

# DOMESTIC BUILDING CONTRACTS ACT 2000

## WHAT CONTRACTORS NEED TO KNOW

(Edition 9 - April 2010)

*This booklet covers legal and technical issues in a general way. It is not designed to express opinions on specific cases. You should obtain independent legal advice on your specific situation before taking action on any issue dealt with in this booklet.*

*While the following advice is particularly directed at contracts involving the full construction or major renovation/extension of a home, contractors should note that the DBCA applies essentially the same obligations to all domestic building work valued at over \$3,300.*

This booklet outlines for contractors some key features of the *Domestic Building Contracts Act 2000* (DBCA) which came into effect in Queensland on 1 July 2000.

The DBCA has important consequences for your contractual relationship with your clients.

If you don't comply with the DBCA, you could:

- end up in a costly dispute
- be prosecuted
- have your contract terminated
- lose money



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BUILDING SERVICES AUTHORITY

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## SCOPE OF THE DBCA — WHO NEEDS TO COMPLY?

Generally, if the building project involves domestic building work valued at more than \$3,300, you'll be subject to the DBCA and required to provide a written agreement that complies with it. "Domestic building work" is broadly defined and includes activities such as:

- the construction of a new detached dwelling (including a duplex)
- the construction of any building or fixture associated with a home, such as a shed, garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa
- the removal or re-siting of a dwelling which is intended to be used as a residence
- renovations, extensions, alterations, improvements or repairs (including painting and the provision of services) to a home (including a duplex or home unit)
- kitchen or bathroom refits, or
- landscaping, paving, site work, etc.

**The DBCA requires you to have a written contract with your clients and to give them a signed copy and a BSA-approved Contract Information Statement.** These documents must be provided as soon as practicable after an agreement is reached (no later than five business days from the date of agreement) and before starting work.

## CONTRACT CHECKLIST

You must ensure all your contract documentation complies with the DBCA. You may develop your own contracts with legal advice, or use contracts that have been developed by BSA or industry associations since 1 July 2000 and comply with the DBCA. Interstate contracts generally will not comply with this Queensland legislation.

Contracts that comply with the DBCA are available for free download from BSA's website.

The DBCA requires, among other things, that your contract must:

- Indicate whether the client is a resident owner (will live in the house within six months of completion of the domestic building work)
- Be in English and legible (i.e. clear and easy to read)
- Show the names and addresses of both you and the homeowner

- ❑ Indicate your licence number
- ❑ Show the date the contract is made
- ❑ Provide a detailed description of the work
- ❑ Contain a conspicuous notice advising the homeowner of their right to withdraw from the contract under the cooling-off provisions (Section 72)
- ❑ State the start and finish dates for the work. If the start date is unknown, the contract should state how the start date is to be decided, the number of days required to finish the work, and that work will start as soon as possible.
- ❑ Indicate allowances you have made for certain types of delay (including bad weather, weekends, public holidays, rostered days off and other likely delays)
- ❑ State the location of the building site, including a lot-on-plan or similar description
- ❑ Clearly state the total price and payment provisions. **Check that the deposit does not exceed the maximum permitted under the DBCA** (see the 'Deposits and Progress Payments' section of this information booklet), and that any progress payments are as set out in the DBCA. If varied by mutual agreement with the homeowner, the replacement schedule must be clearly noted in the contract and must not involve payment in advance of work progress.
- ❑ Include a clear warning located near the contract price referring the homeowner to any clause in the contract that may have the effect of changing the price (e.g. variation clauses and prime cost or provisional sum clauses)
- ❑ Include definitions of key terms
- ❑ Set out the warranties provided under the DBCA
- ❑ Include appropriate plans and specifications if these are required for the work. These must be sufficiently detailed to enable you to obtain any necessary approvals or authorisations from authorities. Homeowner requirements for finishes (for example, number of coats of paint required) should be stated in the specifications.
- ❑ List and describe any fixtures or fittings which are not included (i.e. not supplied by you), and
- ❑ **If the work involves or affects footings or slabs, you must obtain appropriate foundations data before entering the contract** (see section on 'Foundations Data' later in this booklet). If they have paid for it, you must give homeowners a copy of this information.

**NOTE:** If you wish to develop a new contract that complies with the DBCA you should seek legal advice. BSA is NOT able to assist you with contract development. The Contract Checklist on BSA's website (under Homeowners > Getting Started > Contracts) may provide you with a useful starting point.

## THE COOLING-OFF PERIOD

### WHEN HOMEOWNERS MAY WITHDRAW FROM THE CONTRACT

Under Section 72 of the DBCA homeowners have a right to withdraw from a contract during what is known as a *cooling-off* period. Time limits and some costs apply and certain notices have to be given if the homeowner wishes to exercise these rights.

