
Residential Building Consumer Guide

**Your building contractor must give you this guide before
you sign the contract**

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Contents

Owners and Building Contractors.....	4
Residential Building Work.....	4
Licensed Building Service Providers and trades	4
Building Surveyors	4
Contracts.....	5
Types of Contracts	5
Cooling-Off Period.....	5
Deposits and Progress Payments	6
Variations.....	6
Practical Completion, Defects and Acceptable Standards.....	7
Statutory Warranties.....	7
When Things Go Wrong.....	8
Dispute Resolution Options.....	8
Contact your builder	8
Defective Work Directions and Orders by the building surveyor	9
Defects found while work is underway	9
Defects found after a Certificate of Completion was issued	9
Defective Plumbing work.....	9
Informal Advice.....	10
Mediation Process arranged by the Director of Building Control	10
Unresolved residential building disputes – the TASCAT	11
Further Information.....	12
Checklist.....	13
Owner Acknowledgment – Owner Copy.....	14
Owner Acknowledgment – Builder Copy	15

This Guide has been developed by Consumer, Building and Occupational Services (CBOS) under the *Residential Building Work Contracts and Dispute Resolution Act 2016* to assist home owners undertaking residential building work for a contract price of \$20,000 or more. It is designed to help you avoid disputes and common pitfalls, by explaining your rights and obligations under the Act.

Owners and Building Contractors

The 'owner' means you, as the person for whom the residential building work is to be done. This can include lessees or tenants of a residential building or land. 'Building contractor, practitioner or service provider' means the person you have contracted to carry out the residential building work. This may be the builder, electrician, plumber, gas-fitter, or any other trades person you have engaged to carry out the work.

Residential Building Work

There are a range of protections for home owners and building contractors under the *Residential Building Work Contracts and Dispute Resolution Act 2016*. The Act improves the quality of residential building contracts, and provides processes to resolve disputes about contracts for building work worth \$20,000 or more. The types of work covered include new houses, renovations, alterations, extensions, improvements, repairs and conversions of uninhabitable buildings into residential buildings (for example a barn or shipping container into a house). Commercial, public or industrial buildings (including hotels, motels, units above three storeys, bed and breakfast accommodations, caravans and cabin parks) are not covered by this Act.

Licensed Building Service Providers and trades

Before you decide to enter into a residential building contract, make sure that the building contractor you choose to do the work is licensed as a builder in Tasmania. Building service providers, including builders, building designers and building surveyors, must hold certain licences in order to perform certain types of building work. Not all types of building work need a licence such as paving, concreting, painting, and landscaping. You can search for a building contractor's licence details via CBOS's Online Licence Search. Practitioners performing plumbing, gas, and electrical work must also be licensed. To access the online search or find out more about licensing visit: www.cbos.tas.gov.au

Building Surveyors

It is important that you are involved in selecting and engaging the Building Surveyor, as they are responsible for checking that the building design and building work meets the requirements of the National Construction Code and Australian Standards. Your Building Surveyor remains involved in your building project until it is complete, inspecting the work at particular stages to ensure your builder are building in accordance with the approved design.

During the inspection process the building surveyor has the authority to issue inspection directions or orders to the building contractor where defective building work has been identified. Defective work is work that does not comply with the Act, or the National Construction Code, and is discovered during an inspection of the work under this Act or at any point after the completion of the work.

Inspection directions or orders for defective work can be issued up to two years after a Certificate of Completion was issued for the work.

If there are issues with the build, always talk to your building surveyor to see if they can assist. See more details under the section below on Resolving Building Disputes.

Contracts

Residential Building Work Contracts are legally binding agreements between owners and building contractors to perform residential building work. While some of the contract terms may be negotiated until agreement is reached by both parties, there are some terms that must be included in the contract and cannot be taken out.

All contracts must be in writing, dated and signed by both parties. The contract must also include:

- the names of the owner and the building contractor
- the building contractor's licence details (licence number)
- all terms that are agreed between the owner and the building contractor
- a clear description of the building work to be done, including plans, drawings and specifications
- the contract price or an estimate and the method of calculating the price, including prime cost items and provisional sum allowances
- the practical completion date or the method for estimating the practical completion date
- a list of all applicable statutory warranties

As soon as practicable, but within 5 business days of signing the contract, your builder must give you a copy of the signed contract and this Residential Building Consumer Guide.

Types of Contracts

There are two main types of building contracts available:

- Fixed price or lump sum - where the builder or contractor agrees up-front to a fixed amount for the residential building work to be performed. It is important to note that unforeseen changes, the actual cost of prime cost items and provisional sum allowances, interest on overdue payments or variations to the contract may affect the final cost.
- Cost plus contract - where there is no guaranteed final cost for the residential building work (often this contract is used where the nature of the work prevents the final costs from being calculated). With this type of contract, a fair and reasonable cost estimate and the method for calculating the final contract price must be clearly stated. You then pay the contractor at agreed regular progress payment intervals.

