Contents

Introduction .................................................................................................................2
The Home Building Act 1989 .......................................................................................2
Provision of consumer information ............................................................................3
Contracts .......................................................................................................................3
Statutory warranties .....................................................................................................5
Contract variations .......................................................................................................5
Deposits .........................................................................................................................5
Progress payments .......................................................................................................6
Insurance .......................................................................................................................6
  Home Warranty Insurance .........................................................................................6
  Councils and Home Warranty Insurance ..................................................................6
  Other insurances .........................................................................................................7
Check list for owners entering a building contract ....................................................7
Cooling off period .........................................................................................................8
When things go wrong .................................................................................................8
Are there limits on what the Tribunal can do? ............................................................11
How is a decision made? ..............................................................................................12
When will the Tribunal make its decision? .................................................................12
How do you apply? .......................................................................................................12
Making an insurance claim on your Home Warranty Insurer .....................................13

This document contains important information.

If you are building/extending/renovating all the information applies -
read it carefully and go through the check list on pages 7 and 8
before you sign your contract.

If you are entering into a contract with a speculative builder
(ie buying a house already built on a block of land) or buying
from a developer (apartment/townhouse/villa)
pages 9-13 apply.
Introduction

The role of the NSW Office of Fair Trading in the home building industry is to promote fair trading by licensing builders and tradespeople, protecting the rights of consumers and providing information.

In accordance with the Home Building Act 1989, a contractor is required to give you this guide before entering into a contract for residential building work or the supply of a kit home.

Developers and speculative builders are required to give you this guide before entering a contract for sale of land.

This guide is intended to give you a basic understanding of the operation of the Home Building Act 1989, the procedure for the resolution of building disputes and explain how the contract of insurance operates.

In this guide your builder or tradesperson is referred to as your “contractor”.

The Home Building Act 1989

The Home Building Act 1989 is a law that regulates residential building work in NSW. Residential building work is building or trade work on single dwellings, villas, houses and home units. Some of its most important provisions are listed below.

- All builders and tradespeople must be licensed to practice their trade.
- A written contract must be used for residential building work where the value of the contract is more than $1,000.
- The builder or tradesperson must take out home warranty insurance if the value of the contract is more than $12,000 (including the cost of materials supplied by the owner or another person).

The Home Building Act 1989 also applies to situations which involve contracts to supply kit homes. A kit home means a set of building components, which when offered for sale, are sufficient for the construction of a dwelling (home), garage or carport according to plans or instructions provided by the supplier.
Provision of consumer information

This consumer guide does **not** have to be provided if the contract is:

- subordinate to a principal contract to do residential building work (for example, a contract between a subcontractor and a head builder to do residential building work), or
- made between a speculative licensed builder and a licensed trade contractor, or
- for the doing of specialist work (plumbing, draining, gasfitting, electrical wiring, refrigeration and air conditioning) that is not also residential building work, or
- for a contract price not exceeding $1,000, or
- for the provision of labour and materials by the contractor, the reasonable market cost of which does not exceed $1,000, or
- required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of people or to prevent substantial damage to property, or
- for residential building work entered into between the holder of a contractor licence and a developer who does the work.

**Contracts**

By law, the written contract you sign must contain:

- the date that it was signed by both you and your contractor
- your name and the name on your contractor’s licence card and the licence number
- a sufficient description of the work to be carried out
- plans and specifications attached
- relevant warranties required by the **Home Building Act 1989**
- the contract price, which must be prominently displayed on the front page and a warning if the contract price is subject to change
- a check list of 13 items (the form of the check list is set out on pages 7 and 8)
- a caution about signing the contract if you cannot answer yes to **all** items in the check list
• a note about your entitlement to a copy of the signed contract
• a note about home warranty insurance
• an acknowledgment by you that you have read and understood this guide and that you have completed the check list and answered yes to all items on it
• a clause that states that all plans and specifications for work to be done under the contract (including any variations to those plans and specifications) are taken to form part of the contract
• a clause that states that any agreement to vary the contract or any plans and specifications must be in writing and signed by you and your contractor
• a clause that states the work, or components, will comply with the Building Code of Australia, to the extent required under the Environmental Planning and Assessment Act 1979, including any instrument made under that Act, all other relevant codes, standards and specifications that the work is required to comply with under any law and the conditions of any relevant development consent or complying development certificate
• a clause that states that the contract may limit the liability of the contractor to comply with the clause referred to immediately above if the failure relates solely to a design or specification prepared by or on behalf of the owner or a design or specification required by the owner if the contractor has advised the owner in writing that it contravenes the clause referred to immediately above.

