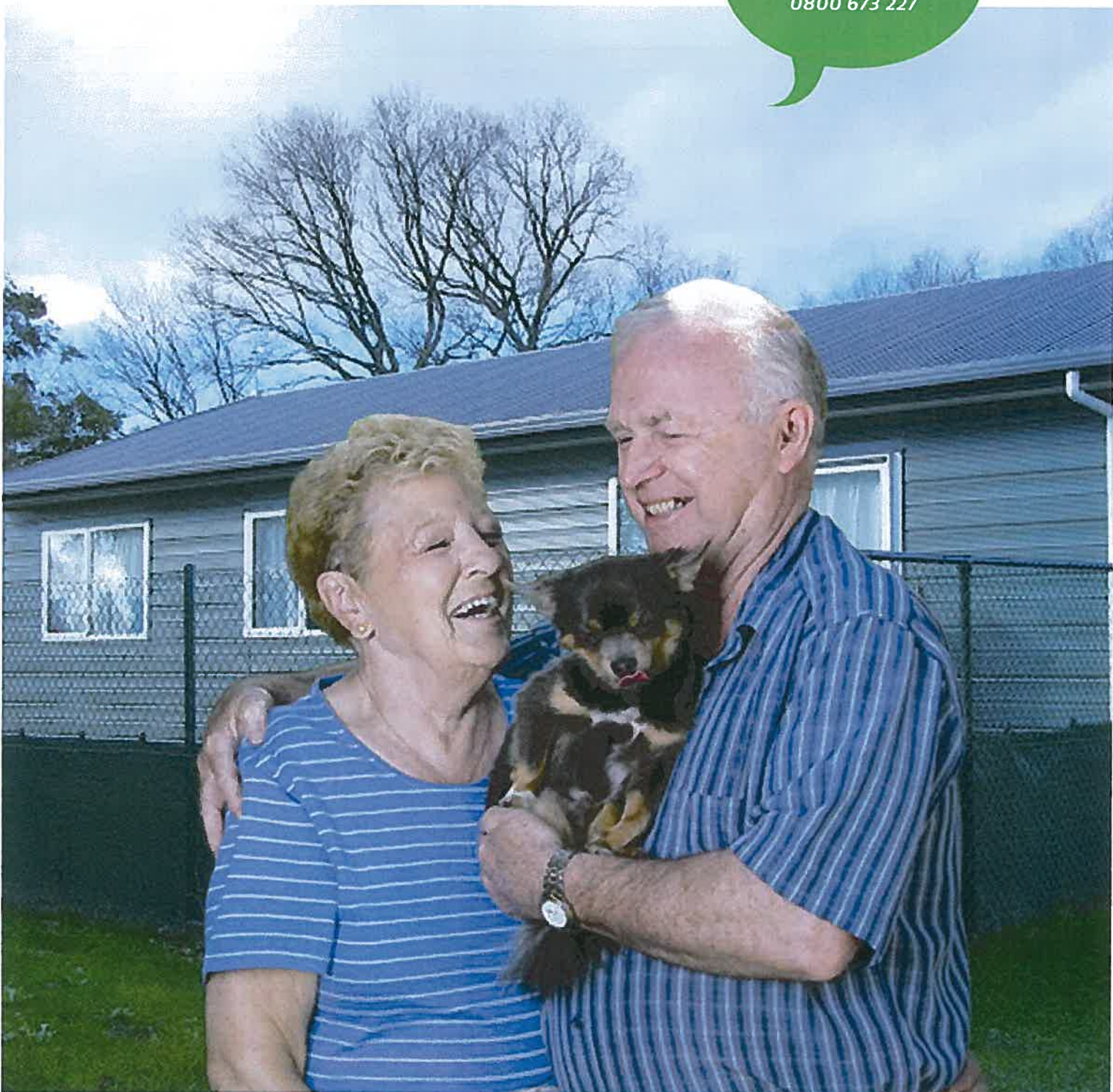
If you have concerns about what your bank tells you, ask to speak to one of their earthquake recovery specialists.

STEP 5. Find out about help with paying for temporary accommodation

Talk to the Canterbury Earthquake Temporary Accommodation Service (CETAS) to find out what help you may be able to get if you are cash settling. Ask CETAS what your options are if you think your accommodation allowance may run out before your building work is finished.

Talk to CETAS.

*Freephone:
0800 673 227*



What do I do if my home is part of a multi-unit building?

If your home is part of a multi-unit building, you will need to work with your neighbours, your and their insurers, and EQC to deal with the shared ownership structure. It is important you understand your ownership structure and your obligations to the other owners.

If you have a cross-lease, you will likely have to repair or rebuild your home or unit. The other lessors/lessees can enforce this even after you sell.

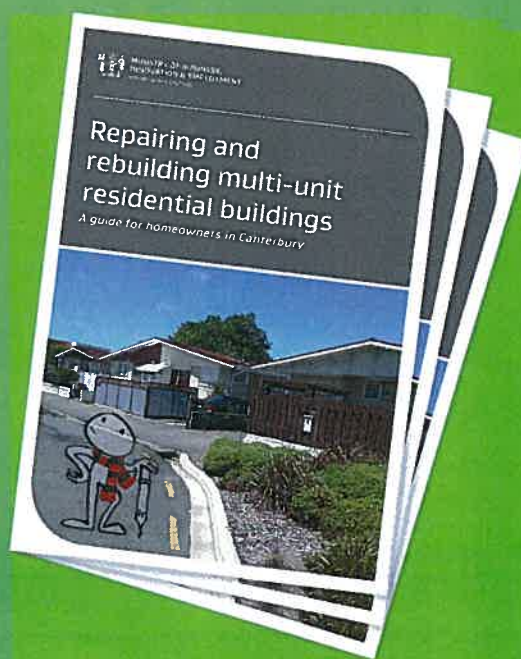
! IMPORTANT THINGS TO DO ARE:

- Get a copy of the memorandum of lease;
- Talk with your neighbours, in the multi unit building about what they are intending to do;
- See a lawyer.

If you have a cross-lease and your property is to be rebuilt, it could be the ideal time to find out if your property would be of more value as a fee simple title rather than leasehold. Discuss this possibility with a lawyer and perhaps a land surveyor. Remember, there is a cost associated with this that won't necessarily be covered under your policy

i See the homeowners guide for *Repairing and rebuilding multi-unit residential buildings*.

www.building.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/canterbury-rebuild-guide-for-homeowners.pdf



Getting informed



- Get informed and ask for advice early.
- Check that EQC or your insurer has assessed your property and provided you with a scope of works.
- Know what the damage is to your home. Check with a professional if you have doubts.
- Understand what your insurance policy entitles you to. If in doubt, ask your insurance representative, your legal advisor or RAS for advice.
- Talk to your bank and understand your financial obligations.
- Contact CETAS if you think your accommodation allowance may run out before your building work is finished.
- Understand how much insurance cover you will have in the future.
- If you own a multi unit building understand your ownership structure and your obligations to other owners.



It is important to have a good working relationship with your advisors, insurers and bank. If you are finding it difficult speaking to one person in the team, don't be afraid to ask to speak to someone else who may be able to explain things better to you.

PART 2

What do I need to understand about the cash settlement process?

Cash settlement with EQC for building damage

The Earthquake Commission Act 1993 allows EQC to choose to settle building claims by either:

- making cash payments; or
- repairing or replacing earthquake-damaged buildings.

Some of the situations in which EQC is likely to choose to make a cash payment for building damage are where:

- the cost of repair is estimated to be under \$15,000 and your home was not structurally damaged
- significant pre-existing building issues unrelated to earthquake damage can be addressed at the same time as the earthquake damage covered by EQC (for example, buildings with weathertightness concerns).
- there is significant deferred maintenance
- issues are discovered after an EQC repair has started

The amount of the cash settlement is based on the work needed to fix the earthquake damage. EQC will only address damage or issues not caused by the earthquake to the extent that it is necessary to do so as part of a lawful repair of the earthquake damage.

What are the steps involved in getting a cash settlement for building damage?

EQC reviews your scope of works and calculates the cost of your repair or rebuild at current rates. In most cases, it will need to do a further site assessment.

Where appropriate, an EQC settlement includes a builder's margin and a project management fee, which you can use to employ a contractor to manage earthquake repairs on your behalf if you wish.

EQC will send you a settlement statement, which includes:

- the total of your cash settlement for earthquake damage to your building
- a scope of works detailing the earthquake damage to your building that has been identified
- any amounts that EQC has already paid to you such as for urgent repairs
- the amount of your excess deduction

If you believe that EQC has missed damage or the cash settlement amount is not fair and reasonable, you can ask for a review (see page 16).

EQC will pay your cash settlement to you, or to your mortgage lender if you have a mortgage.

Can I get my claim reviewed?

If you believe EQC has missed damage or the cash settlement amount is not fair and reasonable, you can ask for a review.

To assist with your review you should provide EQC with an independent quote or report from a relevant trade professional. Any quote or report should:

- detail the location and extent of the damage, and the estimated cost of repair
- state why any additional damage it identifies, which was not recorded in the EQC scope of works, is considered to be earthquake-related and be accompanied by comprehensive photographs showing the location and extent of the additional damage
- include the GST number of the contractor who has provided it
- contain a room-by-room breakdown of repair costs, measurement of the damaged areas and the cost per square metre of each repair strategy.

If the quote relates to a repair strategy that is different to the strategy proposed by EQC, it must also state why EQC's repair strategy will not repair the building to the standard required by the EQC Act.

You can either email this information to info@eqc.govt.nz or post it to:

**Earthquake Commission
PO Box 311
Wellington 6140**

As the home owner, you are responsible for the costs of gathering information to support your review application. However, EQC may cover some costs if it asks for a specific building report or information and, as a result, finds earthquake damage that it did not cover in its scope of works.

How long do I have to complete the repair or rebuild after accepting the cash settlement?

Although EQC does not set a deadline, you should use the cash settlement payment to repair or replace your damaged property as soon as possible. Talk to your bank as uncompleted repairs may affect your mortgage. Getting the work completed as soon as possible may reduce the risk of costs escalating. EQC is not responsible for increased repair costs due to your delay in carrying out the repairs.



It is important to be aware that a home owner's EQC cover could be affected in a future claim if scope of works documents from the past showed that the home owner had not used an earlier cash settlement to repair or rebuild their damaged home.

Keep invoices and any other records that show you have used your EQC cash settlement to pay for repair work.

What happens if I find more damage during the repair?

Tell EQC immediately and stop work until EQC has made an inspection.

What do I do if I am unsure of what building issues my home has, other than earthquake damage and why EQC has chosen to cash settle?

If EQC decides to cash settle your home, it will tell you the reasons for that decision. For further information about the condition of your home unrelated to earthquake damage you should talk to a relevant trade professional, for example, a licensed building practitioner or a home inspection company. They should be able to give you details of any concerns you had about your home before the earthquakes and any deferred maintenance that needs to be done. You can also ask for a review of the amount of the cash settlement offer ([see above](#)).



*Talk to a
relevant trade
professional*

What do I do if I would like to sell my property with earthquake damage?

Talk to your legal advisor. You will also need to consider:

- If the claim has not been settled with EQC, the buyer will likely need a Deed of Assignment for the claims, including the land claim of the property.
- If the claim has been settled but the repair has not been done, tell the potential buyer.
- If the claim has been settled and the repair has been done as part of the Canterbury Home Repair Programme, it may be wise to assign claims to the new purchaser in case further damage is identified later. Give the buyer copies of your scope of works, signed completed works document, and any technical reports provided by EQC or obtained yourself.



*Talk to
your legal
advisor*

Cash settlement for land damage with EQC

EQC generally settles land damage claims by making a cash settlement. An EQC land settlement can include a settlement for:

- physical damage to structures such as bridges, culverts or retaining walls
- visible land damage such as cracking or localised ponding
- land damage that is not visible, such as increased vulnerability to liquefaction (ILV) or to flooding (IFV).

What should I do with my cash settlement for land damage?