Homeowners may withdraw from the contract within five business days of receiving from you a copy of both:

- ❑ the signed contract; and
- ❑ a BSA-approved Contract Information Statement (i.e. the BSA New Home Construction Consumer Guide or Renovation and Repair Contract Information Statement, or some other BSA-approved Contract Information Statement).

### WHAT IF THE HOMEOWNER DOES NOT RECEIVE A COPY OF THE SIGNED CONTRACT AND INFORMATION STATEMENT?

Once the contract is made, you have five business days to give the homeowner a signed copy of the contract and an approved Information Statement. If after five business days the homeowner has still not received copies of both these documents, the homeowner may withdraw from the contract. If the homeowner receives both documents after the cooling-off period of five business days has expired, they may withdraw within five business days of the receipt date.

**NOTE:** This provision highlights the importance of giving the homeowner a copy of an approved Information Statement as soon as possible, preferably before or at the same time as they receive a signed copy of the contract. A delay in providing the Statement extends the period in which you are exposed to the risk of the homeowner withdrawing from the contract.

### COOLING-OFF PERIOD NOTICE

The contract must contain a conspicuous notice advising the homeowner of their right to withdraw during the cooling-off period. If it does not then, pursuant to Section 74, the homeowner can withdraw from the contract within seven calendar days of becoming aware that the contract should have had a

cooling-off notice.

## WITHDRAWAL NOTICE

A homeowner does not have to give any reason for withdrawing, but must notify you by delivering a written notice to you or your address before the cooling-off period expires. The notice must state under which section of the DBCA the homeowner is withdrawing (i.e. Section 72 or Section 74).

## COST TO HOMEOWNER OF WITHDRAWING

If a homeowner exercises their right to withdraw under Section 72 during the five business day cooling-off period, you are entitled to \$100, plus any out-of-pocket expenses you have reasonably incurred before the homeowner's withdrawal. You are entitled to retain this money from any deposit paid under the contract, but you must refund any excess. If the deposit is less than your entitlement, the homeowner must pay you the difference.

If the homeowner withdraws under Section 74 because the contract does not contain the required warning, you are only entitled to a reasonable amount for the services you performed in managing or carrying out the work to the time of the withdrawal.

## A HOMEOWNER MAY NOT WITHDRAW DURING THE COOLING-OFF PERIOD IF:

- You and the homeowner had a previous contract on similar terms for the same site or home; or
- The homeowner received independent legal advice about the contract from a practising lawyer before the contract was made; or
- The homeowner informs you they received independent legal advice about the contract from a practising lawyer before the contract was made.

## WARRANTIES

The Act requires you to provide certain warranties and to set them out in your contract documentation.

The following warranties should be set out:

- materials used will be good and suitable for the purpose
- materials will be new (unless you agree otherwise and if so, this must be stated in the contract)
- the contractor will comply with all relevant laws and legal requirements, including the Building Code
- the contractor will carry out the work in an appropriate and skilful way with reasonable care and skill
- where plans and specifications form part of the contract, work will be carried out in accordance

with the plans and specifications

- where appropriate, the new home, renovation or extension will be suitable for occupation on completion, and
- any provisional sums included in the contract have been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract was entered into.

## CONTRACT INFORMATION STATEMENT

**The DBCA requires that all contractors performing domestic building work valued at more than \$3,300 must give their clients a BSA-approved Contract Information Statement.**

The Information Statement contains general information about the contract for homeowners' benefit. It includes information about the rights and duties of the owner and contractor, procedures for resolving disputes, maintenance obligations, etc.

The DBCA gives BSA the authority and obligation to approve Information Statements submitted by industry associations and individual contractors. The Queensland Building Services Board has approved criteria for the development and approval of Contract Information Statements. These guidelines are available from BSA's web site and BSA offices.

To satisfy your obligations under the DBCA, you can choose one of the following three options:

1. Purchase and provide your clients with a copy of one of the two Contract Information Statements produced by BSA (available for free download from BSA's website, or from all BSA offices for \$2)
2. Use an appropriate contract produced by BSA or an industry association that includes a BSA-approved Information Statement
3. Draft your own Information Statement (refer to the guidelines provided on the BSA website) and submit this to BSA for approval. Once approved, you can use your own Information Statement.

## DEPOSITS AND PROGRESS PAYMENTS

### DEPOSITS

**The DBCA sets out maximum deposits that cannot be exceeded**, even if the homeowner agrees. If your contract is for work priced at more than \$3,300, but less than \$20,000, the deposit must not exceed 10% of the total contract price. If the contract price is \$20,000 or more, the maximum allowed deposit is 5%.