Make sure that the name on the licence certificate matches the name on the contract (and any other documents used by the contractor). A licence in the name of an individual does not permit the individual’s company to make the contract, even if the individual is a director of the company. If the company is making the contract, the company needs to be licensed in the company name. Go to www.fairtrading.nsw.gov.au/building and do an on-line licence check.
Statutory warranties

The following warranties are implied by law into contracts by builders and tradespersons, even if they are not written into the contract:

• The work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract.
• All materials supplied will be suitable for the purpose for which they are used and that those materials will be new, unless specified otherwise.
• The work will be done under and will comply with, the Home Building Act 1989 or any other law.
• The work will be done with due diligence and within the time stated in the contract, or otherwise in a reasonable time.
• If the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling.
• The work and any materials used in doing the work will be reasonably fit for the specified purpose or result that the owner has made known to the contractor, so as to show the owner relies on the contractor’s skill and judgement.

Contract variations

All variations must be in writing and include the signature of both parties to the contract. This includes changes to plans, schedules, attachments to the contract and other documents referred to in the contract.

Deposits

Under NSW home building law, there is a maximum deposit that you can be asked to pay.

• If the contract price is $20,000 or less, you cannot be asked to pay more than 10% of the contract price as a deposit.
• If the contract price is more than $20,000, you cannot be asked to pay more than 5% of the contract price as a deposit.

If the work is required to be covered by Home Warranty Insurance (see below), it is illegal for the contractor to ask for a deposit or other payment under the contract unless Home Warranty Insurance has been taken out, and a certificate of the insurance is given to you.

Progress payments

The contractor may ask you to make progress payments. This is usually so that they can pay for materials and labour as the job progresses.

As for how much and how often, the general rule is you only pay for work that has already been done.

Insurance

For your own protection, check that the builder or tradesperson has the following types of insurance and that the certificates are current.

Home Warranty Insurance

Home Warranty Insurance allows a claim to be made because of the insolvency, death or disappearance of the contractor. Home Warranty Insurance covers you for loss caused by defective work for a period of six years for structural defects and two years for non-structural work, or a period of 12 months for incomplete work. If the builder or tradesperson does not have home warranty insurance where the proposed work is valued over $12,000 (including the cost of materials supplied by you or another person), they are committing an offence under the Home Building Act 1989.

Councils and Home Warranty Insurance

Compliance with the insurance provisions of the Home Building Act 1989 is a condition attached by Councils to the development consent for residential building work.

If the conditions of the development consent are not complied with the Council may be unable to issue a final occupation or building certificate.
This may adversely impact on your ability to sell and/or legally occupy your residence.

**Other insurances**

You should check with your contractor that they have other relevant insurances including:

- Builder’s all-risk insurance
- Public liability insurance
- Workers compensation or WorkCover insurance

**Checklist for owners entering a building contract**

By law, the written contract you sign must contain the following check list:

1. Does the contractor hold a current contractor licence?  
   [ ] Yes  [ ] No

2. Does the licence cover the type of work included in the contract?  
   [ ] Yes  [ ] No

3. Is the name and number on the contractor’s licence the same as on the contract?  
   [ ] Yes  [ ] No

4. Is the work to be undertaken covered in the contract, drawings or specification?  
   [ ] Yes  [ ] No

5. Is the contract price clearly stated?  
   [ ] Yes  [ ] No

6. If not, is there a warning that the contract price is not known?  
   [ ] Yes  [ ] No

7. If the contract price may be varied, is there a warning and an explanation about how it may be varied?  
   [ ] Yes  [ ] No

8. Are you aware of the cooling off provisions relating to the contract?  
   [ ] Yes  [ ] No

9. Is the deposit within the legal limit? The limit is 10% for work costing $20,000 or less or 5% for work costing more than $20,000.  
   [ ] Yes  [ ] No
10. Is the procedure for variations understood?  
Yes □ No □

11. Are you aware of who is to obtain any council or other approval for the work?  
Yes □ No □

12. Do you understand that the contractor must have a policy of home warranty insurance under the Home Building Act 1989 and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than $12,000?  
Yes □ No □

13. Has the contractor given you a document that explains the operation of the Home Building Act 1989 and the procedures for the resolution of contract and insurance disputes?  
Yes □ No □

The contractor must give you a copy of the contract within five business days after you sign it (the weekend, NSW public holidays and 27-31 December [inclusive] do not count).

