

# Consumer Building Guide

## Mandatory information for consumers

*This information applies from 15 January 2015, when the majority of the new home building laws commence. A new version of this guide will apply from 1 March 2015 when the provisions related to contracts and progress payments come into effect.*

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 get the most from your building project.

## Protecting consumers under home building laws

NSW Fair Trading is the NSW Government agency that regulates residential building work under the *Home Building Act 1989*. Residential building work includes building or trade work on single dwellings, villas, houses and home units.

## 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.
- Specialist work - like plumbing, air conditioning and refrigeration, electrical work and gasfitting - requires a licence regardless of the value of the work.
- If more than one tradesperson is needed for the work, you need a builder to manage the building project and co-ordinate tradespeople (such as plumbers, painters and carpenters).

Do a licence check by visiting the Fair Trading website or by calling 13 32 20.

## Home Building Compensation Fund

Where work is worth more than \$20,000 (including labour and materials), the builder or tradesperson must not start work until they give you a copy of the Home Building Compensation Fund certificate for your job.

## 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 or check a certifier at the Building Professionals Board website: [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

## The contract and payments

The two main types of contract 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 not a final guaranteed cost for the job and the consumer reimburses the builder for direct and indirect costs and fees as the job progresses. This contract should include an estimated budget, timetable for reporting of actual costs and a way of tracking actual costs against the budget.

Residential building work worth more than \$5,000 requires a full home building contract. It must include all of the requirements of the 'small jobs' contract as well as other comprehensive information, including details of the statutory warranties the builder must provide, and the contract price or warning that the contract price is not known. A complete list of contract requirements can be found on our website.

You will generally be required to make progress payments over the course of the construction so the builder can pay for materials and labour as they go.

Any change you need to make to a contract is known as a variation. Variations must be in writing and include the signature of both parties to the contract. Almost all variations impact the contract price.

The maximum deposit you can be asked to pay is 10% if the work is under \$20,000 and 5% if the work is over \$20,000. You should agree with the builder when these are payable before work starts. It is a good idea to include them in the contract.

### Common traps and tricks

Beware of:

- An extremely low quote compared with others; this may indicate that corners are being cut, compromising the quality of the job. It may also indicate that the builder doesn't 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 lack the right kind of licence or Home Building Compensation Fund certificate. Note: the Home Building Compensation Fund is the new name for the Home Warranty Insurance scheme.

### 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 plans and specifications in the contract. Unless otherwise specified, materials should be new and appropriately used. These warranties can be enforced through dispute resolution.

### Resolving a dispute

These steps can help you resolve a dispute:

- Discuss concerns with your builder or tradesperson once you become aware of a problem to clarify any misunderstanding. 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.
- To safeguard your position under the Home Building Compensation Fund let your insurer know as soon as you become aware of defective or incomplete work.

### More information

Browse the Home Building and Renovating section on the Fair Trading website to:

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