

THE HOME BUILDING ACT 1989 (NSW)

General

The Home Building Act 1989 ('the Act') regulates the residential building industry and certain specialist work. It also regulates building disputes in NSW. Recent reforms have changed the requirements on contractors, owner-builders and insurers.

Builders and tradespersons must not undertake any residential building work or specialist work unless they hold a current contractor licence.

Residential building work is any work involved in, or the co-ordinating or supervising of, construction, alterations, additions, repairs, renovations, decorations or protective treatments to a dwelling (house, townhouse or unit).

Specialist work is any plumbing and drainage work, medical gas-fitting, electrical wiring, refrigeration or air-conditioning work, mechanic services and medical gas work, medical gas technician work and gas fitting work whether or not done the work is done in connection with a dwelling.

Building consultants who carry out pre-purchase inspections of dwellings must also hold a current building consultancy licence.

Contracts

If the contract price is more than \$5,000 (or if the contract price is not known, where the reasonable cost of labour and materials is more than \$5,000) you must have a written contract with your builder or tradesperson.

Building work that is between \$5,000-\$20,000 requires a small job contract with basic information (below \$5,000 a written contract is not required but still recommended). In particular with a small job contract:

- The contract must be signed and dated;
- The contract must contain relevant information including the names of the parties, the contract licence number, a description of the work, any plans or specifications for the work, the contract price (if known);
- The contract must include a Quality of Construction clause that states that the work will comply with the Building Code of Australia, other relevant codes, standards and specifications as required by law and any relevant development consents or complying development certificates; and
- The contract must include a clause that states that the contract may limit the contractor's liability in terms of a failure to comply with the Quality of Construction clause in certain instances.
- The maximum deposit you can be asked to pay under any building contract is 10% of the contract price regardless of the contract price.

Where a contract price exceeds \$20,000, in addition to the matters that apply to a contract

that is between \$5,000-\$20,000 the following also apply (not an exhaustive list):

- the contract should be signed and a **copy** given to you no later than 5 business days after the contract was entered into;
- you must be given a Consumer Building Guide that explains the Home Building Act and what happens in the case of a dispute between the builder and the owner;
- A contract of insurance under the Home Building Compensation Fund is required (formally known as the Home Warranty Insurance Scheme) and a Certificate of Insurance evidencing the Contract of Insurance must be provided to you.
- A cooling off period of 5-days applies to the contract, unless a certificate is provided to waive the cooling off period.

Please call us on (02) 99080 1700 for preliminary advice on any contract you may wish to enter into PRIOR to signing.

Warranties

Certain statutory warranties are implied by law into the contract and cannot be contracted out of a contract. Statutory warranties are in effect for 6 years for major defects and 2 years for all other defects commencing from when the work was completed. These warranties include that:

- the work will be performed with all due care and skill and be in accordance with the plans and specifications;
- the work and materials will be suitable for the purpose for which they are to be used;

- the materials will be new unless otherwise specified;
- the work will be done with due diligence and will comply with the Act and other laws;
- the work will be done within the time stated (if not, within a reasonable time);
- the work will result in a dwelling that is reasonably fit to live in.

A successor in title to a person entitled to the benefits of the statutory warranties (i.e. a new owner) is entitled to the same benefits, except for work and materials already enforced by the previous owner.

Insurances

All contractors must hold Home Building Compensation Cover (formerly Home Warranty Insurance) for residential building works valued at \$20,000 or more (unless the project is exempt from insurance). This cover protects owners in the event that their contractor cannot complete a job or where they cannot fix defects because they have died or become insolvent or have had their licence suspended.

You must be provided with an original certificate of insurance prior to any demand for payment and commencement of works.

For your own protection you should also ensure that the builder has builder's all risk insurance, public liability insurance and workers compensation insurance.

Owner-Builders

Owner-builders should be aware of their obligations when undertaking owner-builder work. All owner-builders must obtain a **permit** from NSW Fair Trading when undertaking residential building work (including supervising and coordinating) valued over \$10,000 and requiring development consent or that is a complying development.

Owner-builders cannot apply for a permit more often than once every 5 years. To ensure compliance, it is a requirement that all co-owners must also be on the permit application.

There are also education requirements that need to be undertaken by owner-builders (subject to the value of the works).

Home building compensation cover is no longer necessary for owner-builders, however the contractors they engage must have this insurance cover for any work over \$20,000. The owner-builder should get a copy of the contractor's certificate of insurance before the work starts and before they pay any money to the contractor.

Owner-builders should also take out further insurances such as workers compensation and public liability for their own protection.

Subsequent Sale

As of 15 January 2015, the Home Building Compensation Fund no longer issues insurance cover to home-owners who sell their properties. There is also no requirement to have a certificate of insurance attached to the contract.

However, if you were an owner-builder and decide to sell your home within 7 years and 6 months after an owner-builder permit was issued, the contract for sale must include a note that an

owner-builder permit was issued in relation to that land. Otherwise the purchaser can void the sale contract prior to settlement.

Subsequent purchasers are entitled to the benefit of Statutory Warranties and can take you to the NSW Civil and Administrative Tribunal ('Tribunal') to enforce their rights against you.

If you are an Owner-Builder and considering selling your home, contact us on (02) 9908 1700 for an update on the requirements of your Contract for Sale annexures.

Resolving Disputes

In the case of a dispute and where the works are valued at \$20,000 (thus home building compensation cover was required):

- You should contact the insurer and follow their claim-handling procedures;
- You may wish to attach written documentation evidencing your claim such as independent reports, quotations for repairs, photographs and so on.

With all other disputes, the Act provides for a dispute resolution process by NSW Fair Trading:

- Notify NSW Fair Trading in writing of your dispute with your contractor;
- They may investigate the matter and assist the parties in resolving the dispute or issue a Rectification Order to the contractor;
- If the Order is not complied with or you are not satisfied with the order you may escalate the matter to the NSW Civil and

Administrative Tribunal (“Tribunal”). Strict time limits apply at the Tribunal.

The Tribunal has jurisdiction to deal with building claims where the value of the claim is less than \$500,000 and the claim is commenced:

- within 3 years of the supply - where the claim relates to supply of building goods & services;
- within 10 years of the completion of works - where the claim relates to a contract of insurance;
- within 6 years of the completion of the works for major defects or 2 years for other breaches, where the claim relates to an implied statutory warranty.

A more serious dispute may be referred to the Building Services Commissioner for investigation.

For all your legal matters regarding home building contracts, please do not hesitate to contact us on (02) 9908 1700. For more information you may also like to view the website of NSW Fair Trading at <https://www.fairtrading.nsw.gov.au>.

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