

Contracts and problems that may occur

Last updated: 21 March 2016

A written contract can help protect you if something goes wrong, such as a payment or quality dispute. You should always seek legal advice before you sign.

A contract gives you a legally binding record of how much the building work will cost with specific terms and conditions relevant to the project. A contract between the main contractor and a sub-contractor should also include this information.

If you are a building contractor working on a residential property that will cost \$30,000 or more (including GST) you must provide a written contract (alternatively the homeowner can provide the contract, so long as you both agree). Businesses can be fined for not having a written contract with a homeowner when it's required.

[Building contracts \(https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/contracts-for-your-building-project/\)](https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/contracts-for-your-building-project/) and what should be in them.

If you have concerns about your building work, as set out in your contract, start by discussing the problem with the other party to the contract.

Typical contract problems

Typical contract-related problems include:

- different understandings of the terms agreed in the contract
- different expectations about the level of quality and finish (for example, a homeowner may not realise that by choosing the cheapest quote they might get materials of lesser quality)
- late payments, or payments that don't follow the contract schedule
- underestimating the impact of making changes after accepting the initial quote, signing the contract or getting building consent
- misunderstandings about the scale of the project, including time and complexity.

If you are still unhappy after talking any problems through with the other party, your next step is to follow the dispute resolution process set out in the contract. If your contract doesn't include a dispute resolution process, you can use the process in the Construction Contracts Act or the Building (Residential Consumer Rights and Remedies) Regulations 2014's default clauses.

Resolving payment disputes through the Construction Contracts Act

If you are party to a contract for construction work and have concerns about payment you can use the Construction Contracts Act to resolve the dispute.

[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/) explains the Act and includes payment claim information.

Default clauses within the Building Act

If you need to resolve a dispute and your contract doesn't include a process, or you don't have a contract, you can use the process set out in the default clauses within the Building Act.

The default clauses cover several aspects of a contract and apply to all residential building work agreements, whether they are incomplete, unwritten, by handshake or verbal.

Default clauses will automatically be considered part of your contract if:

- you don't have a written contract for a project valued at or above \$30,000 plus GST (a requirement)
- the contract doesn't include the minimum content specified in the Building Act
- you don't have a written contract.

A default clause won't override an existing clause in your contract on a similar topic. For example if you have a payment schedule in your contract it won't be replaced by the payment default clause.

Default clauses cover:

- building consents
- variations
- payments
- subcontractors
- dispute resolution
- notices.

Read the full [default clauses](http://www.legislation.govt.nz/regulation/public/2014/0361/latest/DLM6322564.html) within the Building Act regulations on the New Zealand Legislation website.

If the dispute resolution process is unsuccessful, you will need to look at other options.

[Resolution options](https://www.building.govt.nz/resolving-problems/resolution-options/) includes several ways to resolve problems.



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

New Zealand Government

This information is published by the Ministry of Business, Innovation and Employment's Chief Executive. It is a general guide only and, if used, does not relieve any person of the obligation to consider any matter to which the information relates according to the circumstances of the particular case. Expert advice may be required in specific circumstances. Where this information relates to assisting people:

- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.