

Builder and designer rights and obligations

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We encourage a professional, no surprises relationship between contractors and clients.

These are general rights and obligations, with the full requirements set out in the Building Act 2004 and its regulations, as well as other building legislation (for example, Construction Contracts Act).

Set up the project to protect both parties

Before agreeing to building or design work, a contractor must provide potential residential clients who ask for it or whose project will cost \$30,000 or more (including GST) with:

- a disclosure statement including information about skills, qualifications, licensing status and any insurance or guarantees related to the work
- a standard checklist that includes information about the steps of a build and minimum requirements for a contract.

A contractor can be fined for not supplying a homeowner with these documents.

A contractor can be convicted and fined up to \$20,000 if they knowingly:

- provide false or misleading information
- leave information out of the disclosure statement.

[Construction Contracts Act \(https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/construction-contracts-act-2002/\)](https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/construction-contracts-act-2002/) sets out other contractual obligations.

[Consumer protection \(https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/consumer-protection-disclosure-and-checklist/\)](https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/consumer-protection-disclosure-and-checklist/) - disclosure and checklist.

Contracts provide clarity

Once you have agreed to do building work you should agree the terms in a contract with the building owner. A contractor must provide a written contract for a residential project that will cost \$30,000 or more (including GST).

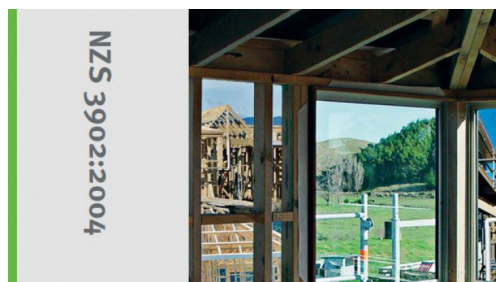
The contract should include all of the requirements specified in the Building Act regulations and listed in the standard checklist. Seek legal advice before signing any contract.

A contractor can be fined for not having a written contract if one is required.

[Getting a contract \(https://www.building.govt.nz/getting-started/your-rights-and-obligations/homeowner-rights-and-obligations/buying-a-house/getting-the-contract-right/\)](https://www.building.govt.nz/getting-started/your-rights-and-obligations/homeowner-rights-and-obligations/buying-a-house/getting-the-contract-right/)

NZS 3902:2004 – Housing, alterations and small buildings contract

This Standard is a 'plain English' standard building contract for use by property owners who want to engage someone to build their house or to undertake alterations or other building work of a simple nature. It is intended to be fair and clearly understood and sets out the rights and responsibilities for all parties.



New Zealand Standard NZS 3902:2004 Housing, alterations and small buildings contract

Download a free copy
(<https://www.standards.govt.nz/sponsored-standards/building-standards/nzs3902/>)

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Pricing the job

When pricing a job, the price should be the total cost of all the building work (including supplies, fixtures, fittings and GST). This is regardless of whether a subcontractor is doing all or part of the work.

You can only exclude the cost of the subcontractors' work if they enter into a separate contract with the client. However, if a contractor simply splits the work into separate contracts of less than \$30,000 they may be attempting to avoid their obligation. A written contract protects both parties.

Default clauses kick in if a contract is lacking

You will automatically have to meet default clauses specified in the Building Act if you are working on a residential building project that will cost \$30,000 or more (including GST) and you either:

- don't have a written contract with the homeowner
- or don't include the minimum content required in the contract.

The default clauses won't override an existing clause but cover many aspects of a building project and all the minimum contract requirements.

Examples of the default clauses include:

- the building contractor undertakes to obtain all necessary approvals, including building consents, before commencing the building work
- the building contractor must provide the code compliance certificates to the client before the building contractor submits its final payment claim under the contract.

Read the [default clauses in schedule 3](http://www.legislation.govt.nz/regulation/public/2014/0361/latest/DLM6322530.html) (<http://www.legislation.govt.nz/regulation/public/2014/0361/latest/DLM6322530.html>) of the Building Act on the New Zealand Legislation website.