For some kinds of land damage, it is impractical to fix or remediate the land. However, if the land damage can be remediated, it is important that you use the cash settlement to repair or replace the damaged land because:

- some repairs may be necessary to make your home safe, such as repair of retaining walls that support or protect your home
- your insurance cover with a private insurer may be affected in the future if you do not use the cash settlement for this purpose
- in some circumstances, your future entitlement to EQC cover may be affected if your payment is not used for this purpose
- it may be difficult to sell your property in future if the work has not been done.

If you have a mortgage, the EQC payment for land damage may go directly to your bank.

You may need to get resource consent for your land repair. You should contact your local council for more information. You will also need to give them information about the type of land damage and the proposed repairs available. So, before you contact the council, you may also need to talk to your private insurer, mortgagee and the contractor who will do the repair, and a geotechnical engineer. EQC is unable to recommend contractors to do your repairs, but suggests that you get two or three quotes for the work, if you are not planning to do the repairs yourself.

Environment Canterbury and your local council have worked together to streamline the consent process to make it as easy as possible for you. If you live in:

- the Christchurch City Council area, visit the land repair page at www.ccc.govt.nz/landrepair to find what may, or may not, be required as you continue with your land repair
- the Waimakariri District Council or Selwyn District Council area, you will need to contact them directly for information.

If your property has Increased Flooding Vulnerability (IFV) land damage, you could consider using any land cash settlement amount (calculated on the basis of Diminution of Value (DOV), together with any cash settlement you may have for separate building damage, to reduce the effects of any future flooding. However, you are under no requirement to do so. If you do not use the DOV cash settlement to deal with the increased flooding vulnerability, it will not affect your future EQC cover for the property provided insurance is in place.

Seek legal advice before assigning any EQC land claims to your insurer.

Can I get my land claim reviewed?

If you do not agree with the decision, or you have new information you believe may support your claim, you can ask EQC to reconsider. As a result of this review, EQC may:

- stay with its original decision
- overturn its original decision
- make a new decision for a different reason, which it had not previously considered.

You can send your request for a review with supporting information to:

Land Challenges
PO Box 311
Wellington 6140

Alternatively you can scan the information and email your request to info@eqc.govt.nz



For more information about the claim review process:

- ***go to EQC's website at www.eqc.govt.nz or***
- ***call EQC on 0800 DAMAGE (0800 326 243) between 7am and 9pm, Monday to Friday, or between 8am and 6pm on Saturday.***



Cash settlement with a private insurer

As home owners have different insurers and policies, we can't tell you exactly what cash settlement process you will follow. Instead, the information below gives you an overview of the general process and includes some questions you may wish to ask your insurer to help you understand how your insurer does things.

Remember, insurers have different settlement processes so you should talk with your insurer early on so you can be sure of what to expect.

HERE ARE SOME BASIC STEPS YOU CAN EXPECT WHEN CASH SETTLING WITH YOUR INSURER

- STEP 1.** Your insurer will give you their estimated cost of your home repair, replacement, or calculation of indemnity value.
- At the same time, they should give you all supporting documentation about your earthquake-related damage.
- STEP 2.** You meet with your claims supervisor to discuss your claim.
- STEP 3.** You talk with your insurer about any differences between the scope or costings and what you have found out.
- STEP 4.** You get independent advice from a lawyer, quantity surveyor, engineer, or builder.
- a.** Make sure that the scope of works includes all damage to your home.
 - b.** Get your own quotes on the cost of repair or hire a quantity surveyor to calculate it.
- STEP 5.** If you agree to the offer, any EQC payments and excesses you have received will be deducted from the cash settlement amount. For example, if your cash settlement is \$500,000 and EQC pays you \$100,000 when your claim is assessed as over cap, your cash settlement becomes \$400,000, less your EQC excesses and insurance excess, emergency works or other investigation costs.
- STEP 6.** Your next step depends on your settlement offer.
- a.** If it is a full and final settlement of your earthquake claim(s), you need to sign a discharge form. This means your insurer may have no further liability if you discover damage that has not been identified before or if your costs increase beyond your budget. However, this depends on the words in the discharge.
 - b.** You may need to sign a statutory declaration, or present a build contract that you intend to rebuild or repair your home.
 - c.** You may need to sign a Deed of Assignment, assigning claims from EQC to your insurer. Check if this is for your claims for both land and home. **Discuss with your legal advisor before signing.**
 - d.** If it is a partial settlement where the insurer carries out some of the repair work (eg, on the foundations), you do not sign the discharge form until all works are completed. Again, this depends on the words in the discharge.
- STEP 7.** Once you are satisfied with the amount and terms of your settlement, your insurer pays the agreed amount to your nominated bank account or by cheque, or pays it to your bank or mortgage lender if you have a mortgage.

? QUESTIONS TO ASK YOUR INSURER AT THIS STAGE

- What is the basis for the cash settlement (replacement or indemnity)?
 - How is replacement value calculated?
 - If relevant, how is indemnity value calculated?
 - What are terms of the settlement agreement?
 - What if I find further damage to my home?
 - Is a contingency for unknown costs included in the offer? If so, how is it calculated?
 - If my home needs foundation repairs, how have these been calculated?
 - Does the settlement include project management fees (if you are not planning to use a group home builder)?
 - How long will you (your insurer) continue to insure my house while I make arrangements to repair the damage?
 - Who will demolish the house if I am rebuilding?
 - What is your (insurer's) policy on demolition if I am not planning to demolish the house immediately or am planning to do it at a later date?
 - Can you (your insurer) provide an engineer to check the safety of my home and provide a habitation report?
 - Where can I get contract works insurance and other necessary cover for the repair or rebuild?
 - If I am rebuilding, what liability cover can I get?
 - Will you (your insurer) require me to sign a Deed of Assignment? This will transfer the benefit of the EQC claims from you to your insurer. If so, is this for both my land entitlement and my building entitlement?
 - What does a full and final discharge form mean?
 - Will you (your insurer) require me to sign a statutory declaration that I intend to rebuild or repair the home?
- Note:** it is a criminal offence to make a false declaration. You must comply with the terms and conditions your insurance company has placed in the statutory declaration.
- Do you pay the cash settlement directly to me, or to my bank if I have a mortgage?
 - If I bank the cheque you send me, can I still negotiate the amount of the settlement?

Discuss any concerns you have with your insurer and legal advisor before signing

How do I dispute my claim?

If you are dissatisfied with the outcome of all or part of your claim, you can dispute your claim in three steps:

1. Ask for access to your insurer's internal complaints system. A senior person, who hasn't previously been involved, will review your claim.
2. If you are not satisfied with a result of the review, you can ask your insurer for a letter of deadlock and take your dispute to the insurer's dispute resolution service. All insurers must belong to a dispute resolution scheme. You can find out which dispute resolution service your insurer belongs to by asking your insurer or checking on the financial service providers register www.business.govt.nz/fsp.
3. Seek legal advice as to other dispute options, such as taking legal action.

Talk to your legal advisor or RAS if you need help

Do I have to cash settle?

Some insurance policies have a clause that allows the insurer to pay the cash equivalent of the cost of the repairs or rebuild. **Check what your own policy says.**

However, you do not have to sign an agreement stating you accept that the claim is fully settled, unless you agree to a 'full and final' settlement. It is especially important that you understand what signing such an agreement will mean if you intend to repair or rebuild your home: in effect, this agreement shifts the risk (such as the cost of repairing any additional damage or unexpected building conditions) on to you.

If you have agreed with the insurer to complete the repairs or rebuild (either as part of the cash settlement, or as required by the policy), you are legally obliged to do so. If the repairs or rebuild are more expensive than anticipated at the time of the cash settlement you will need to meet the costs. Similarly if the repairs or rebuild are completed for less than the cash settlement, there is no obligation to reimburse the insurer.

Some insurer will not require you to cash settle if it has already chosen to manage the repair or rebuild. You should also talk to your insurer about your options if you, or someone in your household, has a vulnerability. If your insurer has changed its position from a managed repair or rebuild to a cash settlement, get legal advice.

If I decide to cash settle, does it have to be a 'full and final' settlement?

Insurers differ in their policies. To reach a full and final settlement, you would have to agree with your insurer that the settlement is adequate compensation under the policy. **Talk to your insurer and independent advisors about whether this is the right option for you.**

You may find it gives you the freedom to:

- buy an existing house
- rebuild on a new site
- rebuild a larger or smaller house
- make alterations to your existing house at the same time as repairing or rebuilding.

But you should check the terms of the settlement offer to be sure these options are open to you.

Settling on an 'ongoing repair basis' may be a better option if:

- you are planning to repair or rebuild your house to be as it was before the earthquakes on the same site, and
- your policy states that your insurer will pay the cash equivalent of the cost of the rebuild or repair.

If your settlement is on an ongoing repair basis, your insurer must meet the costs of the repair or rebuild. You get a cash settlement that is the estimated value of those costs but, if you later face extra legitimate costs that were not expected and would be covered under the policy and the terms of the discharge you can go back to your insurer and ask for further payment. In this case, your insurer may include time limits for completing the repair or rebuild in the settlement agreement.

*Talk to your
insurer and
legal advisor*

Once I cash settle, do I have to go ahead with the repair or rebuild?

The terms of 'full and final' settlements differ between insurers. Your settlement may fit with what you are entitled to under your insurance policy or another form of agreement accepted in addition to your policy entitlements.

If you sign a statutory declaration that you intend to repair or rebuild the home, you must comply with the terms and conditions your insurance company has placed in the statutory declaration. **Discuss any concerns you have with your insurer and legal advisor before signing.**

What is an indemnity value cash settlement?

The basis of calculating the indemnity value of your property should be set out in your policy. This will vary, for example it may be the depreciated replacement cost if you intend to repair, or loss of value if you do not. Some policies settle on the basis of indemnity value when the owner has no intention of repairing the property. They only receive the indemnity value of their property if their insurance policy specifies that and the insurer applies that provision.

If I decide to cash settle on an 'ongoing repair basis', can I choose the method of my repair or rebuild?

Any repair method you use must meet the requirements of the Building Act 2004. Ask an independent advisor about what the best repair method is for your home. Discuss your preferred method with your insurer before going ahead with it as your choice may affect how much they pay and whether you can insure your house in future.

If I cash settle, will I have to pay for any unexpected costs in my repair or rebuild?

It depends on your policy and the method you and your insurer choose to settle the claim. If you intend to repair or rebuild your home, first speak to your insurer about whether the terms of the settlement cover unexpected damage that may only come to light after the repair or rebuild begins. You may be able to agree with your insurer that:

- you will approach them on an 'as incurred basis' if any unexpected issues arise and then your insurer will inspect and may cover any reasonable costs, or
- your insurer will include a sum in your settlement that you believe is suitable to cover unexpected problems.

Ongoing insurance for a repair

MOST INSURERS WILL CONTINUE TO INSURE YOUR HOME WHILE YOU MAKE ARRANGEMENTS TO REPAIR THE DAMAGE, BUT THEY WILL NOT DO SO INDEFINITELY.

To renew your home policy, you'll need to give your insurer clear evidence that you intend to repair the damage, such as builders' quotes. Generally, if you give this evidence to your insurer before the policy's renewal date, the insurer will agree to renew your policy. If this renewal is within six months of your cash settlement, your policy will continue until the following renewal. However, it is always better to check with your insurer what their procedure is.

How will a cash settlement affect the amount my home is insured for?

Your sum insured should be reduced by the cash settlement amount you received. For example, if your home would cost \$500,000 to rebuild and you've received \$150,000 to repair the damage, your new sum insured should be \$350,000. You will pay a lower premium in line with the new sum insured.

Talk to your insurer or insurance broker about updating your sum insured.

What if I choose to sell my property after my cash settlement?

Your insurer will cancel your policy when you sell the property. However, potential buyers can contact your insurer to discuss their options.

What if I decide to rent out the property after I cash settle?

If your owner-occupied home is substantially damaged and you choose to rent it out, you will need to contact your insurer to see how this will affect your insurance. You may need to change your policy to a rental policy.

Is it possible to insure an 'as is, where is' home?