Cooling-Off Period

You may withdraw from the contract within five business days of receiving a copy of the signed contract (including any plans and specifications), and a copy of this Residential Building Consumer Guide. If your builder has not provided you with this Guide, then you

have up to seven days of becoming aware that you should have received the Guide to withdraw.

You must notify the contractor in writing of your intention to withdraw, within these timeframes. There may be costs to withdraw from the contract. The building contractor can retain \$100, plus any out-of-pocket expenses reasonably incurred up to the time of withdrawal. The builder must refund the remaining pre-paid or deposit amount (if any) that was paid under the contract. There are certain circumstances under which you cannot rely on the cooling-off period. These include:

- if you have previously entered into a residential building work contract with the building contractor which is substantially the same; or
- you have received formal legal advice about the contract prior to signing.

Deposits and Progress Payments

There are restrictions on the amounts a building contractor can ask for as an initial deposit for work to be performed, or as progress payments for various stages of the contract. This is to ensure that you do not pay excessive amounts in advance for work that has not yet been performed. The maximum deposit amounts allowed are:

- 10% for contracts between \$20,000 and \$50,000
- 5% for contracts of \$50,000 or more
- 20% for contracts of any price, where the value of the work to be performed off-site* is more than half of the total price.

*‘Off-site’ means a place that is different to where the residential building work is to be finally installed or constructed (for example prefabricated or ‘kit’ homes that are substantially constructed in a warehouse, and then delivered to be installed on site).

Owners and builders are free to agree to the number and timing of the progress payments. These payments must be clearly stated in the contract and be proportionate to the value of work performed. In other words, your builder cannot ask you to pay more than 50 per cent of the contract price, until at least half of the work has actually been completed.

Variations

Any agreed change to the materials used or the scope of the work to be performed under the contract is known as a ‘variation’. Variations must be in writing and signed by the owner and building contractor. Your builder must give you a copy of the signed variation document within five business days of the changes being agreed, and before any work commences. Almost all variations will impact the final contract price. The building contractor must clearly state the new contract price and impact on the progress payments (for fixed price contracts), or a fair and reasonable estimate of the cost (for cost plus contracts), to reflect the changes.

If a variation is needed urgently or is unforeseeable, it may not be possible to put it in writing before the work commences. However, the builder is still required to tell you the costs and the reasons why the variation is needed, and you must give confirmation to the changes. The builder is then to put the variation in writing as soon as practicable after the work has commenced.

Practical Completion, Defects and Acceptable Standards

The building work has been ‘practically completed’ when it has been completed in accordance with all contract terms, plans, specifications and legal requirements, and is without any major defects or omissions that affect occupation. In other words, as soon as all of the work specified in the contract has been carried out to an acceptable standard, the work is deemed to be completed.

The building contractor is to provide you with a notice advising you of the date of practical completion, within 10 business days. This is the date that final payments will be due. The acceptable standards of work are detailed in the Guide to Standards and Tolerances, which may be found at www.cbos.tas.gov.au

If work does not comply with the mandatory requirements of codes and building standards, it has not reached “Practical Completion” stage. The building surveyor needs to be involved, to inspect the work and decide whether to issue an inspection direction to the building contractor.

If you find any minor defects or omissions outside of these acceptable standards, they must be recorded and agreed by you and the builder on or after the day of practical completion (such as on the day of handover) as issues which are to be fixed. The building contractor must then provide you with a signed document that lists all the identified and agreed issues and fix them as soon as possible, by no later than six months after you receive the defects document. You must provide the building contractor access to fix the defects within the six month time period. You should continue to talk to your building contractor during this period to make sure the issues can be fixed quickly and easily.

Statutory Warranties

Building contractors must give a range of promises, otherwise known as warranties, which automatically form part of all residential building contracts. These warranties become a right that can be enforced by owners, whether they are written into the contract or not. The statutory warranties provide that:

- all materials supplied will be of good quality and suitable for the work to be done
- all materials supplied will be new (unless otherwise stated in the contract)
- the work will comply with all relevant laws and legal requirements, including the standards set out in the:
 - National Construction Code
 - Building Act 2016 (Tasmania)
- the work will be carried out in an appropriate and skilful way, with reasonable care and skill
- all work carried out is in accordance with any plans and specifications, as set out in the contract (if applicable)
- once the work is completed, the dwelling or home will be suitable for occupation (if applicable)

- all work carried out will be performed with reasonable diligence, in that it is completed to the agreed or estimated timeframe
- any provisional or estimated costs have been calculated with reasonable care and skill, taking into account all information reasonably available at the time.

