



Building or Renovating your Home – Which Contract to use?

New South Wales law requires that all Residential building work over \$5,000.00 must have a written contract made between the property owner and the building contractor. Choosing the right form of contract to use, and negotiating the terms of it, are as essential to your building project as your choice of design and builder.

What Comprises Residential Building Work?

Residential building work is defined under the NSW Home Building Act as any work involved in, or involved in co-ordinating or supervising any work in:

- (a) the construction of a dwelling, or
- (b) the making of alterations or additions to a dwelling, or
- (c) the repairing, renovation, decoration or protective treatment of a dwelling.

The Act defines a "dwelling" as a building or portion of a building that is designed, constructed or adapted for use as a residence (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).

Small Jobs Contracts

Residential building work between \$5,000.00 and \$20,000.00 must be covered by a "Small Jobs" contract which must be in written form and be dated and signed by each of the parties to it. It must also contain the following: -

1. Full names of the parties including the name of the holder of the contractor license;
2. The number of the contractor licence;
3. Description of the work and any plans or specifications for the work;
4. The contract price;
5. A copy of the Consumer Building Guide published by the NSW Department of Finance;
6. A provision that the deposit, if any, payable under the contract cannot exceed 10% of the contract price.

The contract must also contain a "quality of construction" clause that states that the building work will comply with:

- the Building Code of Australia,



- all other relevant codes standards and specifications that the work is required to comply with under any law, and
- that it will also comply with the conditions of any relevant development consent issued in respect to the works.

Contracts for Large Jobs

Residential building work for more than \$20,000.00 needs a more extensive “Large Jobs” contract and care needs to be taken to ensure that the contract is not one-sided and is otherwise fair to both the property owner and the building contractor.

Large Jobs building contracts must contain the same provisions specified for Small Jobs contracts and a number of additional provisions including:

1. relevant warranties required by the *Home Building Act 1989*
2. the cost of cover under Home Building Compensation Scheme if insurance is required
3. a clause that states that any agreement to vary the contract or any plans and specifications to be done under the contract (including variations) are taken to form part of the contract and must be in writing and signed by both the homeowner and contractor.
4. A progress payment schedule, which may only include the following types of payments:
 - (a) fixed payments to be made following the completion of specified stages of work with the payment amounts being a stated percentage of the contract price.
 - (b) payments to be made as work is performed and costs are incurred (and which may include the addition of a margin), at intervals fixed by the contract or on an ‘as invoiced’ basis.
 - (c) a combination of the above two types of payments.
5. a termination clause, which must include a statement that the contract may be terminated in the circumstances provided by the general law and that this does not prevent the parties agreeing to additional circumstances in which the contract may be terminated.
6. a checklist of 14 items that are prescribed in the Home Building Regulation 2014
7. a caution about signing the contract if the homeowner cannot answer yes to all items in the checklist
8. a note about the home owner’s entitlement to a copy of the signed contract within five days of signing
9. a note about the contractor's obligation to give an insurance certificate under the Home Building Compensation Scheme (formerly known as home warranty insurance)
10. a clear statement setting out the cooling-off period of five clear business days within which the homeowner may cancel the contract, and,
11. the homeowner must provide a statement of acknowledgement that they have read and understood the Consumer Building Guide which explains procedures for the resolution of contract and insurance disputes and have also completed the checklist and answered yes to all items on it.



Issues to Consider

Whether the contract is a Small Jobs contract or Large Jobs contract, there are a number of issues that should be taken into consideration when examining the terms of the building contract. These include:

1. Whether the contract has been drawn up on a **“Lump Sum”** or a **“Costs Plus”** basis as the distinction between these two types of contracts can have significance in respect to costs “blowouts” during the course of construction.
2. What proportion of the building costs are **“fixed costs”** compared to the proportion of costs categorised under **“provisional allowances”**.
3. **Time provisions** – does the contract clearly set out a date on which the works will commence as well as a specified completion date for the works?
4. **Liquidated damages** and delayed damages – what are the penalties imposed on the property owner and the contractor respectively if there are delays in the project due to the actions of one of the parties and are these fair?
5. **Payment terms** – does the schedule of claimants contained in the contract adequately reflect that the amount payable is commensurate with the work undertaken to the date of such payment?
6. **Practical completion** – how is this being defined under the contract and what are the impacts on and obligations of the property owner when this stage of the construction process has been reached?

As many standard form contracts used in the construction industry are drafted by construction industry associations, consumers need to be aware that they are heavily weighted in favour of the builder. So, whether you’re building your first home, extending or renovating your existing residence or constructing a residential investment project, it’s most important that you obtain appropriate legal advice on the terms of a building contract before you sign it.

If you or someone you know wants more information or needs advice about building contracts please contact one of our [accredited property law specialists](#), [John Bateman](#) or [Michael Battersby](#) on 02 4731 5899 or email property@batemanbattersby.com.au.