At the point of sale, an 'as is, where is' property is uninsured. But, once the home has been repaired to an insurable state, then it is possible to get cover. **(Note that insurers differ in what they consider an 'insurable state' to be.)**

Ongoing insurance for a rebuild

WHEN YOU ARE REBUILDING, YOUR INSURER WILL CANCEL YOUR EXISTING COVER AT THE TIME OF THE CASH SETTLEMENT.

What insurance can I get if I intend to rebuild on site?

Talk to your insurer or insurance broker about whether your existing policy provides liability cover, such as contract works insurance. If not, you may like to extend your contents cover to include liability protection. If you have an undamaged building on the same site (such as a granny flat or garage), your insurer may insure your building for the current value plus liability for a maximum of two years.

Can I extend or renew these policies?

To extend the cover beyond the first year, your insurer will need you to provide some additional information that indicates you are rebuilding on the site.

Insurance during the repair or rebuild

What insurance do I need when repairing or rebuilding my home?

You will need to arrange contract works insurance for:

- a rebuild, or
- any repair that involves structural work. You will also need to cover the existing structure

Your cash settlement is likely to include an amount to cover this extra cost.

Do I need to tell my insurer if the council applies any special terms to a consent?

Yes. Your insurer will need to know if there are any special terms on a consent as they are likely to impact your ongoing and future insurance. For example, a council may issue a building consent subject to section 72 of the Building Act 2004 because the land is affected, or likely to be affected, by a natural hazard.

Insurance after the repair or rebuild

Once my repair is complete, what do I need to do to get full insurance cover again?

You need to give your insurer or insurance broker some information. The information needed depends on the type of work done on your home.

- 1.** If the repair needs a building consent, your insurer will require evidence that the council has issued a code compliance certificate for the work.
- 2.** For structural damage that did not need a consent, your insurer will require:
 - a.** a scope of works
 - b.** producer statements (both PS1 Design & PS4 Construction Review) from a certified structural engineer
- 3.** You may need to give additional information and your terms of cover may change in some situations – for example, if you are in an area at risk from flooding. Before you start work on your repairs, discuss with your insurer what cover is available in these circumstances.
- 4.** If the repair was for cosmetic damage, your insurer may need a statement from the tradesperson who carried out the repairs. This statement outlines the extent of repairs done and verifies that all work completed complies with the Building Code. For minor repairs, your insurer may accept at its discretion, copies of receipts and/or photos as evidence instead of a statement.

Once my rebuild is complete, what do I need to do to get full insurance cover again?

Your insurer can give you insurance cover once the work is complete and your local council has issued a code compliance certificate. Your insurer may also need you to give additional information and may change the terms from your earlier insurance policy. **Talk to your insurer or insurance broker before the rebuild is underway about what cover you can get when it is completed.**

PART 3

**How do I know if
the cash settlement
is fair?**

There can always be uncertainties when working out a cash sum to cover the costs of your repair or rebuild, whether it is a cash settlement with EQC or your insurer, or you are doing your own repairs, renovations or rebuild. Spending time doing some due diligence can help to minimise the risk and reduce the uncertainties. You may need to seek professional advice for costings, extent of damage, repair method and negotiation. This can be money well spent to give you peace of mind.

In this part, some of the things you need to consider and some costs you may not know about now are listed. Use the six steps as a checklist to help you work out whether the cash settlement will cover the costs of your repair or rebuild and who to talk to in each of the steps for advice.

Your cash settlement should cover the costs of repairing or rebuilding your home less:

- any EQC payments you have received, and
- any EQC and/or insurance excesses that you owe.

For every home owner, the earthquake damage to their home and the terms of their insurance policy will differ. The best solution for your neighbour may not be what's best for you, so you should carefully review your cash settlement, taking into consideration where you are at in life, what you want to achieve and what the best outcome will be for you. Find out more about the details of the offer so you understand how the cash offer has been established and any potential risks.

If you have concerns, go back to EQC or your insurer. If necessary, ask for independent advice from RAS, or other independent advisors. You may also find it helpful to speak with family and friends about what a good outcome may look like for you.

To dispute the scope of works, repair methodology or your policy entitlements, you may need to pay independent advisors to provide evidence, reports or opinions to EQC or your insurer. These may or may not be reimbursed in your cash settlement.

If you have concerns, go back to EQC or your insurer



You can get information on finding a financial advisor from the Financial Markets Authority www.fma.govt.nz/consumers/getting-financial-advice

Things to consider:

- **Understand the scope of works for your property.** Has your insurer or EQC undertaken a technical investigation and given you a copy of the report? Have you hired an engineer or other professional to assess this independently? Remember, this costs and may not always be needed. Talk to your insurer first.
- **Read your cash settlement offer carefully.** It should include a breakdown of your entitlement under the policy.
- Have you got **independent quotes** for your repair or rebuild based on the scope of works? **Compare your quotes** and damage assessment with the cash settlement offer and then add the other entitlements in your policy.
- Does your home have **distinctive features**? Read your insurance policy and seek independent advice to check that the offer is based on the appropriate replacement.
- It may be worth confirming there is no damage to sewers and stormwater when considering the scope of works.
- Check if you are entitled to an alternative accommodation payment from your insurer, and if so, for how long. Was this included in the cash settlement amount? If you are not entitled to such a payment or there are delays in you receiving it, find out about what other options are available to you.

Read the part of this booklet for a list of agencies and organisations that can guide you through the decision making process and the repair/rebuild process.

Find out about CETAS on page xx

A cash settlement is based on what can be assessed, and the cost your insurer or EQC estimates you would pay in the private market if you employed professionals to carry out the work, at the time the offer is made to you.

HERE ARE SOME COSTS THAT YOU MAY NOT HAVE THOUGHT ABOUT BUT THAT MAY AFFECT YOUR REPAIR OR REBUILD.

- **Inflation costs:** If you accept a cash settlement and then go on to rebuild a year later, you may find the prices of materials and building work have increased. Your cash settlement cannot be readjusted for inflation. Talk to your financial advisor about the best way to invest your settlement to reduce the effects of inflation.
- **Check if the cash settlement offer is 'full and final'.** If it is, it will be your responsibility to pay the costs of repairing any damage that has not been identified previously or to cover any increase in costs more than your budget. So, before making your decision about whether to accept a full and final offer, it's important that you are satisfied the scope of works includes all earthquake damage to your home and that you have compared your own quotes for the repair or rebuild with the offer.
- **Contingency costs:** In any repair or rebuild project, there is always a risk of something unexpected happening that has not been included in the budget. Allow a contingency sum in your budget to cover such costs. (This does not allow for unknown ground conditions see below.)

- **Some costs are difficult to estimate with certainty until building work starts.** Check with your insurer about whether you or your insurer will pay any additional costs. One of the largest unknown costs can be the cost of foundations, particularly if you are on TC3 land. Even if you have geotechnical reports for them, it can be difficult to calculate these costs accurately until the foundations are dug out. To reduce the risk of the foundations costing more than is budgeted for, your insurer may:
 1. make a partial settlement
 2. do the foundation work themselves
 3. include contingency sums
 4. allow you to go back to the insurer if costs are a lot more than expected.

Note: Individual insurers have different approaches for addressing price uncertainty.

- Likewise, for some other structural damage, it can be difficult to work out the costs accurately until work on it begins.
- The Earthquake Commission Act 1993 sets out what you are entitled to if you are settling with EQC. Your insurer can only give you payments that fit with what you are entitled to under your insurance policy. It is best to discuss any additional costs with EQC or your insurer before going ahead with the work. If you want them to pay more or reimburse you for additional costs, you will need to have information to support your claim (eg, reports, costings etc) that is in line with the Act or your policy entitlement.
- Take your time to carefully consider whether cash settling is the best option for you. It may have been frustrating and stressful getting to this point, so it is even more important that you get the information you need, consider it carefully and take any advice you may need.

*Talk to your insurer
about what options
are available.*




STEP 1. Who do I talk to if I have concerns about the scope of works?

HOMES WITH COSMETIC, NON-STRUCTURAL DAMAGE

If your home has cosmetic, non-structural damage, it may be helpful to get an independent assessment of damage and a **written quote** from a professional, for example, a licensed building practitioner (LBP). In this way, you can check that:

- all earthquake damage is included in the scope of works from the insurer or EQC
- the cash settlement amount will cover the cost of repair.



If you have concerns, talk to RAS.

Residential Advisory Service (RAS) – provides free, impartial help to residential property owners who are facing challenges in getting their home repaired or rebuilt after it has been damaged by the Canterbury earthquakes. An Independent Advisor will help you better understand the repair process and how to progress your repair or rebuild.



RAS
Residential Advisory Service
for Property Owners

You may also ask a builder or contractor to inspect your property and review the scope of works. They can give you a written quote to compare with the settlement offer and a timeline to complete the works.

Make sure you ask a contractor who has relevant qualifications and is a member of a professional industry body.

HOMES WITH SIGNIFICANT OR STRUCTURAL DAMAGE

If your home has more significant or structural damage or you are concerned that the expert reports or the repair methods are wrong, the independent advice you need depends on the type of damage involved. Here are some professionals who may be able to help you.

- A **chartered professional engineer** can give engineering advice.
A **structural engineer** can advise on the correct foundations for your property's ground conditions.
A **geotechnical engineer** can check the ground conditions of your property and work with the structural engineer to find a good foundation solution.
- A **professional quantity surveyor** can check everything is included in the scope of works and that the costings are accurate.
- A **land surveyor** can advise if the existing title has any problems or if it will be affected by any proposed building work. This information is particularly important if your property is part of a cross-leased, multi-unit building, or you would like to change your cross-leased title to fee simple.
- A **building surveyor** can provide advice on the scope of works. They will review the property damage and work out in detail what needs to be done. They won't provide structural solutions but can tell you who else can give you this advice.

In order to dispute the scope of works, your policy entitlements or the repair methodology, you may need to pay independent advisors to provide evidence, reports or opinions to EQC or your insurer. These may or may not be reimbursed.

STEP 2. Who do I talk to if I'm not sure about what I am entitled to under my insurance policy?

- 1. Get legal advice.** Talk your legal advisor or RAS, who can help you to understand your entitlements under your insurance policy, and how the courts are likely to interpret the terms of your policy. Your legal advisor can also advise you on your options and help to review any contract documents.
- 2. Use this table as a guide NB.** This table is not exhaustive. Entitlements will vary between policies and the particular circumstances of your repair or rebuild.

POLICY ENTITLEMENTS	CASH SETTLEMENT	
	N/A	YES
Engineering fees (geotechnical and structural)		
Design fees (architect or draughtsman)		
Surveyors (land and quantity surveyors)		
Project management fees		
Council consent fees		
Builders margin		
Contract works insurance		
Contingency sums		
Stress benefits		
Landscaping costs		
Accommodation allowance		

- 3.** Check that the cash settlement is based on current costs, rather than on costs from when the report was prepared, which may have been some time ago.
- 4.** Check what costs are included for structural and geotechnical input that it may only be possible to do later – for example, after the house is demolished.
- 5.** Check what design fees are included. These may or may not be needed in your situation, depending on the type of house you are replacing.
- 6.** Check if a builder's margin is included.
- 7.** Check if project management fees are included in the costs when you are using a group home builder. If you are using your own contractors, check that project management fees are also included.
- 8.** Contingency sums recognise that not all costs will be known before your rebuild or repair starts. Costings may be more certain for a rebuild than a repair, other than for the foundations. For a repair, contingency sums may need to be higher because more factors may be unknown until the cladding is opened or below-floor work begins.
 - Generally, the more uncertainty around scope and/or costings there is, the higher the contingency sums may be.
 - Contingency sums should also be higher if your building work needs a consent and must be checked by a project manager or engineer.

9. Get written quotes to compare with cash settlement costings.
10. Check 'out of scope' items, which are items that the Earthquake Commission Act 1993 does not cover, such as fences and driveways. Your insurer may be responsible for paying for these items.
11. Check whether there are other items that EQC or your insurer may cover, such as:
 - a contribution toward shared driveway (check your property title)
 - common areas of a cross-lease (check the memorandum of lease, which explains the responsibilities between the owners)
 - a fence, retaining walls, private lanes etc.
 - additional landscaping costs
 - temporary accommodation costs
 - contents replacement – get quotes for drapes and carpet and check your EQC cover.