Establishing your legal obligations

The Building Act and its regulations set out the rules for building work. All building work in New Zealand must meet the requirements of the Building Code, even if it doesn't require a building consent.

Other laws can affect the project, including council bylaws, the Resource Management Act and laws specifying that qualified professionals must do restricted building work and certain plumbing, gas and electrical work.

While the homeowner is responsible for ensuring the work meets the relevant requirements, the contractor usually has the relevant knowledge and needs to help the homeowner meet their obligations.

Information about 'who will do what' should be included in any contract, as it is part of the minimum contract requirements in the Building Act regulations.

For example, the contractor might take on the role of obtaining the building consent, even though it is the homeowner's responsibility. Nobody can contract out of this obligation, but someone else can do it on the homeowner's behalf.

This might include making sure:

- council inspections occur as set out in the building consent
- restricted building work or any other specialised work is carried out by a person with the appropriate qualification (and the homeowner is given relevant documentation)
- any 'notice to fix' is acted on and the work re-inspected
- the council is notified about:
 - who will do any restricted building work (provide the name(s) of the licensed building practitioners who will do or supervise the work)
 - any changes to the consented plans as you progress
 - a planned change of use for the building
 - an extension of life for a building with a specified life
 - a planned subdivision of a property with an existing building
 - any alterations, even if they don't require a building consent (alterations can trigger upgrade requirements, such as smoke detectors or insulation)
- all council fees are paid
- an application is made for a code compliance certificate.

Contractors also need to meet health and safety requirements.

[Health and safety on site](https://www.building.govt.nz/projects-and-consents/health-and-safety-on-site/) (<https://www.building.govt.nz/projects-and-consents/health-and-safety-on-site/>) gives an overview of responsibilities.

[How the building system protects you](https://www.building.govt.nz/getting-started/how-the-building-system-protects-you/) (<https://www.building.govt.nz/getting-started/how-the-building-system-protects-you/>)

[Projects and consents](https://www.building.govt.nz/projects-and-consents/) (<https://www.building.govt.nz/projects-and-consents/>) covers many of these subjects.

When work requires a licensed professional

Understandably, some parts of the build require people with specific skills or qualifications.

A licensed building practitioner (LBP) must do any work essential to structure or weathertightness (called restricted building work). The council needs to know who any LBPs are, preferably as part of a building consent application.

An LBP is licensed as competent in a particular area of building or design and participates in ongoing skills maintenance to retain their licence or licenses (they can hold more than one). They might be a:

- designer
- carpenter
- brick and blocklayer
- roofer
- external plasterer
- [site or foundation specialist](http://www.lbp.govt.nz/lbp/) (<http://www.lbp.govt.nz/lbp/>)

An LBP must also provide the homeowner with documentation about the work they have done or supervised, in the form of a Record of Work or a Certificate of Work. The homeowner will need it to get the work signed-off by the council at the end of the build.

[The LBP website](http://www.lbp.govt.nz/lbp/) (<http://www.lbp.govt.nz/lbp/>) includes information about LBP work and how you can qualify.

Some building professionals are able to do or supervise some restricted building work because of their qualification. For example, architects, engineers, electrical workers, plumbers, gasfitters and drainlayers.

[Restricted building work](https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/choosing-the-right-people-for-your-type-of-building-work/use-licensed-people-for-restricted-building-work/restricted-building-work/) (<https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/choosing-the-right-people-for-your-type-of-building-work/use-licensed-people-for-restricted-building-work/restricted-building-work/>) explains the requirements.

Owner-builders do not need to be or use a licensed building practitioner for restricted building work on their own home or holiday home. However they will need to apply to the council for exemption as well as applying for a building consent.

[Owner-builder exemptions](https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/choosing-the-right-people-for-your-type-of-building-work/owner-builder-obligations/) (<https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/choosing-the-right-people-for-your-type-of-building-work/owner-builder-obligations/>)

Other work requires licensed professionals but isn't restricted building work. For example, most gas or electrical work. They should give you an energy work certificate to show the work is safe and complete. You will also need this certificate if the work is part of a building project you are applying for the council to sign-off (for work that requires a building consent).