These warranties last for six years from the date of practical completion. You must make a claim within this time if you feel that the building contractor has not met one of the guarantees. If the exact date of practical completion cannot be established (in that the work has not been performed in compliance with the contract and all statutory requirements, or there are major omissions or defects that affect occupation), this date is taken to be the day the certificate of completion or occupancy permit is issued.

If neither of these dates can be established, practical completion will be taken to be two years from the date you received a building permit, or the building surveyor provided authorisation for the work to be done. If the residential dwelling or home is sold within this time, these warranties transfer to the new owner until the original time period expires. You also have rights and protections under other areas of law, including contractual rights and guarantees under the Australian Consumer Law.

When Things Go Wrong

To reduce the risk of a dispute, carefully read and understand the contract before you sign it. This includes all plans, drawings and specifications.

A dispute can occur in situations where:

- the building contractor does not fix the defects or omissions listed in the defects document within six months
- the building contractor does not fix defects found after handover within the liability period agreed upon in the contract
- there are major defects or omissions in the work done, or the work does not meet acceptable building standards or requirements
- the building contractor does not meet their obligations under the contract, relevant laws and standards, including warranties and licence conditions
- the owner fails to meet their obligations, such as scheduled progress payments, under the contract.

Dispute Resolution Options

If a dispute with your contractor does occur, these steps are available to help you resolve the issue:

Contact your builder

- You must notify your building contractor of your concerns as soon as you become aware of them. The best first step is to make sure your building contractor is aware of your concerns and give them an opportunity to resolve the issues. Follow up with an email or a letter.

- Understand the acceptable work standards set out in the Guide to Standards and Tolerances. This document has been developed for use by builders and owners as a convenient reference for acceptable standards of workmanship in residential building work. The Guide is available from our website: www.cbos.tas.gov.au

Defective Work Directions and Orders by the building surveyor

All building and plumbing work in Tasmania must comply with the minimum mandatory standards of the *Building Act 2016* and the National Construction Code.

Under the *Building Act 2016*, the building surveyor engaged by the owner for notifiable and permit building work has the responsibility to undertake inspections of the work at various stages during construction.

Defects found while work is underway

If during construction, defective work is identified, the building surveyor may issue an Inspection Direction to the building contractor for rectification of defects within a period specified by the building surveyor.

The contractor is required to comply with these directions.

Defects found after a Certificate of Completion was issued

If, within 24 months of work being completed, the building surveyor or the Director of Building Control certifies that building work is defective, the building surveyor is to issue a Defective Work Order to the building contractor.

They will then need to rectify the work specified in the order to make the building work compliant. The building surveyor may specify in the order any conditions, requirements and restrictions on how the defective work is to be rectified.

Defective Plumbing work

For plumbing work, the council permit authority is responsible for inspections of plumbing work at various stages, and it can order the responsible plumber to rectify defective plumbing work.

Note that these inspection and rectification processes in the *Building Act 2016* mainly deal with significant defects that are in breach of mandatory codes and standards. They do not apply to other contracted standards of work, such as the owner's choice of materials, finishes and fittings (see the Guide to Standards and Tolerances regarding contracted standards of work).

To enforce those contracted requirements, the owner has to rely on the remedies in their building contract and the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

Informal Advice

If you and the building contractor are still unable to resolve the dispute yourselves, contact CBOS for free advice regarding dispute resolution.

Mediation Process arranged by the Director of Building Control

Under the Act, there is a formal mediation process for disputes, which may be lodged by either party (the owner or building contractor).

A party to residential building work may lodge a notice of dispute relating to the residential building work contract or the performance of the work under such a contract. This notice commences the mediation process.

The Director may reject a notice of dispute if the person lodging the notice has not made a reasonable attempt at resolving the issue before lodging an application for mediation.

If the Director accepts the notice, a mediation panel will be established. Mediation is voluntary and aims to get the parties to discuss their problems and to work out solutions.

Mediation may be held on-line or in person.

There is no application fee for mediation, but both parties are expected to pay the costs of the mediator panel (usually shared equally between the parties).

Once the mediation process has begun, you have 20 days to reach agreement or settlement with the building contractor.

If a dispute can be resolved, the parties can be assisted to record their agreement in writing.

Agreements made will be binding and you have the right to enforce your rights through the Tasmanian Civil and Administrative Tribunal (TASCAT).

If the parties cannot reach a settlement within 20 days, the mediator must cease to give assistance and will inform the Director of the outcome.

If you fail to reach agreement you will have to rely on other legal avenues.

Seek independent legal advice if legal action is the option you choose to follow. Note that time limits apply to certain legal options.

Consumer Building and Occupational Services (CBOS) has more information on its website regarding the mediation process. If you have questions, please contact CBOS.