STEP 3. Who do I talk to if I am not sure the repair method is correct?

1. **Ask your insurer or EQC** if you're not sure the repair method is correct.
2. **Talk to RAS.** RAS has a technical panel that comprises professionals such as structural and geotechnical engineers and quantity surveyors who can review the technical reports provided by you, your insurer or EQC. The panel provides a desktop review to ensure that the proposed solution/s meets, as a minimum, the MBIE Guidelines and the Building Act/Code and provides a response through the RAS Independent Advisors.
3. **Talk to a professional structural or geotechnical engineer, or a building surveyor.**
4. **Ask your local council** whether you would get a building consent if your building work uses that repair method. Check how much the consent would cost and what documentation you need to provide when you apply. The answer may point to other advice you need to get – for example, if a geotechnical report is required.

STEP 4. Who do I talk to if I don't understand the steps involved in receiving a cash settlement?

1. **Ask your insurer or EQC** to explain all the steps involved in working out a cash settlement.
2. **Talk to RAS.** One of its independent advisors can explain how the process works and what you need to do.
3. **Talk to your legal advisor or other trusted advisor** about what may be best for you.

STEP 5. Who do I talk to if I have concerns about managing the repair or rebuild myself?

1. **Talk to your insurer or EQC** about your concerns.
2. Read about managing your repair or rebuild in **Part Four** of this booklet. Many building companies will provide you with a project manager so you don't have to manage the whole repair or rebuild yourself. See [page x](#) for more information.

STEP 6. Who do I talk to if my quotes for the repair/rebuild are greater than the costings in cash settlement documentation?

1. **Talk to your insurer or EQC** about your concerns.
2. **Talk to RAS.** RAS has a technical panel that comprises professionals such as structural and geotechnical engineers and quantity surveyors who can review the quotes and costings provided by you, your insurer or EQC.
3. **Talk to a quantity surveyor** who can check the variation in costs and advise whether the settlement amount is enough to do the repairs or rebuild. You will need to pay for this advice.

Talk to your legal advisor or RAS before signing the final settlement documentation.

If you want to include other renovations or improvements at the same time as your repair or rebuild, check with your bank about its funding options.

How do I know if the cash settlement is fair?

STEP 1. Understand and agree on scope of works or damage

- Yes
- No / Not Sure – go back to insurer or EQC

STEP 2. Cash settlement includes all policy entitlements

- Yes
- No / Not Sure – go back to insurer, legal advisor, RAS

STEP 3. Repair methodology consentable and agreed

- Yes
- No / Not Sure – go back to insurer or EQC, RAS, engineer, local council

STEP 4. Understand settlement path

- Yes
- No / Not Sure – go back to insurer, EQC, legal advisor, RAS

STEP 5. Feel comfortable about managing the repair or rebuild yourself

- Yes
- No / Not Sure – go back to insurer, EQC, legal advisor, read Part 4

STEP 6. Compare your quotes with the costings in cash settlement

- Yes
- No / Not Sure – go back to insurer, quantity surveyor, legal advisor, RAS

If yes to all, check the settlement amount is enough to do the repairs and rebuild. If you want to include other renovations or improvements at the same time, check with your bank about its funding options.

PART 4

Managing your repair or rebuild

DISCLAIMER

This guide by the Ministry of Business, Innovation and Employment (the Ministry) has been written in accordance with Section 175 of the Building Act, which relates to guidance published by the Ministry's Chief Executive. While the Ministry has taken every care in preparing this document, it should not be relied upon as establishing all the requirements of the Building Act. Readers should always refer to the Building Act and associated regulations as the source document and be aware that for specific situations or problems it may be necessary to seek independent legal advice.

This part will help you plan your repair or rebuild. It will help you to ask the right questions, build your confidence about the repair and rebuild process and help you to get the work you need done on your home.

As the home owner, you are responsible for making sure that any work done on your property complies with the law and is of a good standard. This is for your protection, and also to protect anybody else who may buy or service your property in the future.

Building or repairing your home can be a complex process. This guidance provides an overview of what to do, but does not cover all the rights and responsibilities involved in building or repairing a home. Before you start the building work, consult with others who may have an interest in the property such as your bank or mortgage provider, EQC, your insurer, the council, neighbours and any tenants.



A cash settlement is given to you to repair or rebuild your home. By repairing or rebuilding your home to a good standard you are preserving the equity in your home.

Having decided to carry out the repair or rebuild, here are some of the issues you will need to consider.

Financials

CAN I START BEFORE I'VE GOT THE MONEY FROM MY CASH SETTLEMENT?

We recommend that you start planning early, but you should have a finalised budget before starting any project.

WHAT IS THE AMOUNT OF MY CASH SETTLEMENT?

You need to know exactly how much money you will get from your cash settlement. You also must understand what you need to do now you have this money, such as your obligations to EQC, your insurer and bank or mortgage lender.

WHEN SHOULD I CONTACT MY BANK OR MORTGAGE LENDER?

When you deposit your money, it may help to meet with your bank, mortgage lender or another trusted advisor (like your lawyer or accountant) to discuss your plans. Their help may be especially useful if you have a mortgage or want to borrow money to carry out further work. You may need to have several sessions with the bank as the budget and scope are fine-tuned.

DOES MY INSURER HAVE AN INTEREST?

You need to discuss your plans with your insurer. Your repairs may affect whether or not you can reinsure your home.

SHOULD I GET INSURANCE FOR RISKS DUE TO THE CONSTRUCTION WORK?

Talk to your insurer or insurance broker about cover. Also talk to your proposed building contractor about what insurance cover they have. You may be able to use the contractor's insurance cover to meet your insurer's requirements. This is also a good time to check you've got your insurer's permission to go ahead with repairs, if you need it.

Scope of work

IS THE WORK SUBSTANTIAL (PERHAPS EVEN A REBUILD) OR IS IT MOSTLY COSMETIC?

Understand the amount of damage to your home. The size of the job will have an impact on how you choose to move forward.

HOW DO I WORK OUT THE SCOPE OF WORKS?

It's important for you to be clear on the brief before you hire a designer. You may want more work done at your own cost to improve the quality or value of your home, such as including modern, energy-efficient features. Know your overall aims for the work, the specific details that it must include, and your budget. While you are making plans, have an honest conversation with your designer to make sure your expectations are realistic in view of your budget.

DO I NEED A PROFESSIONAL PROJECT MANAGER?

You need to consider how much time is involved in managing your particular job and the level of expertise it needs. If it is a fairly small job, you may find it easier to employ tradespeople directly rather than have a project manager to do it for you. It depends on your own level of knowledge and confidence, which will differ from home owner to home owner. It's not always necessary to use a designer but, if you do, use a designer who has the expertise you need such as a Licensed Building Practitioner, Registered Architect, Chartered Professional Engineer or another qualified building professional. It's important to be clear on what services you want from your designer. Go over your ideas with your designer, keeping your budget firmly in mind.

WHAT IS THE RELEVANCE OF MY TECHNICAL LAND CATEGORY?

Understand which technical category (TC1, TC2 or TC3) your property is in before you begin design work. The Ministry for Business, Innovation and Employment (MBIE) has set these categories based on foundation and land damage. Confirmation of the technical categories provides direction on which foundation and building solutions may be most appropriate for your home. You should be able to find this information in your cash settlement documentation.

IS THERE A SMART WAY TO BREAK UP THE WORK?

Before starting the design process, consider all issues that might apply to your building site. For example, application to your council for a Land Information Memorandum (LIM) will identify flood potential or contaminated land. It helps to develop the design far enough to understand what resource or building consents you need and then waiting until these come through to avoid delays once you've started construction. This may not be relevant if you have contracted out the consent applications.

IS NOW THE RIGHT TIME TO REPAIR OR BUILD?

It's worth considering the availability of contractors. With so much building work going on in Canterbury, you may have trouble booking contractors at a time that suits you. It could be a good idea to hold off the work until your preferred contractor can fit it in. Remember that building work can be stressful, particularly if you're living on site or face delays.

IF I AM UNSURE ABOUT SOMETHING, WHAT SHOULD I DO?

Discuss the options with your advisors and hire the expert help that your repair or rebuild needs. Remember you don't have to make decisions alone. You can find information on where to find support on [page X](#).

Rights and responsibilities

Recent changes to the Building Act 2004 and supporting regulations affect home owners who are planning to build or repair their homes.

See Schedule 1 of the Building Act for an updated list of work on homes and outbuildings that do not need a building consent. Low-risk work is exempt, but there are limits on who can do some potentially higher-risk work and only authorised people can do specialist work without consent. For example, certified plumbers or drainlayers (as defined in the Plumbers, Gasfitters and Drainlayers Act 2006) are the only ones who can do certain plumbing and drainlaying work without consent.

Consumer protection

On 1 January 2015 new consumer protection measures became part of the Building Act 2004. These measures encourage a professional, no-surprises relationship between you and your contractor. They should also help you to make informed decisions about building work.

These are some of the key changes to protect you:

- You must have a written contract for residential building work that will cost \$30,000 or more (including GST).
- If the work is \$30,000 (including GST) or more, or if you ask for one (for smaller jobs), before you sign a contract your contractor must give you the prescribed checklist and a disclosure statement that tells you about their skills, qualifications, licensing status, and the insurance or guarantees they provide.
- Your contractor must also give you information after they have done the building work on any requirements for maintaining the building in the long term, insurance policies and guarantees or warranties.
- After the building work is finished, there's a 12-month defect repair period when contractors have to fix any defective building work you've told them about.
- You have new ways to take action when contractors have not met warranties in the Building Act.
- Contractors can be fined if they don't comply with the law.



For more information on consumer protection measures, including the prescribed checklist and the disclosure statement template, see:
www.doyourhomework.co.nz

Building Code and consenting requirements



All residential building work must comply with the New Zealand Building Code, even if the work does not need a building consent.

As the home owner you are ultimately responsible for making sure the work has a building consent and code compliance certificate, if needed. You can delegate this task to your architect/designer, builder or project manager, but you should agree to this in writing.

The building contractor is responsible for making sure their work meets the building consent requirements. If you don't need a building consent, they are responsible for making sure their work meets the Building Code.

A building consent authority (BCA) issues building consents. Your BCA is your local council. If you need a building consent, you must get one before any building work starts. When work begins a BCA official will inspect the site regularly. The BCA issues a code compliance certificate after the final inspection of the finished building project. A code compliance certificate confirms that the BCA is satisfied that the completed project conforms to the building consent.

The Building Act 2004 defines whether building work requires building consent. Schedule 1 lists building work that does not need consent, which is usually only simple and low-risk work. Check the guidance on Schedule 1 exemptions at www.building.govt.nz/bc-no-consent or talk to your local council to find out whether your work needs a building consent. Even if the work fits within a schedule 1 exemption you may choose to repair with a Building Consent. This could be useful when selling the property in future, or when arranging insurance as it shows that the Council was satisfied that the remedial work completed complied with the requirements of the Building Code.

Do I need a resource consent?

This will depend on the work you are getting done. If you do need a resource consent, you need to apply for it as soon as the design is started or you may find you cannot move forward with your building plans. You can ask your local council if you're not sure whether you need a resource consent.

The building process



ARE YOU GOING TO USE A DESIGNER?

Yes = Go to step 1 **No** = Go to step 4

STEP 1 Look for a designer

Use a designer who is a Licensed Building Practitioner, Registered Architect or Chartered Professional Engineer or another building professional. It is important to be clear on what services you want from your designer. Go over your ideas with your designer, keeping your budget firmly in mind. Make your brief really clear; before you hire a designer, know your overall aims for the work and what specific details it must include.

A range of people, with different skills and backgrounds, can do the design work. It does not need to be a Licensed Building Practitioner or experienced building professional unless the scope of work will include foundation or structural design input. However, you benefit from using qualified professionals because their professional association sets a quality standard of service.