Keep documentation, including the approved plans and specifications and any certificates, on site (in a safe place).

[Energy work certificates](https://www.building.govt.nz/projects-and-consents/build-to-the-consent/energy-work-certificate/) (<https://www.building.govt.nz/projects-and-consents/build-to-the-consent/energy-work-certificate/>) includes links to relevant registration boards.

[Get the right people for your project](https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/choosing-the-right-people-for-your-type-of-building-work/) (<https://www.building.govt.nz/projects-and-consents/planning-a-successful-build/scope-and-design/choosing-the-right-people-for-your-type-of-building-work/>) explains some of the different roles and related building consent requirements.

At the end of the project

Once the building work is completed, and regardless of the price of the work, you must give clients the following information, documents or both:

- a copy of any current insurance policy you hold for the building work completed under the contract (not including policies that expire before the work is completed)
- a copy of any guarantees or warranties for materials or services used in the building work, including:
 - information about how to make a claim
 - if the guarantee or warranty is transferable
 - if it must be signed and returned to the issuer
- information about the processes and materials to be used to maintain the building work, particularly if maintenance:
 - is required to meet the requirements of the Building Code
 - could affect any guarantee or warranty.

You could source product maintenance information from the manufacturer or supplier, or online (for example, BRANZ maintenance schedule). This is an additional requirement over and above any maintenance information supporting a consent application.

It's okay to provide information as you go, but it might be easier to keep track if you save it up and hand it over as a package when the project is finished. That way, you also know exactly what you've provided.

You could be fined if you don't provide this information.

Be aware of ongoing consumer protections

If there is a problem during the build or once it is complete there are several measures in place that affect builders, designers and tradespeople.

If you are the main contractor:

- you are required by law to fix any defective building work notified within 12 months of the building being completed. (You could walk your client through the project after each milestone to show them progress and check the quality of the work. It should be much easier (and more time and cost effective) to repair any defective work or products as you go. If you wait until the end of the project they may be hidden by other building elements or you may not have time for repairs before you move to your next project)
- you need to ensure clients visiting the site are not harmed by hazards in the workplace you control ([check Health and safety on site](https://www.building.govt.nz/projects-and-consents/health-and-safety-on-site/) (<https://www.building.govt.nz/projects-and-consents/health-and-safety-on-site/>)).
- you will need to organise the repair of anything faulty related to the build. You are also responsible for the work done by your subcontractors, so make sure you keep an eye on the quality of their work

- any defective product must be remedied. It is your responsibility to arrange a replacement of any product you supplied.

[How to identify defects \(https://www.building.govt.nz/projects-and-consents/sign-off-and-maintenance/completing-your-project/how-to-identify-defects/\)](https://www.building.govt.nz/projects-and-consents/sign-off-and-maintenance/completing-your-project/how-to-identify-defects/) includes our Guide to tolerances, materials and workmanship.

12-month defect period

There is an initial defect repair period of 12 months, starting from the date the building work is complete.

If your client tells you in writing about any defective work before the 12 months are up, you must put it right within a reasonable timeframe from receiving notification. If you dispute the defect, you need to prove that it is not your fault or your subcontractor's (or due to the products you've used).

Once the 12-month defect period ends

Contractors have a responsibility to remedy defective work after the 12-month defect repair period ends, for up to 10 years. This ongoing protection is due to implied warranties in the Building Act.

If you dispute a defect you are notified about after the 12-month repair period has lapsed, it is up to the homeowner to prove there is a defect.

Contractors also have responsibilities if there are problems related to:

- payments or disputes - refer to the Construction Contracts Act
- service (including any trade work, design work or inspection services) - refer to the Consumer Guarantees Act
- being misled about products or services - refer to the Fair Trading Act

Our Contractors: do your homework booklet (<https://www.building.govt.nz/getting-started/your-rights-and-obligations/builder-and-designer-rights-and-obligations/contractors-do-your-homework/>) on consumer protection measures is available for download.

[Resolving problems \(https://www.building.govt.nz/resolving-problems/\)](https://www.building.govt.nz/resolving-problems/) has more information and several resolution options.



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