**Cooling off period**

If the contract price or the market cost of the labour and materials is more than $12,000 your contract is subject to a cooling off period of 5 clear business days within which you may rescind (cancel) the contract.

The 5-day period excludes the weekend, NSW public holidays and 27-31 December (inclusive).

The 5-day period is available to you:

- for 5 days after you have been given a copy of your signed contract, or
- for 5 days after you become aware that you should have been given a copy of the signed contract.

You may cancel your contract by way of a written notice, which should clearly state that you cancel the contract. You must give this notice:

- to the holder of the contractor licence personally, or
• leave it at the address shown in the contract as the address of the holder of the contractor licence, or
• by serving it on the holder of the contractor licence in accordance with any notice or service provision in the contract.

If you do cancel your contract your contractor is entitled to a reasonable price for the work carried out under the contract to the cancellation date.

You can avoid or shorten the cooling off period if you wish by including a provision in the contract and by giving the contractor a certificate (in accordance with the Home Building Act) which you must get from a solicitor.

**When things go wrong**

Things don't always go to plan when you are building or renovating. Even if you have followed our advice and been thorough by checking out the builder or tradesperson, things can still go wrong. You may find problems with the work, either while it is being done or some time after it has been finished. There is now a step by step process for resolving disputes, which works as follows:

**Step 1 - Talk about it**

It is important to develop and maintain positive communication with your builder or tradesperson. Sometimes people in dispute have not even spoken to each other about the problem. This makes it very hard for people to continue with the work, or to fix mistakes.

**Step 2 - Put it in writing**

Write a letter to the builder or tradesperson about your concerns with the work. It is also a good idea to do this as a follow-up measure after you have first discussed it. The letter should outline what you have both agreed to do and by any set date. Keep a copy of the letter for your records and note the date you posted it or delivered it (it may be useful to send the letter by registered post).
Step 3 - Intervention by the Fair Trading Centre and the Home Building Service

If you and your contractor cannot resolve the problem, you may notify your local Fair Trading Centre that there is a dispute and ask for help to resolve it. The Fair Trading Centre will accept a written complaint or, if there are health and safety issues, an oral complaint is sufficient. They will attempt to negotiate a suitable outcome between you and your contractor. However, should you be unable to reach an agreement, the Fair Trading Centre will give you information about other appropriate options that may be available to you including the Home Building Service, any other service which may be available and the Consumer, Trader and Tenancy Tribunal.

The Home Building Service deals with disputes relating to incomplete and/or defective home building work. If appropriate a Building Inspector will arrange to meet on-site with you and your contractor to inspect and discuss the complaint items. Where possible, the Building Inspector will encourage the parties to agree on how the dispute is to be resolved. Where defective/incomplete work exists, the Inspector may issue a Rectification Order listing the work that is to be rectified/completed and the conditions that both parties are to meet in complying with the Order. A date will be set by which the work is to be completed. An inspection report will be provided to both parties following the meeting.

A Rectification Order cannot be made for a building claim over $500,000.

If the Rectification Order is complied with and you are satisfied with the outcome, the matter is resolved. Should the Rectification Order not be complied with or if either party lodges a claim at the Consumer, Trader and Tenancy Tribunal during the Rectification Order period, the Order ceases to have effect and the Tribunal will hear the matter.

Where your contractor breaches the Home Building Act 1989 by not complying with the Rectification Order, the breach issues are referred to the Home Building Services’ Investigations Branch for further action.
Step 4 - Claim before the Consumer, Trader and Tenancy Tribunal

If you and your contractor fail to resolve the dispute, an application to the Tribunal for a decision on a building claim can be made. You cannot lodge a claim unless you have been through steps 2 and 3 (unless the Tribunal directs otherwise).

The Tribunal may make orders, including:

• the payment of money
• relief from paying money
• the delivery, return or replacement of goods
• reversing an insurer's decision on an insurance claim
• the payment of compensation for loss because of a breach of a statutory warranty, for example, work not done in a proper and workmanlike manner.

Are there limits on what the Tribunal can do?