Structural and geotechnical works require specialist skill. For restricted building work, you will probably need to use a certified designer. If engineered solutions are part of the design, a higher level of project management will be needed during construction. Foundations on difficult land need to be designed by a structural engineer.

We recommend you have a contract with all professionals who are involved in your building work. You could use a contract from Standards New Zealand, the Institution of Professional Engineers New Zealand, Civil Contractors New Zealand or a professional industry association.

Always check with your lawyer before signing a contract.

STEP 2 Work with the designer on concepts and detailed plans

After your designer draws up detailed plans, contractors can quote more accurately for the work and firm up details early that could cause disputes down the line. Make sure you're happy with everything at the design stage because you'll literally be living with these choices.

TECHNICAL GUIDANCE FOR REBUILDING AND REPAIRING HOMES IN CANTERBURY

You can build on TC1, TC2 or TC3 land. Each category of land has its own design requirements suited to its particular ground conditions, so it is possible to use most existing sites in any category.

A property's technical category indicates the level of site investigation required and which kind of foundation system is appropriate for that property if it has foundation damage. To see maps of the areas covered by each of the technical categories, go to <http://maps.cera.govt.nz/advanced-viewer/?Viewer=Ccc-Floor-Levels> It's important to understand which technical category your property is in before your design work begins.

REBUILDING IN AREAS THAT SUFFER FROM LIQUEFACTION

If you are rebuilding in an area that is at risk of land damage in future large earthquakes, such as land in TC3 areas, then MBIE's guidance recommends that you do not build using heavy materials.

Using lighter materials for the roof, walls and floors will help to safeguard your asset for the future. It will significantly reduce the load on the foundation and the ground beneath; this will reduce the potential for the subsoil to settle in future significant events. Lighter construction can reduce the weight around the perimeter of your foundation by as much as 70 per cent.

Lighter wall coverings and roofing include:

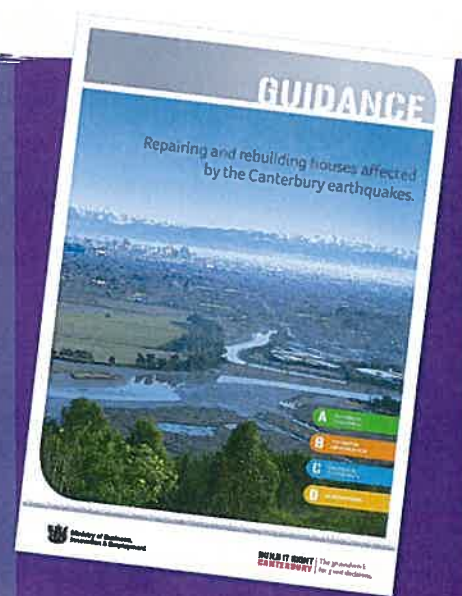
- Weatherboards
- Profiled metal
- Sheet materials (e.g. ply, fibre cement)
- EIFS (exterior insulation and finishing system)
- Sheet and metal tile roofs

If you prefer to use heavy construction materials in areas such as TC3, you can do so. However, you will need appropriate engineering advice and careful design.



*To get advice on the appropriate foundation systems for your site, your designer should refer to the MBIE Technical Guidance document, **Repairing and Rebuilding Houses Affected by the Canterbury Earthquakes**:*

www.building.govt.nz/guidance-on-repairs-after-earthquake



REPAIRING OR REBUILDING IN AREAS OF CHRISTCHURCH CITY THAT ARE PRONE TO FLOODING

If you plan to build, add to an existing building or fill land you need to check whether you are located in an area at risk of flooding. If you are, you may require a resource consent for your renovations or work.

Existing use rights may apply to your property and you may not need a resource consent in respect of flood risk and floor levels. To find out if this is the case, please call 03 941 8999 and ask for the Duty Planner. Even if you have existing use rights, you will be strongly encouraged to consider rebuilding at the guideline floor levels for new development in an area at risk of flooding (see below) both for your own safety and for the safety of future occupants of the property.

Please note that even if you have existing use rights to rebuild at lower floor levels, you will still need a building consent for most works. This will include meeting the Building Act's 50-year flood floor levels, which may be higher than the original floor levels before the earthquakes. Check whether neighbours' consent is required if the house is near the boundary, or if recession plane rules may be breached.

REPAIRING A LEAKY HOME

If you are repairing a house that you know or suspect to have weathertight damage, you may qualify for financial assistance. If so, the Government pays 25 per cent (and your local council may pay another 25 per cent) towards the actual costs for repairing the weathertight damage. This package does not cover earthquake or other repair costs, but it could be economical to do these repairs at the same time.



Check out the Government's Financial Assistance Package at:
www.dbh.govt.nz/fap

ASBESTOS

Before you start renovations or repairs on your property, do you know whether there is a risk of asbestos? EQC or your insurer may have already checked this already. Ask them first if you're concerned.

Asbestos Aware will tell you what asbestos looks like, where you might find it and how to deal with it.



To find out more, go to: www.asbestosaware.co.nz



DO YOU NEED BUILDING OR RESOURCE CONSENT?

BUILDING CONSENT

When it issues a building consent, your local council is confirming that, if the building work is completed to the design in the consent, then the finished building will comply with the Building Code.

The building contractor must follow the consent. They cannot change details during the project unless the council gives further consent.

The council will hold your repair documentation on your property file. It will also inspect the site during the building work to check that it is being done correctly.

The building consent process affects the resources, costs and time involved in your building work. For this reason, there are exemptions for specific minor building work that involves low-risk repairs or maintenance. Check with your local council about whether your building work needs a building consent. Remember it is legally your responsibility as the home owner to make sure that, if your building work needs a building consent, it gets this consent. Many people delegate this responsibility to their main contractor.

RESOURCE CONSENT

A resource consent is a council consent that you must have for activities such as: using land for particular purposes; subdividing land; taking water; discharging contaminants into water, soil or air; or using or occupying coastal space. In their plans, district and regional councils outline when you need a resource consent for different activities.

It's not just new buildings that may require resource consent. You may also need to get one if you are planning to use an existing building in a different way. Just as council plans vary, the need for resource consents varies from one area to another.

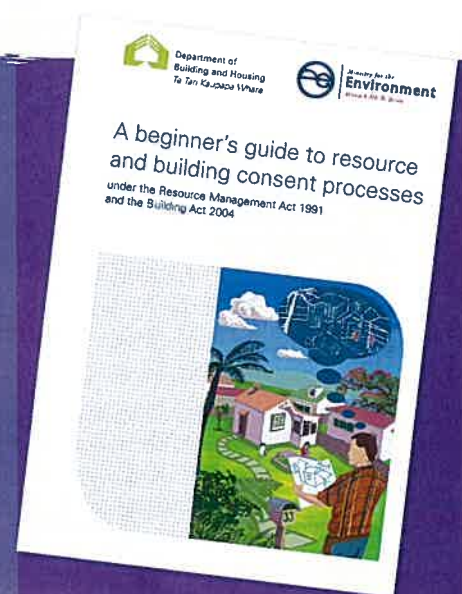
The council can advise if resource consent is required. For the majority of work where the house is being repaired a resource consent is not required. As the scope of foundation work increases or the height of the house is changed the potential to need a resource consent increases.

Applying for resource consent can impact the resources, costs and time involved in your building work. Be aware you may require agreement from your neighbours before you are granted resource consent.



For more information, including a step-by-step guide to getting resource and building consents, go to:

www.building.govt.nz/rma-guide-index



STEP 3 Look for a builder

When looking for a contractor, ask for recommendations from your friends or family. Ask potential contractors for references and look at examples of their previous work. It can also be a good idea to follow your designer's recommendations for a contractor, as it helps to have a contractor who is used to the designer's style of work. Make sure you use a Licensed Building Practitioner for Restricted Building Work.

If your building work will cost \$30,000 or more (including GST) or if you ask for one, the building contractor must provide you with the prescribed checklist and a disclosure statement with information about their skills, qualifications, licensing status and the insurance or guarantees they provide. The contractor must give you this disclosure statement before you enter into a written contract. If anything in the disclosure statement seems unusual, ask the contractor about it.

CAN I DO THE REPAIRS OR REBUILD MYSELF?

If the work is cosmetic repairs, and Schedule 1 exempts the work from a building consent, you may be able to do it yourself.

If you are planning to do it yourself, it's worth checking with your insurer first to make sure you can still reinsure your home by doing it this way. Your insurer may require you to follow a quality assurance (QA) process or get an experienced professional to approve the work when it is finished.

If you choose to do the work yourself, you are responsible for making sure the building work meets the Building Code, as well as for getting the building consent and code compliance certificate if needed.

DO I QUALIFY AS AN OWNER-BUILDER?

Owner-builders are able to carry out Restricted Building Work on their own home.

You are an owner-builder if all three of the following points apply. You:

- live in or are going to live in the home (which may be a bach or holiday home)
- do the Restricted Building Work on your own home yourself, or with the unpaid help of your friends and family members, and
- have not, under the Owner-Builder Exemption, done Restricted Building Work on any other home within the previous three years.



To find out more about the Owner-Builder Exemption and to see if you qualify, visit www.building.govt.nz/builditright-homeowners-owner-exemptions

RESTRICTED BUILDING WORK AND LICENSED BUILDING PRACTITIONERS

You need to start thinking about Restricted Building Work right from the start of your project.

Restricted Building Work is everything that involves or affects:

- **primary structure** – for example, work that contributes to the resistance of vertical and horizontal loads (such as walls, foundations, floors and roofs)
- **weathertightness** – any work done to the outside of the building to protect it from the weather or elements
- **design of fire safety systems** – work done to protect people and property from fire (eg, escape routes) in multi-unit residential buildings.

If you are using a designer, they must identify all the Restricted Building Work on your job when they fill in their Certificate of Work (part of the documentation required for building consent). They'll do this when they draw up your building plans.

You must use a Licensed Building Practitioner (LBP) to do or directly supervise any Restricted Building Work.

LBPs are designers, carpenters, brick and blocklayers, roofers, external plasterers, or site and foundations specialists who have been assessed to be competent to carry out work essential to a building's structure.

To be sure that your contractor is an LBP, you can:

- ask your contractor or building company to show you their Licensed Building Practitioner identification, or
- check that your contractor is on the LBP register at www.lbp.govt.nz On this website you can also find out more about DIY and the responsibilities of owner-builders.

When you're ready to go

GETTING A PRICING FOR THE JOB

For a larger job, a quantity surveyor can give you a reasonable idea of how much your building work will cost. You may have documentation from the settlement calculations. You can give contractors the quantity surveyor's estimate of materials required (but not the price) to help them prepare their quotes. You could also get a quantity surveyor to calculate progress payments and to cost variations during construction.

WHO WILL MANAGE THE BUILD?

There are different ways of managing a building project.

- You can manage the project, including contracting the designer, main contractor and subcontractors.
- Your designer or main contractor can manage the project on your behalf (including hiring subcontractors).
- You can hire an independent project manager, who manages the project on your behalf.

Each approach has advantages and disadvantages.

- Managing the project yourself can be more stressful and time consuming, particularly if you haven't done it before. It may be harder to hold others to account for defects in the work. On the other hand, you have more control over the project, including who does the work. Before you choose this option, think about what you don't know and how 'learning along the way' might affect your budget and timeframes.
- Having the building contractor or designer as project manager may give you less control over who does the work, unless you have a comprehensive contract. On the other hand, you will be in a better position to hold contractors to account if things go wrong.
- Having an independent project manager increases your costs. On the other hand, you can be more confident that an independent expert will be managing the project in your best interests.

WHAT SKILLS AND QUALITIES ARE NEEDED TO MANAGE A PROJECT?

The key skills and qualities a person needs to manage a construction project are:

- a sound understanding of how to set up a contract and administer the progress of the project, including making payments
- an understanding of documentation requirements for building consent and (if necessary) resource consent and how to get those consents
- an understanding of the work that is detailed enough for them to judge the rate of progress and whether it is meeting quality expectations
- communication skills and aspirations that will encourage work to a high standard
- time available to manage the project
- a base close to the site to keep travel costs low.

