



## **THINKING OF BUILDING, RENOVATING OR REPAIRING A RESIDENTIAL PREMISES?**

So, you have found your perfect builder and you are eager to start the construction, renovation or repair of your residential premises. Before you jump right into it, there are some important matters that need to be taken care of, the most important of which is your building contract.

Answering yes to the following questions will have an important impact as to the type of building contract you will require (if any):

1. Is the work to be carried out to residential premises?
2. Is the cost of the work going to exceed \$5000?
3. Is the work to be carried out going to involve more than one trade to complete?

If the answer to all of the above is YES then you will be required to enter into a major domestic building contract in accordance with the *Domestic Building Contracts Act 2005* (DBCA).

### **Requirements of all Domestic Building Contracts in General**

The DBCA sets out the following restrictions applying to the nature and contents of all domestic building contracts:

1. Limit on amount of deposit
2. Contract for more than one sort of work must identify the domestic building work
3. Restrictions on cost plus contracts
4. Arbitration clauses prohibited
5. Restrictions concerning cost escalation clauses
6. Builder must not seek more than the contract price

Importantly, all domestic building contracts have implied warranties that run with the building and cannot be signed away. These implied warranties include but are not limited to the builder warranting the following:

- (a) The work will be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;
- (b) All materials to be supplied by the builder for use in the work will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those material will be new;
- (c) The work will be carried out in accordance with, and will comply with, all laws and legal requirements; and
- (d) The work will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the contract.

The inclusion of these warranties are for the benefit of the owner where it is found that the works are defective. Accordingly, the warranties provide the owner with some recourse against the builder should the builder be in breach of those warranties.

### **Requirements for Major Domestic Building Contracts**

In addition to the general requirements for all domestic building contracts, the DBCA sets out additional requirements for major domestic building contracts. These additional requirements include:

- (a) A builder must not enter into a contract unless registered;
- (b) A builder must obtain information concerning foundations;
- (c) The contract must be in writing and comply with a number of requirements under the DBCA which includes ensuring that the plans and specifications for the work are provided with the contract;
- (d) The builder must make allowance for delays in time estimates;
- (e) Contract must contain warning if price likely to vary; and
- (f) A cooling off period.

This is not an exhaustive list of the requirements under the DBCA but merely provides a sample. It is clear from this sample, that there are various requirements that need careful consideration before the contract should be signed off by the Owner or the Builder.

### **Insurance**

Before enter into a contract and carrying out domestic building work over the value of \$12,000, a Builder is required to have taken out an insurance policy to indemnify the building owner in respect of loss or damage in the event of defective domestic building work and a breach of any of the implied warranties under the DBCA.

Important things to note about this insurance requirement and policy include:

1. The insurance requirement does not apply to the construction of a multi-storey residential building. A multi-storey residential building is defined as a building that has a rise in storeys (not including a space used for purposes of car parking) of more than 3 and contains two or more separate dwellings.
2. The insurance is only triggered in the event that the builder disappears, dies, or becomes insolvent.
3. Claims are limited to the sum of \$200,000.00
4. The time for making a claim is two years from the completion date for non-structural defects and six years for all other loss and damage.

It is clear to see that whilst the decision to build or renovate a residential premises is an exciting proposition, there are a number of things that you need to be aware of before signing on the dotted line. We are well placed to advise on whether your building contract complies with the requirements under the DBCA and you are sufficiently protected should something go wrong.

For assistance on any building, owners corporation or property law matters, please contact Emilia Panayiotou, Mark Lipshutz or Jonathan Cohen at CLP Lawyers on 9042 2070 or at [clp@clplawyers.com.au](mailto:clp@clplawyers.com.au).



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