Unresolved residential building disputes – the TASCAT

If mediation was unsuccessful in resolving a dispute, a party may make an application to the TASCAT for a formal hearing and decision to be made. The TASCAT is a simple, affordable and timely alternative for dispute resolution compared to a court.

The TASCAT has power to determine a range of matters, including:

- If residential building work is incomplete or is defective;
- The work has not been completed to the standard, or using the materials, required under the contract;
- If the work has caused, or resulted in, damage to any building, structure or residential building work;
- If residential building work complies with the requirements of a relevant Act, such as permits, certificates and compliance orders under the Building Act; and
- Disputes relating to the terms of a contract.

The TASCAT has powers to make binding orders similar to a court, such as to award compensation, or to require that work is to be completed to the contracted standard.

Parties may seek to have legal representation before the TASCAT.

Note that an application cannot be made to the TASCAT if:

- The residential building work contract was entered into before 1 January 2017; or
- The parties to a contract have not yet genuinely attempted to resolve a dispute; or
- The parties have not attempted to undertake formal mediation of their dispute through the Director of Building Control; or
- The parties have already started legal action in a court or other body to resolve this dispute.

Contact details of the TASCAT:

Email: tascat@tascat.tas.gov.au

Phone: 1800 657 500

Further Information

Visit the Consumer, Building and Occupational Services website at www.cbos.tas.gov.au to:

- learn more about your rights and responsibilities
- view a complete list of requirements for residential building work contracts
- find more information about dispute resolution
- find further building information on technical issues, including:
- access current residential building news and information
 - Aerated Wastewater Treatment Systems
 - Bushfire prone areas
 - Condensation in buildings
 - Energy Efficient Houses

You may also contact the Tasmanian State Government Helpline or email us directly.

Department of Justice Consumer,
Building and Occupational Services
PO Box 56 Rosny TAS 7018
P: 1300 654 499
E: cbosinfo@justice.tas.gov.au
W: www.justice.tas.gov.au

Checklist

This checklist is required by law. Ensure you are able to tick all boxes before signing the contract. This checklist is designed to ensure you have considered important issues to do with the contract. Once you are satisfied you can check off all of these points, please sign and keep the acknowledgement page for your records. If you are unable to check off any of these points, you should continue to discuss the matter with the building contractor until you reach agreement.

- ☐ I have read and understood this Residential Building Consumer Guide.
- ☐ I have checked that the building contractor is licensed for the type of residential building work to be performed, and the licence is current.
- ☐ I have selected and engaged a building surveyor to ensure the building design and building work detailed in the contract is carried out in accordance with the National Construction Code and Australian Standards.
- ☐ I have read and agree to all terms in the contract, including general conditions, special conditions (if any), and all plans, drawings and specifications for the work to be performed.
- ☐ I have checked that a detailed description of all work that is to be done is included in the contract.
- ☐ I am satisfied that the total contract price is clearly stated, or a reasonable estimate has been provided (if applicable).
- ☐ I understand the deposit and progress payments arrangements (including how they are calculated and varied), and these are clearly stated in the contract. Remember – there are maximum deposit amounts building contractors can ask for.
- ☐ I am satisfied that the start and finish dates (including practical completion and handover requirements) are clearly stated in the contract.
- ☐ I understand the process to make variations to the contract, including extensions of time and cost increases, and the need to put all variations in writing.
- ☐ I understand the statutory warranties that apply to the work done under the contract, and know about my rights to enforce them.
- ☐ I understand my cooling-off rights, including how and when I may withdraw from the contract if I choose to.
- ☐ (if applicable) I have discussed my questions/concerns about the contract with a practising solicitor. I understand that this may affect my ability to withdraw from the contract without penalty.
- ☐ I am aware of the dispute resolution options which are available.
- ☐ I am satisfied that the following is an accurate summary of the contract in which I am about to enter into:

Owner Acknowledgment – Owner Copy

Complete and sign the section below to acknowledge that you have received this Residential Building Consumer Guide from the building contractor and completed the checklist before you sign the contract.

Remember - the building contractor is to give you a signed copy of the contract and return a signed copy of this guide to you, within 5 business days.

You and the building contractor must keep a copy of this acknowledgement sheet as a record that you have been provided a copy of the Residential Building Consumer Guide.

Owner

Name:

Date:

Signature: 

Building Contractor

Name:

Date:

Signature: 

Owner Acknowledgment – Builder Copy

Complete and sign the section below to acknowledge that you have received this Residential Building Consumer Guide from the building contractor and completed the checklist before you sign the contract.

Remember - the building contractor is to give you a signed copy of the contract and return a signed copy of this guide to you, within 5 business days.

You and the building contractor must keep a copy of this acknowledgement sheet as a record that you have been provided a copy of the Residential Building Consumer Guide

Owner

Name:

Date:

Signature: 

Building Contractor

Name:

Date:

Signature: 