One advantage of having the designer do the management is that they are already familiar with the details of the project and often have the other skills and qualities needed as well.

The scale of the work will also have an impact on who can manage the project. For example, the builder may be able to provide a full service from getting consents through to finishing the building work. If you would prefer to get a second view of the work, you could ask the designer to do the quality assurance work while you deal with progress payments, monitor performance and progress, and administer any changes or disputes.

Achieving the quality you want is often a key goal for your project. To make it more likely that the quality of the project meets your expectations:

- make sure the person who sets up the project (either yourself or your chosen project manager) has the right level of knowledge for the project
- define the project in enough detail to make clear the quality required
- choose contractors based on a track record of quality work (check their references)
- choose a project manager or designer who has the skills to judge the quality of the building work
- match the project details to the site.

STEP 4 Get detailed quotes from contractors or a 'design and build' company (or refresh early quotes if time has passed)

QUOTES

A quote is based on detailed specifications. It shows the price you will pay to complete the building work. Quotes may include both fixed and provisional sums. The fixed sum component should only change if costs increase due to matters outside the builder's reasonable control or because the project varies from the work set out in the contract. Provisional sums will be based on the actual work required for this work.

Get at least three detailed quotes (including a breakdown of labour and materials) for the building work. Note these should be quotes, not just estimates. To get a quote with the detail you need, give the contractor a copy of the detailed drawings, specifications and quantity surveyor estimates (if you have them) alongside information about the building site. The more information you give them, the more reliable the quote will be.

Make sure you check whether or not the quote price includes GST. Ask for the contractor's hourly rate (including GST) so that you know how much to expect to pay if you want them to do any additional work.

When considering and comparing quotes to choose your contractor, don't think only about any differences in price. Also think about the levels of experience and reliability of the different contractors and what fixtures and fittings they suggest. Check their references too.

Look at the details and make sure that the quotes all cover the same scope of building work and the same materials and fixtures so you are comparing 'like with like'. If any quote is significantly higher or lower than the others, ask why. It could be that the contractor has overestimated or underestimated the cost of materials and time, or will use less-skilled labour. An unrealistically low quote could lead to cost blowouts further down the track.

It's important that you're happy with the fixtures and finishes stated in the quote because, once you've signed the contract, changing these will be a variation of the contract (and so will probably cost more).

When choosing materials for your building work, contractors will be influenced by a number of factors, including:

- their past experience with the products
- the wholesale price of the products
- the time and labour cost involved in getting their own quotes from a lot of different sources
- terms of trade available from various sources
- loyalty schemes (such as rebates for buying a lot of product) available from various merchants.

Ask your potential contractors:

- why they propose to get building materials and fixtures from a particular source
- whether the quote reflects the benefits of buying materials and fixtures from that source.

If any part of the quote is unclear, ask your contractor for more details. For example, you might ask what 'PC sums' are or what they cover.

If you're not confident about asking difficult questions or negotiating the terms of your contract, ask someone you trust to help you. When you've chosen your contractor, also write to the other contractors to tell them that they have missed out.

STEP 5 Get quotes back from contractors

Look at the scope and the materials/fixtures they're suggesting. Most home owners find that the quotes are over their budget, sometimes by as much as 100 per cent! Don't just take the lowest quote. Check that you're happy with the quality and style of what is being suggested, and that you're comparing 'apples with apples'.

Pay attention to the plans and detailed specifications in your written construction contract, and change these if they're not what you're looking for. Avoid changes after the contract is signed by understanding the intended work in advance. You may also want to talk to the proposed contractor regarding your expectations on the materials used, and the workmanship/finishes you are paying for.

Your contractor should also provide you with a copy of the prescribed checklist and disclosure statement with the quote, if they haven't already, and your building work will cost \$30,000 or more (including GST). Make sure you read through these and query anything you don't understand or that doesn't look right.

**DO QUOTES MATCH YOUR PLANNED BUDGET AND EXPECTATIONS?****Yes** = Go to step 7 **No** = Go to step 6**STEP 6 Re-think, re-scope, re-finance**

If you get quotes that are all beyond your budget, you need to re-think your project and adjust your expectations to fit with the reality of your budget. Most home owners in this situation find a middle ground by reducing the scope of work while also increasing the budget. Prioritise earthquake repairs over other work you were hoping to get done on your home.

STEP 7 Choose a contractor and sign a contract

You must have a written contract for work costing \$30,000 or more (including GST). It is the contractor's responsibility to provide this – but you can negotiate the terms and conditions. Be clear on:

- costs, so you know exactly what you're going to pay
- roles and responsibilities – particularly who is managing the project, organising the materials and supervising the sub-trades.

If you're self-managing your repair or rebuild, you must be available to contractors and prompt with decisions to keep the building work on track (and on budget).

Your written contract must include:

- names and physical and postal addresses (including the address for the delivery of notices) of both parties, and all relevant contact details (e.g., phone numbers and email addresses)
- the address or location description of the site of the building work
- the date(s) when both parties sign the contract
- the expected start and completion date and how possible delays will be dealt with
- the contract price or the method of calculating the contract price (e.g., fixed hourly rate with materials invoiced separately by supplier)
- a description of the building work that your contractor will complete, including the materials and products to be used (if known)
- who will be responsible for getting building consents and any other approvals required for the building work
- who will be carrying out and/or supervising the work
- how one party will give notices and certificates to the other
- the payment process, including dates or stages for payment and how payments will be invoiced, made and receipted
- how defects in the building work will be remedied, which includes referring to the implied warranties in section 362I to 362K of the Building Act 2004 and how they will apply
- the dispute resolution process to be followed if there is a disagreement
- how variations to the building work covered by the contract will be agreed before work continues
- an acknowledgement that the client has received the checklist and disclosure statement from the contractor.

If you don't have a written contract or if your written contract doesn't include all of the above information, the law now considers that certain default clauses are part of your contract. If your contract already covers the information, the default clauses won't override it.

The list above only covers the basic information for a contract. Take time to make sure your contract is suitable for your building work. It's especially important to carefully check the scope of works included in the contract, as this sets out everything your contractor must do.

It's also a good idea to have a contingency or weather-delay plan written into your contract, and your budget. What will happen if work stops for a long time due to rain or snow? Can you afford to pay your bills if the building work goes over budget? Most building projects go over budget due to variations and unexpected delays.

Even if your building work will cost less than \$30,000, ask for a written contract as it can help avoid misunderstandings later on. Always get legal advice before signing a written contract.

The building contract will include a set of specifications and drawings submitted to council for Building Consent and a more general section covering the bullet points above. Ensure standard forms available from leading companies or trade associations are used for the general sections. Widely used standard forms offer greater certainty. If a builder has personalised a set it is worth asking where the conditions differ from the standard to make sure any changes do not affect your risk. If in doubt legal advice should be sought.

DEPOSITS

There is no legal reason why a building contractor should ask for a deposit for your building project. If your contractor wants one, ask them to put their reasons in writing. Generally, the only good reason is to pay for products that the contractor can't get on credit from the supplier or to cover out-of-pocket fixed expenses, like council fees. This usually only occurs for products sourced from overseas or for highly specialised, one-off items.

Most contractors have accounts with building supply merchants that they settle when they finish the work. If the contractor says they can't get credit for local products from a local supplier, this may indicate that the contractor is not a good operator.

PAYMENTS AND CREDIT CONTROL

You must agree a payment schedule with your main contractor in your written contract. It is wise (and standard practice) to keep back some of payment, usually 10–15 per cent of the contract price, until:

- all documents including the code compliance certificate and any electrical, gas or plumbing compliance certificates have been received
- you are happy that they have finished the work to the standard set in the contract.

Base your payment schedule on clearly defined and visible work so that it is easy to work out how much to pay based on the work completed. You or your project manager should visit the site at the agreed time for progress payments and check work has reached the right stage for the payment. Between payments, it also helps to visit the site to observe activity and, if appropriate, to ask some of the suppliers if they have been paid for work in place. Some companies have regular supervised site visits and may offer online progress reports and photographs. These can assist the assessment of work for payment, but are no substitute for an on-site review to confirm payment entitlement.

The best protection against a failure by your contractor is to take care in making payments; however, there is no absolute guarantee.

STEP 8 Get ready and start building

Do you need to move out of your home and find another place to live while the building work is going on? Consider budgeting so that you can live elsewhere, or talk to the Canterbury Earthquake Temporary Accommodation Service (CETAS) about what support you can get.

If you stay in your home, you'll be sharing spaces with tradespeople on-site early in the morning and sometimes late at night. The power and water will be on and off. There's noise, dust and a lack of privacy. Many repairs and rebuilds can have delays. If needed, budget early for other accommodation as it can add to the cost of your project otherwise.

Here are some other important points to consider.

- **What are you going to do with your furniture and other contents of your home?** Have you budgeted for storage and/or movers?
- **What will happen to your pets?** Is it safe to have them on the building site?
- **What about utilities?** Have services been disconnected at your home? If so, do they need to be reconnected for building work to get started?
- **Are there hazards on site?** Is there a management plan? Get specialist advice on how to deal with liquefaction, mould, asbestos or other hazards or contaminants in your home. Your home could be on Environment Canterbury's Hazardous Activities and Industries List (HAIL). To see the list, go to <http://ecan.govt.nz/advice/your-land/contaminated-land/potentially-contaminated-land/Pages/identification-accuracy-listings.aspx>
- **Do you need to get site improvements done before building work can begin?** If so, make sure your contractors and designers are talking to each other to coordinate timing.
- **Will all or part of your existing buildings be demolished before building work begins?** If so, have you arranged this with experienced professionals? Make sure you and your belongings are safe and only go ahead with demolition if you're sure it is needed for your building work.

WHAT ARE MY ACCOMMODATION OPTIONS IF I NEED TO MOVE OUT?

CETAS helps householders who need help finding temporary accommodation following the September 2010 or February 2011 earthquakes.



To find out if you're eligible for help from CETAS, you will need to complete an assessment form online at www.quakeaccommodation.govt.nz or call 0800 673 227.

For more detailed information on CETAS, go to www.quakeaccommodation.govt.nz

STEP 9 Keep on track once building work starts

Once the building work starts, remember that whenever you make a change to what's set out in the contract, you're actually making a variation, which can increase the cost and length of the project. It helps to keep details of the fittings and fixtures in a spreadsheet, so you can track the changes that you make and their impact on costs and timelines. Deal with any issues as they arise, as that's much easier, cheaper and more time-effective than waiting until the end.

Make progress payments as you go, following the payment schedule in your written contract.

Your local council, and possibly your insurer, will make inspections during this time to check on quality and make sure the work complies with any consents that have been given.

STEP 10 Get a final code compliance certificate (if your work needed a building consent) and move back in

The majority of your building work should now be finished, and you can move back into your home. Make sure you have a code compliance certificate issued if your work needed building consent.

No matter what the cost of your building work, your building contractor should give you the following information and documents after they have finished the work:

- what you need to do and what materials to use to maintain the building work, particularly if you must maintain it to meet the durability requirements of the Building Code or the requirements of any guarantee or warranty
- details of any insurance policies the contractor has taken on the work completed under the contract (except for any policies that expire when the work is complete)
- what guarantees or warranties for materials or services used in the building work will continue to apply, how to make a claim, whether you can transfer the guarantee or warranty and whether you must sign and return it to the issuer.

Tell your insurer about the work you've completed and supply evidence of it (i.e., plans and photos) if possible. If there was a building consent granted, your local council will have records of what was done. If there was no building consent, you can provide records which the Council can keep on the property file.

Also arrange reinsurance if you have taken back responsibility for the building work from the contractor after they finished their work.

UPDATING YOUR PROPERTY RECORDS

You can provide your local council with copies of any building or engineering reports on your property, and any repairs or rebuilding work that is not covered by a building consent (e.g., emergency repairs that do not need a building consent). Having accurate and complete property information will help you if you decide to sell your property in future. Future buyers can then use this information to do their due diligence, although you should note the council does not routinely check reports supplied for non-consented work.

