

Consumer Building Guide

Mandatory information for consumers

Builders and tradespeople must give you a copy of this guide before entering into a contract for residential building work costing more than \$5,000. Read this guide to help protect your rights, carry out your responsibilities and support your building project.

Protecting consumers under home building laws

NSW Fair Trading is the NSW Government agency regulating residential building work (including building or trade work on single dwellings, villas, houses and home units) under the *Home Building Act 1989*.

What to consider before work starts

Licensing

Licensing requirements include:

- Tradespeople and builders carrying out residential building work valued at more than \$5,000 must be licensed by NSW Fair Trading (check a licence at the Fair Trading website or by calling 13 32 20).
- Regardless of the work's cost, a licence is always required for specialist work (like plumbing, air conditioning and refrigeration, electrical work and gasfitting).
- If the work requires more than one tradesperson, you need a builder to manage the building project and co-ordinate the tradespeople, such as plumbers, painters and carpenters.

Home Building Compensation Fund (previously called Home Warranty Insurance)

Where work is worth more than \$20,000 (including labour and materials), the builder or tradesperson must not start work or ask for any money (including a deposit) until they give you a copy of the Home Building Compensation Fund certificate for your job. Certain types of work are exempt; check our Home Building Compensation Fund web page.

Approvals

To help your building project go smoothly:

- Check with your local council or an accredited private certifier on approvals your building work needs.
- Engage a building certifier. This is your responsibility, not the builder's. Find an accredited certifier at the Building Professionals Board site: www.bpb.nsw.gov.au

The contract and payments

All contracts must be in writing. The two main contract types are:

- Fixed price or lump sum - where the builder or tradesperson agrees upfront to a fixed amount for the whole job. Unforeseen changes during construction may affect the final cost.
- Cost plus contract - there is no guaranteed final cost for the job (often this contract is used where the project's nature prevents the final cost from being calculated). The consumer repays the builder for verified direct and indirect costs and fees at regular intervals. It is good practice for the builder to give a non-binding estimate before starting, and track costs with you against the project's budgeted estimate.

Residential building work worth less than \$20,000 must be done under a 'small jobs' contract. The written contract must be dated and signed by, or on behalf of, each party. It may specify that work be paid for at regular intervals. It must contain:

- the parties' names, including the name of the holder of the contractor licence as shown on the contractor licence
- the number of the contractor licence
- a description of the work
- any plans or specifications for the work, and
- the contract price if known.

Residential building work worth more than \$20,000 requires a full home building contract. As well as all of the requirements of the 'small jobs' contract, it must include other comprehensive information such as the details of the statutory warranties the builder must provide, and the contract price or warning that the contract price is not known. Find a complete list of contract requirements on our website.

All contracts over \$20,000 in value must have a progress payment schedule. Progress payments must match the work carried out and, for cost plus contracts, be supported by receipts or other verifying documents.

Any change you need to make to a contract is a 'variation'. Variations must be in writing and be signed by both parties to the contract. Almost all will impact the contract price.

The maximum deposit you can be asked to pay before work starts is 10%.

Common traps and tricks

Beware of:

- An extremely low quote compared with others. This may indicate the job's quality is being compromised. Or, the builder may not fully understand what is required.
- 'Sales pitches' putting pressure on you to sign a contract quickly to avoid a price increase.
- A builder who recommends you get an owner-builder permit while they organise all the building work. The builder may be trying to avoid responsibility and may not have the right kind of licence or Home Building Compensation Fund certificate.

When things go wrong

Statutory warranties

Builders and tradespeople must guarantee that their work is fit-for-purpose, performed diligently and delivered in a reasonable timeframe, in line with the contract. Unless otherwise specified, materials should be new and

appropriately used. These warranties are time-limited: legal proceedings to enforce them must be commenced within 2 years for all defects, and 6 years for 'major defects'. There is another 6 months for both warranty periods if the defect only became apparent after 18 months or 5 and a half years. Find out more about these warranties on the Fair Trading website.

Resolving a dispute

These steps can help you resolve a dispute:

- You must notify your builder or tradesperson and discuss concerns as soon you become aware of a problem. Follow up with an email or letter.
- Understand acceptable work standards by downloading the *Guide to Standards and Tolerances* from our website.
- Contact Fair Trading for free dispute resolution if you and your builder or tradesperson are unable to resolve the dispute.
- Lodge a claim with the NSW Civil and Administrative Tribunal if you remain unsatisfied with the dispute resolution outcome.
- Protect your rights under the Home Building Compensation Fund: contact your insurer as soon as you become aware of defective or incomplete work.

More information

Visit the Fair Trading website (focussing on the Home Building and Renovating section) to:

- learn more on your rights and responsibilities and the statutory warranties
- do an online licence check to verify a builder or tradesperson's licence details
- find out about dispute resolution
- download free home building contracts
- subscribe to enews and information, and to access Fair Trading on social media.