**NOTE:** It is an offence to seek or receive a deposit

greater than these percentages set out in the DBCA.

## PROGRESS PAYMENTS

- ❑ For the construction of an entire home the DBCA sets out a schedule for progress payments (Base Stage = 10%; Frame Stage = 15%; Enclosed Stage = 35%; Fixing Stage = 20%, and the balance at Practical Completion). You and the homeowner can agree to vary this payment schedule, but only by giving the homeowner a notice before the contract is entered into stating the matters set out in Section 5 of the *Domestic Building Contracts Regulation 2000*. The homeowner must initial the clause in the contract that sets out the revised progress payment schedule. If the homeowner does agree to vary the payment schedule, the new schedule must be clearly noted in the contract and should not involve payment in advance of work progress on site.
- ❑ For the construction of a home to the enclosed stage (formerly known as 'lock-up stage') or to the fixing stage (formerly known as 'pre-paint stage'), the DBCA sets out different schedules for progress payments.
- ❑ For jobs not involving the designated stages of home construction referred to above (i.e. for work such as renovations, extensions, pools, trade work, etc.), the above deposit maximums (5% and 10%) still apply, but you are free to negotiate a mutually agreeable progress payment arrangement. You cannot seek payment in advance of work performed on site except if expressly agreed between the parties. If you want to be paid in advance of the progress of work, you must give the homeowner a notice before the contract is entered into stating the matters set out in Section 4 of the *Domestic Building Contracts Regulation 2000* and have the homeowner initial the clause in the contract that sets out the progress payments.  
**NOTE: Payments in advance of work progress on site my soon be banned under proposed changes to the DBCA.**

For further details or advice about payment arrangements under the contract, seek legal advice.

## FOUNDATIONS DATA

Where the building project involves (a) the "construction or alteration of footings, or a concrete slab, for a building", or (b) where the work may "adversely affect the footings of a building or a concrete slab forming part of a building", the DBCA requires you to obtain appropriate foundations data (e.g. soil tests, contour

surveys and other geotechnical information) before entering the contract.

**You must give the homeowner a copy of the foundations data** (on payment of the costs incurred) unless the homeowner gives you the data, or you reasonably believe the homeowner already has a copy.

## PRIME COST ITEMS AND PROVISIONAL SUMS

**If the contract includes prime cost items or provisional sums, the contract must have a separate schedule** with details for each item or sum. In the schedule, each item or sum must be described in detail and a breakdown of cost estimates given. The breakdown of cost estimates must, where appropriate, show the quantities of materials involved and the unit cost to the contractor. If you propose to charge a margin for an item or sum, this must also be stated in the schedule (example, the cost of the item plus 10%).

The total amount for a prime cost item or provisional sum must be stated in the schedule, and must be the reasonable cost of supplying and delivering the item, or providing the service. The amount must take into account the information reasonably available at the time the contract is entered into, and the nature and location of the building site. If the amount of the allowance is not reasonable, this may affect your ability to recover a higher amount than estimated in the schedule.

When you claim payment for a prime cost item or provisional sum, you must give the homeowner copies of any invoices, receipts or other documents showing the cost of the item or sum.

## COST PLUS CONTRACTS AND DISPLAY HOME CONTRACTS

Special conditions apply to cost plus and display home contracts. The BSA Consumer Guide, available online or from BSA offices, contains key information about these two types of contracts.

### COST PLUS CONTRACTS

**Cost plus contracts are prohibited under the DBCA unless certain strict criteria are satisfied.** An example of when a cost plus contract may be permitted is when the cost of a substantial part of the work cannot reasonably be calculated without some of the work actually being carried out e.g. rectification of termite damage where the extent of the damage cannot be accurately determined until after work has started.

**WARNING:** Because cost plus contracts involve considerable legal and financial risks for both contractors and homeowners, and are a common

source of disputes, **you are strongly advised to get formal legal advice before using a cost plus contract.**

## DISPLAY HOME CONTRACTS

A copy of the display home's plans and specifications, and a draft copy of the building contract you propose to use for the construction of a similar home, must be prominently displayed at the display home.

The DBCA also provides that where the contract is to build a home similar to the display home, the work must (unless otherwise agreed) be carried out in accordance with the same plans and specifications as the display home and employing at least the same standard of workmanship and materials.

## VARIATIONS

Variations are frequently the cause of disputes, particularly where there is inadequate documentation to support them. There are provisions in the DBCA to help prevent these disputes.

### THERE MUST BE A WRITTEN VARIATION DOCUMENT

You must put any variations in writing as soon as practicable and, if the variation means additional work, it is to be put in writing and signed by the parties before the variation work is carried out. You must give the homeowner a copy of this document as soon as practicable but within five business days from when the document is signed.

