

GUIDE TO BUILDING SERVICES

The Home Building Act

Each state in Australia has a "Building Act" to protect people building new homes or having building work done on their properties, and to protect workers against unfair claims by the client. Copies of the Act can be obtained from State Government Bookshops.

The Act applies to home building contracts (excluding a Cost Plus Contract) and associated works not less than \$6,000.00 and not more than \$200,000.00 such as new homes, fencing, renovations, and additions and upgrading, but does not apply to interior installations, such as soft furnishing items.

CONTRACTS

A contract is a legal agreement (preferably in writing) between two parties providing for one party to undertake to provide building works for the other party for a nominated fee or cost. Before signing any contract, be aware of the type of contract you are signing, what it implies and what one party's contractual obligations are to the other party.

It is recommended that new home builders, purchasers or renovators consult a legal practitioner to familiarize themselves with and ensure their understanding of the contractual details.

Before visiting a legal practitioner, a list of items in the contract not clearly understood should be drawn up and a "what happens if" list. With building contracts many problems can arise if either one or both parties are not fully conversant with their contractual obligations.

A BEGINNING

Prior to selecting a building contractor, the scope of works should be well documented, to include specifications, plans, elevations, sections and details as necessary, by either an architect or draftsman, depending on the complexity of the works. A clear, precise, pre-determined fee arrangement should be agreed for these services.

Once having paid for such services, the client is then normally entitled and able to call tenders/quotations at their discretion, subject to the Copyright provisions of the agreement with the architect or draftsman. Ordinarily the architect will call tenders on the client's behalf. It is advisable that all builders tender on exactly the same working documents and instructions by the same closing date.

Should the client wish to sub-contract the work independently to tradespeople (painters, carpenters, cabinetmakers, plumbers etc.) or specialist sub-contractors (fences, pools, etc) it is essential to provide these tradespeople with identical documentation. It is only fair that each tradesperson quotes on identical work

and materials required, but also essential for the client to compare like with like.

Construction and supply details do not change or the introduction of “short cuts” by any tradesperson until final selection of a contract has been settled upon. Only then may it be convenient to negotiate to reach the desired budget.

It is common practice for tradespersons to recommend alternative products and solutions prior to the contractor being nominated at the time without regard for the implications such changes may have on other works. This may also amount to “unethical” tendering procedures, by undercutting competitors after announcement of tenders.

Keep all records, (contract documents, invoices, delivery documents, payment records, etc) safely together, and that all variations to the contract (no matter how insignificant) are confirmed to the builder or tradesperson in writing, and dated duplicates be retained.

Ordinarily, the architect will be administering the contract on the client’s behalf and will maintain this paperwork.

DEPOSITS

It is inadvisable to pay deposits until all preliminary obligations of the contract have been carried out, such as gaining building licenses, obtaining permits etc.

A small deposit may be required by the builder/tradesperson but it is illegal for more than 6.5 percent to be charged, and all monies received by the builder/tradesperson, is deposited into a bank trust account in joint names.

If the builder/tradesperson demands more than 6.5 percent the client is entitled to terminate the contract prior to the work being completed, by writing to the builder/tradesperson.

PROGRESS PAYMENTS

During administration of the building works, it is reasonable that builders and tradespersons require progress payments for labour expended and materials supplied. However, this should be stated in the contract.

It should not be expected that the client pay for more than has been completed to their satisfaction. The client is entitled to withhold a retention amount, which also must be stated in the contract, which is generally payable after a defects liability period expires and any defects have been remedied.

APPROVALS

Prior to buildings works being commenced, it is necessary to have building permits (including fire, energy and where applicable, water authority approvals) and this requirement must be fulfilled by either party according to their contractual obligations.

VARIATIONS

The Home Building Contracts Act provides controls over variations and the various forms of contract agreement, and applies rules for their applications.

Variations to a contract should always be confirmed in a written “order”, itemising in detail the nature of the variation and the cost. Ensure that the variation order is signed and dated by both parties to the contract.

The builder should be held responsible to confirm and obtain agreement to variations prior to the work being commenced.

The need for variations can be unforeseen, and a builder or tradesperson must be able to demonstrate, beyond doubt, that the problem was non-detectable prior to tendering and not allowed for in the tender. Such variations must be advised in writing within 14 days of becoming apparent, and the client will be responsible for the cost.

It is essential that the client be able to make balancing variations to the works if necessary and when required, in order to maintain the Contract Sum at a level that can be accommodated financially to keep an accurate, up to date tally of the client’s liability for extra cost.

SUPERVISION

During the implementation of the building contract, local council workers

and supply authorities, commission architects and tradespersons ordinarily have reasonable access to the building site unless otherwise determined by the builder for safety or security reasons.

With the exception of the representative architect, who will be administering the works in detail and in accordance with the contract documents, building surveyors will only be seeking works not in accordance with council and authority regulations.

If an architect is not administering the building works, it is the client’s responsibility to check that all works are in accordance with the building contract.

Inspection times with the builder/tradesperson should be agreed to between both parties to the contract.

Should there be objections to any work carried out this should be submitted in writing to the builder or tradesperson.

TERMINATION OF THE CONTRACT

Should either part to the Contract wish to terminate the contract at any stage, this must be done in writing.

It is reasonable to pay for materials and labour provided and delivered to the building site, to termination date. It is not reasonable to be expected to pay for materials not delivered, nor paid for by the builder.

Should either party to the Contract disagree on finalisation matters prior and following the termination, these matters may be resolved by the Building Disputes Committee in the relevant State.

INSURANCE

Just as it is the client's responsibility to check that the builder or tradesperson is registered, it is also the client's responsibility to ensure that adequate insurance cover to protect the building works exists prior to commencement.

Insurance ordinarily required includes Worker's Compensation (by builder/tradesperson) Builder's All-Risk Insurance to cover loss or damage of materials on-site or in storage and Public Liability to cover members of the public who may be injured because of the building works. In the case of additions to an existing house, the cover should extend to the existing works.

In the case of new works, the builder ordinarily obtains the specified insurance, and in the case of additions, it is preferable that the owner arranges works cover, from the existing insurer, to avoid disputes over causes, location of causes and liability in event of a claim.

In all cases, however, the advantage in an owner arranging insurance is that it is assured that cover is made and maintained.

For other types of insurance it is recommended that the client contact the insurance broker before work commences to ensure that the insurance is adequate and up to date.

ACCEPTING TENDERS & QUOTATIONS

The terms under which a tender will be accepted, should be stated in writing, in the tender documents and advertisements calling for tenders.

Once the tenders/quotations have been returned for consideration, it is not always desirable to accept the lowest tender.

It may be advantageous to ask for references from past client and visit a completed project.

It is not advisable to take the tenderers word that all has been well with previous contracts. Word of mouth from previous clients and architects is by far the most efficient and convenient way of establishing whether the tenderers work, management and ethics are up to standard.

Credit rating with the tenderers major materials suppliers is a good guide to their financial suitability.

Ensure that the builder or tradesperson is registered with the appropriate Board, such as the Builders Registration Board or the Painters Registration Board and that the company has full insurance cover.

DISPUTES

Should a dispute arise between the client and the builder or tradesperson, to save time and money try to resolve it expeditiously, amicable and reasonably.

Should the dispute not be resolvable, it may be necessary to seek the advice of an unbiased third party conversant with building procedures, or take the matter to the Building Disputes Committee or arbitration where provided for in the building contract agreement.

The decision of the building Disputes committee is legally binding.

* * * * *