**ARE THERE STILL SMALL JOBS TO FINISH?**

Yes = Go to step 11 **No** = Go to step 12

STEP 11 Work through the snag list

The rate of work may tail off towards the end of the project. Finish the small jobs that make things feel complete.

STEP 12 Move in (if you haven't already) and make final payments

You need to be happy with the quality of the building work. If there is any work that you think is defective, discuss this with your contractor.

Move your belongings out of storage.

Make final payments and tidy up any other bills.

*Your repair
or rebuild is
finished!*

What if things go wrong?

If things go wrong with your building work and you are in dispute with your contractor about it, you have a number of options for sorting it out. If your building work costs \$30,000 (including GST) or more, you should have a prescribed checklist that sets out some of the basic steps you can take.



You can also see this checklist online at www.doyourhomework.co.nz

CHECK YOUR CONTRACT AND TALK TO YOUR CONTRACTOR

If you have concerns about your building work, start by checking the terms agreed in your contract and discussing matters with your contractor. Many complaints and disputes result from misunderstandings. For example, a home owner may:

- not understand the terms agreed in the contract
- have unrealistic expectations about the quality to expect for the amount of money they have agreed to pay
- not understand how asking for changes from the initial quote or contract may affect the costs or length of the work
- not have been clear about the work they want the contractor to do.

FOLLOW THE DISPUTE RESOLUTION PROCESS IN THE CONTRACT

If you are still unhappy after talking through your concerns with the contractor, check your contract to see what (if any) dispute resolution process you should use and begin that process.

IMPLIED WARRANTIES IN THE BUILDING ACT 2004

The law sets out implied warranties that apply to all residential building work for up to 10 years. You have these implied warranties even if you don't have a written contract or, if you do have a contract, no matter what its terms are.

Residential building work started on or after 1 January 2015 has a 'defect repair period' for the first 12 months from the practical completion date of your building project. During this time, if you tell contractors about defective building work in writing, they must put it right within a reasonable timeframe after that. It is the contractor's responsibility to prove that they (or their product) have not caused the defect if there is a dispute about it.

It is also up to your contractor to arrange and manage the repairs, including any defects in work done by subcontractors. If you've contracted other tradespeople directly, you'll need to contact them yourself (in writing) about the defective building work.

BREACHES OF IMPLIED WARRANTIES

Since 1 January 2015, you have new ways to take action when a contractor does not meet the implied warranties under the Building Act. The legal changes cover:

- what happens when the breach can be remedied
- what happens when the breach is substantial or cannot be remedied
- what a substantial breach is.

If you think your contractor has breached these warranties, your first step should be to begin the dispute resolution process outlined in your written contract.



For more information on implied warranties, go to www.doyourhomework.co.nz

MORE STEPS TO CONSIDER

If you can't sort out the issue through the process set out in your contract, then your next step will depend on who or what you are concerned about and how much you are prepared to spend to get it resolved.

Complaining about the conduct of a Licensed Building Practitioner (LBP). If your contractor is an LBP and you believe they were negligent or incompetent, you can complain to the Building Practitioners Board. The Board can investigate the LBP and discipline them, but it can't award you any compensation or make the practitioner fix defective work.

Complaining to the contractor's trade or professional association. If the contractor is a member of a trade or professional association, you can complain to this body. It may offer dispute resolution services and/or guarantees that cover work done by its members.

Seeking mediation. You can try to come to an agreement with the help of a mediator even if your contract does not provide for it, or if you have no written contract. However, both you and your contractor have to agree to mediation if it is to happen.

You can get a mediator appointed by:

- the New Zealand Law Society
- LEADR, an Australasian association of dispute resolvers
- Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ)
- a private mediation service.

Approaching the Disputes Tribunal or District Court. You can take a dispute to the Disputes Tribunal if your claim is for up to \$15,000 (or \$20,000 if both parties agree).

If your claim is for more than this or if you need to enforce the Disputes Tribunal's decision, you can go to the District Court. You should get legal advice if you are considering taking the matter to the District Court.

KEEP RECORDS OF WORK COMPLETED

Records of the work completed on your home will be useful down the road and should be kept in a safe place. This should include any technical reports received, the scope of work and other contractual documents associated with the remedial work. These documents will be useful if you wish to undertake further renovations in the future, or when selling your property. If the remedial work is undertaken without a building consent, there will be no records held by the council for your property.

PART 5

**What do I need
to know if I am
not going to
repair or rebuild?**

You may decide not to carry out the repairs or rebuild now or in the future. You may decide to wait and repair or rebuild your home at some later date and either continue living in your home or renting it. Alternatively, you may decide to sell your home in its unrepaired state; either buy or rent an existing house or rebuild on a new section.

There are a number of things you need to be aware of with any of these options. In this part we explain your responsibilities and obligations, and what you need to know if you continue living in or renting your unrepaired property, and if your home is demolished and you retain the site, or when selling your earthquake damaged property. We also include things to look out for when purchasing a new property. Whether selling now or sometime in the future it is important you keep copies of claim and repair documents in a safe place. We have provided a list of documents for you to file and keep safe at the end of this section.



Keeping the property to repair or rebuild later

If you decide to keep the property, with the plan of repairing or rebuilding in future, you may decide to continue living in the property or renting it. Alternatively you may choose to demolish the house and retain the land to rebuild on later.

THINGS TO CONSIDER

CONTINUE LIVING IN THE DAMAGED PROPERTY

Once you cash settle, your insurer will review the insurance policy on your house and may change or cancel it as part of the final settlement. Talk to your insurer about what options you have for insuring your property until it is repaired or rebuilt. If the insurer has decided it is uneconomic to repair, you will not have insurance cover for future earthquake events. But you may get contents insurance and possibly fire insurance depending on the scale of damage and the repairs completed so far.



If you do not have an insurance policy covering the home (general fire insurance), you will not have land cover or any EQC cover for it. You will also be responsible for any damage the property causes to neighbouring property or person.

Talk to your local council to see if you can get a rates reduction under the special earthquake legislation, which takes account of the lower value of your property.

Your bank may require you to repay your mortgage from the money you get through the cash settlement.

Keep evidence of any repair work you do as these records will help you later if you wish to sell the property. See Appendix 1 for a list of documents you need to keep.

RENTING A DAMAGED PROPERTY

In addition to the above items, if you keep the property but decide to rent it to provide income, you need to be aware of your responsibilities under the Residential Tenancies Act and other legislation.



Landlords are required to provide and maintain the property in a reasonable state of repair. Landlords must also comply with all requirements relating to health and safety. This includes providing adequate drinking water, toilet and shower facilities and waste removal system. Landlords are unable to contract out of these responsibilities.

Before renting the property, you may consider

- obtaining a structural engineer's report to confirm that the property is safe,
- completing any works required to make the property weathertight.

If the house is not insurable, it is unlikely you will be able to get landlord insurance to cover loss of rents and damage to the property by the tenant. If the property is dangerous, you may be personally liable for any damage it causes to the tenant, their possessions, and neighbouring people and property.

You should advise tenants that the property is uninsured, as they may not be able to get contents insurance for their possessions. If the tenants do not have contents insurance, as landlord you will not be able to recover any loss from your tenant's insurer for any damage to the property caused by the tenants.

DEMOLISH HOUSE AS AGREED WITH YOUR INSURER AND KEEP THE LAND

After a building has been demolished, and the value updated on the District Valuation Roll, the council will reduce rates for the property to land value from the first day of the following month. Likewise, once the house is rebuilt, rates will be based on the full value of the property. If your property is demolished, subdivided or substantially rebuilt during the year, you will get a property valuation notice from the council's valuers and a revised rates assessment from the council.

The cleared land will be uninsured.



If you have questions, contact your local council. For Christchurch City Council, phone 941 8999 or (for Banks Peninsula residents) 0800 800 169, or email EQremissions@ccc.govt.nz.

Selling a damaged property

If your property has had extensive damage or it has been judged uneconomic to repair, one option after cash settling your insurance claim is to sell the property in its unrepaired state. Different insurers have different approaches as to whether or not they will allow a house that has been cash settled to be sold in its unrepaired state, so check with your insurer before considering selling.

If your home is repairable, it is unlikely your insurer would retain salvage rights that have not been included in the scope of works. But if your home has been deemed a total loss, and will be rebuilt, your insurer may retain salvage rights. Check with your insurer and seek legal advice about the terms of your settlement agreement.

Also seek legal advice on your statutory liabilities for unsafe or unsanitary buildings.

For people thinking about buying an 'as is, where is' property, it is very much a case of 'buyer beware'. So it's vital that they get as much information about the home as possible before they buy it.

It is important to note that:

- it will not be possible to insure an 'as is, where is' property until it is repaired to an insurable state. Insurers differ in what they consider an 'insurable state' to be.
- many banks will not lend on these properties while they are uninsurable.
- where there is no insurance, the property owner is personally responsible if the property causes damage to another party's property.

'AS IS, WHERE IS'

When marketing a property, real estate agents usually use the term 'as is, where is' to refer to a home where the owner has settled with EQC and the insurer and the owner has not done all the repairs or has not reinstated the home in line with their settlement. They may have done no work on it or only partly repaired it. Selling the home on this basis, the seller has no responsibility or liability for the condition of the property. The insurer will have cancelled insurance cover as the insurer has met its obligations under the policy.

Cross-leased property

If you own a cross-leased property, keep in mind your obligations to the other owners of the cross-lease

to repair or rebuild the property. Before you try to sell a cross-leased property without completing the repair or rebuild, get legal advice. As the owner, you may still be responsible for the repair or rebuild even after you have sold the property, unless you:

- reach an agreement with the buyer that is registered on the title, or
- change the title from a leasehold to a fee simple.

Advice for buyers of 'as is, where is' property

If you are buying an 'as is, where is' property, you need to understand the risks involved and ensure you do a detailed due diligence investigation before proceeding.

THINGS TO CONSIDER

- Ask a builder, an engineer or a suitably qualified professional to prepare a scope of works for the property so you know the extent of the damage and if it is safe to occupy.
- Ask an engineer to provide a report on the structural integrity of the building, and if you have concerns about the land, get a geotechnical report.
- Check what technical category the property is. (www.cera.govt.nz)
- Check with the local council if the property had a red or yellow placard at any time, this information can be found on the property Land Information Memorandum (LIM).
- Is the building safe to occupy? Has the Council declared the building dangerous and attached a section 124 notice? What works would be required to ensure it is safe?
- Are you prepared to pay for any expenses if the property caused damage to a third party or their property?
- Who is responsible for demolition?
- Where repairs have been completed, you need to be satisfied that they have been done properly and that you will be entitled to the benefit of any guarantees or warranties offered by the builder.
- If repairs have not been completed, be aware that you may not have EQC cover for the property in future earthquakes.
- Has the land claim with EQC been settled? Is any remediation required? Will this be assigned to the buyer?
- What is the situation with retaining walls on your property and neighbouring properties?
- Any obligations you may have if it is a multi-unit building- is it cross-leased or body corporate?
- Find out what an insurer needs you to do before it would reinsure the property.
- Check the cash settlement terms. Do they require the home to be demolished and, if so, does the insurer have salvage rights?
- Confirm with your bank that it will lend on the property.
- Check with your local council if it has reduced rates on the property.
- If the property is rented, the landlord may be liable for any loss and damage to tenants or their property.
- Get legal advice and engage a lawyer to draft or review any contracts.

Selling a property with no structural damage but some repairs to do


If your property has no structural damage but you have not completed all repairs on it, a potential buyer will want:

- evidence of any earthquake damage and the repairs carried out to date
- information on repairs that still need to be done.
- a lower price, taking account of the cost of repairs still to be done, or
- a higher price because, as part of the sale agreement, you agree to transfer the cash settlement sum to the buyer.

Have the same documents on hand as those listed above for selling a damaged property. You could assign any insurance or EQC land claims to the buyer in case further damage is found.

Here are some other things to take care of before you sell your property:

- Have on hand a copy of all the relevant documents listed in File and Store for potential buyers.
- Assign any outstanding claims for earthquake damage – for example, building, land, fences, driveway, paths – to the buyer.
- If you have been renting the property, you will need to give your tenant written notice that you intend to sell. You must also give the tenant 42 days' notice from the date of confirmation of sale that they must leave the property.