A variation does not have to be in writing if the work is required urgently and it is not reasonably practicable to produce a variation document before commencing work.

### FORMAT

**The DBCA stipulates that the variation document must:**

- be in English and legible
- describe the variation
- state the reason for the variation (if the variation is being sought by the contractor)
- provide a reasonable estimate of any delay to the work which may result from implementing the variation
- state the change to the contract price, or at least set out the method for calculating the price change. If this is not stated you may still be entitled to the cost of carrying out the variation plus a reasonable profit
- give the date when any increase in the price as a result of the variation is to be paid, or give the date when any decrease is to be taken into account. For example, if the price is decreased due to the variation, the variation document

must indicate which progress payment is to be decreased as a result, and

- be signed by the contractor. The contractor must also take reasonable steps to have the homeowner sign the document. If the homeowner does not understand it, the contractor should clarify the document in writing or provide further information in writing.

**NOTE:** Where a variation results in an increase in price, you cannot require the additional payment until the homeowner has initialled the variation document and you have started to carry out the variation.

### WHEN THE CONTRACTOR REQUESTS A VARIATION

If you ask the homeowner to agree to a variation and it involves additional work, the homeowner is only liable to pay for that extra work if you could not reasonably have foreseen it at the time of contracting.

In any case, you must still provide the written documentation as detailed above and must not demand payment before the work is commenced.

## CAVEATS

A caveat is a notice on the register of land titles. Caveats prevent the owner of the land from selling the land or transferring the land into someone else's name.

**Under the DBCA you cannot lodge a caveat over the property if the homeowner proposes to live in the house within six months of completion of the work.**

## ACCESS TO THE SITE

You are entitled to occupy the site for the purposes of carrying out the contract. In addition, under most contracts you are entitled to exclude people from the site other than the owner or any person authorised by the owner to be on site. Depending on the provisions of the contract, other people who may be entitled to visit the site include representatives of the homeowner's finance company (if a loan was required for the work), the building certifier, local authority officers and BSA officers.

The homeowner and the homeowner's agent are entitled to reasonable access to the site, under your supervision, to view the work but must not interfere with it. The homeowner may be liable to you for costs or delays caused by interference.

## CONTRACT TERMINATION

Under Section 90 of the DBCA homeowners may, under certain circumstances, have the right to terminate the contract in the event of blowouts in:

- ❑ **the cost** (if the contract price rises by 15% or more after the contract is entered into because of the operation of a cost escalation clause in the contract); or
- ❑ **the time frame** of the contracted work (if the contracted work is not finished within a period that is 1.5 times the period allowed for in the contract), provided that:
  - the reason for the rise in price, or increase in time, could reasonably have been foreseen by you when the contract was entered into; and
  - for a rise in price, the rise is not caused by a delay for which the building owner is responsible.

If you are unsure about your client's right to terminate or withdraw from the contract, you should seek formal legal advice, especially before responding to any legal documentation from the client.

## CONTRACTING OUT

The DBCA and the Domestic Building Contracts Regulation 2010 provides clear instruction against contractual provisions designed to pass on or contract out of statutory obligations under the DBCA and *Queensland Building Services Authority Act 1991* (QBSA). Provisions that must not appear in a contract include:

- ❑ **A provision** which states that a direction given to a building contractor is deemed to have been given to someone else (i.e. a sub-contractor).
- ❑ **A provision** which requires an owner to indemnify the building contractor against all costs that may arise if the BSA issues a direction against the building contractor.

## DEFECTS AT HANDOVER

The final payment at practical completion is due only once the home:

- ❑ has been completed in accordance with the contract and all relevant statutory requirements
- ❑ has been completed without any omissions or defects, or with only minor omissions or minor defects, and
- ❑ is reasonably suitable for habitation.

The DBCA sets out requirements for documenting defects (whether agreed by both parties or not) at the final inspection. These requirements can be summarised as follows:

### Where you and the homeowner agree on the defects and omissions:

If you and the homeowner agree that there are minor defects or minor omissions, then you should provide the homeowner with a 'defects document' that lists these defects and omissions at the time of the final inspection. The list must state by what date you are to correct each agreed minor defect or minor omission. You must sign the defects document and make all reasonable efforts to have the owner sign.

**NOTE:** You must not receive all or part of the completion payment until the homeowner has been given a defects document.

### Where you and the homeowner do not agree on the defects and omissions:

The defects document must also list any minor defects or minor omissions which the homeowner believes exist but you do not agree exist. If you subsequently cannot resolve these issues by discussion with the homeowner, you should contact BSA for further assistance.

**TELEPHONE STATEWIDE  
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**[www.bsa.qld.gov.au](http://www.bsa.qld.gov.au)**

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