The Tribunal cannot hear a building claim over $500,000. There are also time limits on making claims:

• 3 years from the date of supply on claims about building goods or services supplied
• 3 years from the date for supply on claims about building goods or services not supplied
• 10 years from the completion date of the relevant work on claims about home warranty insurance
• 7 years from the completion date of the relevant work (or if the work is not completed, from the date for completion in the contract or, if there is no such date, the date of the contract) on claims for breaches of a statutory warranty
• 3 years from the date of the contract for any other building claim. The fact that a time limit for making a building claim to the Tribunal has expired may not prevent a building claim being made to a court.
How is a decision made?

Each side presents their evidence. If a building inspector made a report, the Tribunal may take the report into consideration. The Tribunal may also appoint an expert to advise the Tribunal. Where such an expert is appointed, no party may call another expert to give evidence unless the Tribunal agrees. Subject to an order of the Tribunal, the cost of the expert is to be shared by the parties.

When will the Tribunal make its decision?

Usually the Tribunal makes a decision after everyone has finished giving their evidence. Sometimes the Tribunal might want more time to think about your case, or it might direct either or both parties to provide additional documentation or clarify an issue in some other way. If this happens, the Tribunal will give its decision later. A notice of the order is sent out after the Tribunal makes its decision.

How do you apply?

A form to notify the Tribunal of a dispute or a building claim can be obtained from the Registry of the Tribunal, a Fair Trading Centre or from www.cttt.nsw.gov.au. You need to attach certain documents to your application, such as:

- the home building contract
- any independent building reports
- photographs showing the details of alleged defective work.

After carefully reading the guide notes, complete the form and return it to the Tribunal. There is a fee to lodge an application with the Tribunal.
Making an insurance claim on your Home Warranty Insurer

A claim may be lodged where the contractor becomes insolvent, dies or disappears and you cannot recover financial loss or have the work fixed. You will need to read the policy carefully to check the period of cover and the time limits for making claims. Ask the insurer to send you information on the actual insurance policy and their claims-handling procedures. Some insurers prefer to have claims placed on their special forms. If an insurer refuses to provide you with a claim form, you are still entitled to make a claim in writing and have its receipt acknowledged by the insurer. It may help to send the claim by registered post.

You need to attach copies of all the following documents to your claim letter:

• home warranty insurance certificate
• the contract you signed with your contractor
• any document showing agreed variations.

Other documents which may also be helpful are:

• independent reports itemising defects and necessary rectification or completion work
• estimates of costs to fix the itemised defective or incomplete work
• photographs
• relevant letters or documents supporting your claim.

If the insurer gives you a written decision on your claim and you disagree with it, you have 45 days in which to lodge an appeal against that decision with the Consumer, Trader and Tenancy Tribunal. Note that your claim to the Tribunal will be against the insurer, not the builder. If the insurer does not give you a written decision within 45 days after the date you lodged the claim, unless you have agreed to extending their time, the insurer is deemed by law to have refused your claim. You may then lodge an appeal against the insurer at the Consumer, Trader and Tenancy Tribunal. For information on the process involved, contact the Tribunal on 1300 135 399 or go to www.cttt.nsw.gov.au
For help on any fair trading issue call your nearest Fair Trading Centre, or call the specialist service listed below which is relevant to your enquiry. A range of Fair Trading services are also available via Government Access Centres (GACs) and other agency locations throughout regional New South Wales. For details, visit the Web site www.fairtrading.nsw.gov.au

Fair Trading Centres - call 13 32 20 for general enquiries

Specialist Services

- Tenancy Enquiries .......9377 9100 ..1800 451 301(outside Sydney)
- ........................................9377 9099 (*TTY)
- Strata Schemes ..............9338 7900 ..1800 451 431(outside Sydney)
- Aboriginal Tenancy.......9377 9200..1800 500 330 (outside Sydney)
- Business Licences ..........9619 8722 ..1800 463 976(outside Sydney)
- Consumer,Trader and Tenancy Tribunal (CTTT)
- ........................................1300 135 399

Visit the Home Building Service Web site


- search the public register on-line to see if a contractor’s licence is valid and current before entering into a contract, and
- find helpful information for homeowners, builders and tradespeople on home building matters.

TTY .........9338 4943 * Telephone service for the hearing impaired.

Language assistance

Tel. 13 14 50 Ask for an interpreter in your language.

Office of Fair Trading
1 Fitzwilliam Street Parramatta N SW 2150
PO Box 972 Parramatta N SW 2124
Tel. 9895 0111

www.fairtrading.nsw.gov.au

February 2004