Talk to your insurer about ongoing insurance: what options do you have until you sell the property and what are the options for potential buyers?

Documents you may need to keep



If you sell the property now or in several years, think about what information a prudent buyer would need. As there is no public register of EQC and insurance claims, it is important you keep the following documents somewhere safe to help the sale process:

- scope of works from EQC or your insurer
- it is important you keep some or all of the following documents: technical reports, including all engineering reports. What you keep will depend on what happened to the property
- the signed copy of any work's completion
- cash settlement documentation
- evidence of repair work completed if done by owner – for example, receipts, photographs of repair work
- a record of how outstanding insurance or EQC claims have been assigned
- a record of whether the property is safe to occupy
- a record of any uncompleted land, pathways, driveways or fence claims to EQC or insurer or details of any cash settlements of these claims.
- documentation identifying the ownership of retaining walls on your property and neighbouring properties
- documentation showing any changes to a cross-lease



See Appendix 1 for a sample checklist of the documents you need to have on hand to help the sale process.

PART 6

Support and assistance

There are agencies and groups that have financial and other support for Canterbury residents who are continuing to work through their earthquake related home repair or rebuild.

It can be difficult to ask for assistance but these agencies are here to help. Check out the list below and see if there is an agency that might be able to help you.

Advice

RESIDENTIAL ADVISORY SERVICE (RAS)

Provides free, impartial, legal and technical advice to residential property owners to progress their rebuild, repair and settlement claims following the Canterbury earthquakes. Free facilitation services for multi-party meetings are also available.

FREEPHONE: **0800 777 299**

PHONE: **(03) 379 7027**

VISIT: **www.advisory.org.nz**

COMMUNITY LAW CANTERBURY

Offers a free, general legal service as well as specialist advice and information services.

FREEPHONE: **0508 CAN LAW (0508 226 529)**

VISIT: **www.comunitylaw.org.nz**

RED CROSS INDEPENDENT ADVICE GRANT

Helps home owners with the costs of getting advice on what to do with their earthquake-damaged property. The grant is available to those whose home has been zoned TC3 or has been assessed as costing over \$100,000 to repair.

FREEPHONE: **0800 754 726**

VISIT: **www.redcross.org.nz**

BUILD BACK SMARTER

Provides free advice to homeowners on making homes warmer, drier, healthier and cheaper to run through development of a Healthy Home Improvement Plan tailored to the homeowners' needs and budget. An advisor will come to your home and talk with you about options. Available to all Christchurch homeowners including landlords. Particularly useful when undertaking earthquakes repairs.

VISIT: **www.buildbacksmarter.co.nz**

Support

CANTERBURY SUPPORT LINE

Connects callers to free and confidential services. The support line can help with questions, give information, and connect callers with free counselling services or organisations that can offer practical support, information or advice. The support line is open 7 days a week, from 9am to 11pm.

FREEPHONE: **0800 777 846**

EARTHQUAKE SUPPORT COORDINATION SERVICE

Provides information and practical help for those whose homes and lives have been directly affected by the Canterbury earthquakes. The service helps families recover from the effects of the earthquake by working with them to plan what they need and connecting them to services including earthquake-related housing, financial assistance, legal, EQC and insurance help, heating and repairs, school or childcare help, to name a few. To request an Earthquake Support Coordinator, call the free and confidential service line, between 9am and 11pm any day.

FREEPHONE: **0800 777 846**

COMMUNITY ENERGY ACTION CHARITABLE TRUST (CEA)

Provides free or subsidised insulation, grants for efficient heating especially where replacing expired log-burners, free recycled curtains, free independent energy advice, some help for uninsured homeowners and energy efficiency measures during earthquake repairs (conditions apply). They can also provide energy efficiency assessments of new home plans (a charge applies). CEA assists all homeowners and tenants in mid and north Canterbury.

FREEPHONE: **0800 GET WARM (0800 438 9276)**

PHONE: **(03) 374 7222**

VISIT: **www.cea.co.nz**

Information

IN THE KNOW

A website that answers questions about the residential rebuild and repair process in Canterbury.

VISIT: www.intheknow.org.nz

Accommodation

CANTERBURY EARTHQUAKE TEMPORARY ACCOMMODATION SERVICE (CETAS)

Matching and placement. Helps people to find temporary accommodation while their home is being repaired or rebuilt as a result of the Canterbury earthquakes. CETAS can help people to find a place within the private rental market or at one of the temporary accommodation villages, if it is available.

FREEPHONE: **0800 673 227**

VISIT: www.quakeaccommodation.govt.nz

TEMPORARY ACCOMMODATION ASSISTANCE (TAA) (NOT INCOME OR ASSET-TESTED)

Provides financial help for home owners whose homes are uninhabitable and their insurance cover for temporary accommodation has run out. TAA can help with rent, board or motel stays.

FREEPHONE: **0800 673 227**

VISIT: www.quakeaccommodation.govt.nz

Help moving

RED CROSS PACK AND MOVE GRANT

For households of greater Christchurch with limited or no insurance, helps with the cost of moving house as a result of the earthquakes. This grant is available to those moving out of earthquake-damaged properties for repairs, or moving for a third or more time since September 2010.

FREEPHONE: **0800 754 726**

VISIT: **www.redcross.org.nz**

RED CROSS STORAGE GRANT

Provides financial help for earthquake-affected home owners and renters who have had to leave their property and pay for storage for their belongings any time since 4 September 2010 and have run out of other financial assistance to pay for storage.

FREEPHONE: **0800 754 726**

VISIT: **www.redcross.org.nz**

Transport or extra support

RED CROSS TRANSPORT SERVICE

A community transport service for those who need help with transport to medical appointments or community engagement activities. The Outreach team can also point people in the right direction for further assistance and provide a listening ear.

FREEPHONE: **0800 468 873**

VISIT: **www.redcross.org.nz**

Engaging tradespeople and professional services

THE MINISTRY OF BUILDING, INNOVATION AND EMPLOYMENT (MBIE)

The Ministry of Building, Innovation and Employment (MBIE) have produced guides for Canterbury homeowners to help plan your repair or rebuild. They will help you ask the right questions, rebuild with confidence and ensure your home is built right.



The booklet *Rebuild with confidence – A guide for homeowners in Canterbury* gives an overview of the process, but does not cover all the rights and responsibilities involved.

www.building.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/canterbury-rebuild-guide-for-homeowners.pdf

The guidance *Repairing and rebuilding houses affected by the Canterbury earthquakes* provides robust and well-balanced engineering solutions for repairing and rebuilding earthquake-damaged houses in the Canterbury region.

www.building.govt.nz/guidance-on-repairs-after-earthquake

Recent changes to the Building Act 2004 and supporting regulations affect home owners who are planning to build or repair their homes. For more information on the consumer protection measures, or to download the guidance booklet, please visit:

www.doyourhomework.co.nz



ARCHITECTS

New Zealand Registered Architects Board (NZRAB) is a statutory entity tasked with registering, monitoring and, if need be, disciplining architects. NZRAB registers architects who have been assessed by their peers as competent to practice independently, maintains an online register, so the public can confirm that an architect is registered, reviews the competence of architects every five years, and investigates complaints and, if need be, disciplines architects.

VISIT: www.nzrab.nz/Search/

BUILDING INDUSTRY ASSOCIATIONS

Building contractors may be a member of an industry association, such as Certified Builders Association of New Zealand (CBANZ) or Registered Master Builders Association (RMBA). These associations may offer additional guarantees and benefits to their members, and their members' clients. Associations usually hold members accountable to standards of workmanship and business practice.

VISIT: www.certified.co.nz and www.masterbuilder.org.nz for advice on finding a building contractor

CONSUMER NEW ZEALAND

Consumer New Zealand has a range of independent information on building, buying, renovating and maintaining houses including dealing with tradespeople and project management.

VISIT: www.consumer.org.nz/topics/building-a-new-home

ENGINEERS

The Institution of Professional Engineers New Zealand (IPENZ) is the professional body representing engineers in New Zealand. Information about employing an engineer, including how to find the right engineer, standard contracts and what to do if dissatisfied with the quality of an engineer's work can be found on the IPENZ website.

VISIT: www.ipenz.org.nz/IPENZ/For_the_public/default.cfm

FINANCIAL ADVISORS

Information about finding a financial advisor can be found from the Financial Markets Authority.

VISIT: www.fma.govt.nz/consumers/getting-financial-advice

LICENSED BUILDING PRACTITIONER (LBP) SCHEME

A Licensed Building Practitioner (LBP) is a tradesperson you can trust to know how to "build it right". LBPs have been assessed as being competent to do the type of building they hold a licence for.

LBPs have to show certain skills, give proof of practical experience and comply with the building code to get their licence. They also have to gain enough skills maintenance points every two years to keep it.

There are a number of licences that can be held by a tradesperson. These each specialise in an area of the building process.

These licences are:

- design
- carpentry
- foundation
- roofing
- brick and block laying
- external plastering

Registered Architects and Chartered Professional Engineers are automatically treated as design LBPs and you can employ them to do any Restricted Building Work design. Certified Plumbers, Gasfitters and Drainlayers are automatically treated as LBPs in the roofing, external plastering, and brick and blocklaying licensing classes. All can only carry out work that they are competent to do.

VISIT: www.business.govt.nz/lbp

NEW ZEALAND LAW SOCIETY

Information about finding a lawyer can be found at their website. Use this service to find the contact details for a particular lawyer or organisation who provides legal services to the public, or to find all lawyers who practise in a particular geographical area and/or a particular area of law. If you have already chosen a lawyer, you can confirm that the person you plan to consult holds a current practising certificate by searching the Register of Lawyers.

VISIT: www.lawsociety.org.nz/for-the-community/find-lawyer-and-organisation/help

PLUMBERS, GASFITTERS AND DRAINLAYERS

The Plumbers, Gasfitters and Drainlayers Board (PGDB) is the statutory body which regulates these trades. While New Zealand law allows anyone to purchase fittings and appliances it is illegal to do restricted sanitary plumbing, gasfitting or drainlaying work without authorisation.

Ask for the card. You should ask to see the current authorisation card of a tradesperson – this is confirmation that the plumbing, gasfitting and drainlaying work will be completed by someone qualified or competently supervised. A public register of all certifying and licensed tradespeople is available at www.pgdb.co.nz You can use the search function to find contact details of specific individuals, or to find the names and contact details of certifying or licensed tradespeople in your area. If you are building or renovating find out all you need to know and obtain the handy consumer guide at the Board's website.

VISIT: www.pgdb.co.nz/consumer

QUANTITY SURVEYORS

A quantity surveyor is the person responsible for figuring out just what a construction project is going to cost. They aim to keep projects on budget, among many other roles. The New Zealand Institute of Quantity Surveyors (NZIQS) is the professional organisation in New Zealand for quantity surveyors, estimators, cost managers and cost consultants in the construction industry.

VISIT: www.nziqs.co.nz/Membership/Apply/Registered-Quantity-Surveyor

REAL ESTATE AGENTS

Real Estate Agents Authority (REAA) is the independent government agency that regulates the New Zealand real estate industry. Information on key things buyers or sellers should know about the buying and selling process, what to expect from their real estate agent and the different methods of buying or selling is available on the REAA website.

VISIT: www.reaa.govt.nz/ForBuyersAndSellers/Pages/ForBuyersandSellers.aspx

File and store



Create a file and store these documents and information somewhere safe.

- Your EQC claim number
- Date of earthquake your claim was for:
4 Sept 2010 22 Feb 2011 13 Jun 2011 26 Dec 2011 10 Jul 2012
- Copy of scope of works
- Copy of signed works completion
- Name of EQR project manager
- Contact details
- EQC land claim:
Details of cash settlement
Copies of remediation works invoices
- Opt out
- Cash settled:
Date repairs completed
Copies of invoices for work done
- Private insurer claim
- Claim number
- Date filed
- Claim for:
Fence Driveway House repairs
Path Retaining walls
- Written acknowledgement from insurer claim complete
- Any land contamination

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