



5 Tips and Traps about Builders and Contracts

You are required to enter into a major domestic building contract in Victoria, when the total cost is \$5,000 or more and you carry out domestic building works which includes building; Repairs; Improvements; Maintenance; Demolition; and/or Removal.

Before you sign a domestic building contract, there are a number of things that you should check.

1. **Is the builder registered with the Building Practitioners Board (at the Victorian Building Authority)?**

Note that *only* builders that are registered with the Victorian Builders Association can carry out major domestic building works and enter into major domestic building contracts. You can conduct a search on the Victorian Builders Association website, noting that the results of this search should *exactly match* the details contained in your domestic building contract and your Building Permit.

2. **Is there a domestic building insurance policy?**

On a preliminary point note that it is only registered builders who can obtain insurance. Also you should be aware that if the cost of your domestic building works is \$12,000 or more, your builder will need to obtain home warranty insurance and provide you with a copy of this policy and your domestic building contract will also need to include details about this.

3. **Are these fees included in the contract (or are you aware of them)?**

The building fee, which may or may not include the cost of mandatory inspections by the building surveyor and may vary between companies
planning permit fees (if your council requires a planning permit)

The lodgment fee paid to the local council for recording purposes

The crossing deposit or asset protection fee paid to the local council and refundable at the end of the project, if no damage has occurred to council property

An inspection fee, a non-refundable fee paid to the council for the cost of their inspection of council assets

A government levy which is a charge when the contracted cost of work is more than \$10,000. There are three levies based on the total cost of your building, which also apply to owner builders.

5. What should be included in domestic building contracts?

It must include a full description of the works to be carried out and be accompanied by plans and specifications of sufficient detail so that a building permit can be granted. In addition it should also include the following:

- Date of contract
- Names and addresses of the parties to the contract
- Home warranty insurance
- Commencement and completion date
- Cooling-off period
- Right to access
- Implied warranties
- Damages
- Termination, and
- Definitions.

6. What to do when we receive a building contract?

Your builder must give you sufficient time to review your domestic building contract and some builders say that it is the 'standard contract used by everyone'. You should never sign a domestic building contract and then forward to your builder to do the same. Additions or deletions from the contract could be made without your knowledge.

RRR Lawyers are experienced in this area of law, and has acted for both builders and owners. RRR Lawyers were the solicitors on record for the landmark case of Mt Holden Estates Pty Ltd v Lanigan Baldwin Pty Ltd & ors. This firm was involved in the initial jurisdiction hearing at VCAT, which was appealed to the Supreme Court and upheld by the Supreme Court. The decision of both VCAT and the Supreme Court was to extend the meaning of the "Domestic Building Work", and "Domestic Building Dispute", and therefore the jurisdiction of VCAT. The decision of the Supreme Court was overturned by the Court of Appeal. The firm was also involved in O'Lachlan Housing Guarantee Fund v Gabor Tamas, and RRR Lawyers were instructing solicitors both the VCAT proceeding and the Supreme Court Appeal. Through the Supreme Court Appeal, RRR Lawyers was able to overturn the position of Deputy President of VCAT Dr. Cremena.

If you are not familiar with building contracts you would be wise to have us to review it with you so that you have peace of mind about what you are signing.

It may be a simple matter of your lawyer asking the builder to delete some clauses that are not in your interests to sign; that limit your rights or expose you to significant costs. It is not uncommon for the builders to minimize the amount pertaining to the liquidated damages in the contract. Furthermore, it is not uncommon for the builders to work on multiple building contracts at any given point of time, and therefore, the builder is more likely to complete projects which have the maximum rate of penalty in terms of liquidated damages clause for late completion.

If you need some help call us on 03 9387 2424 or email info@rrrlawyers.com.au.