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fact: n. 1. an event or thing known to have  
occurred. 2. a truth or reality that  
can be observed. 3. a piece of  
information. get me all the facts of this case.

# FACT SHEET

## CONTRACT CHECKLIST

This fact sheet is to assist home owners (and their contractors) check that a building agreement complies with the *Domestic Building Contracts Act 2000* (the DBC Act).

**DISCLAIMER:** This contract checklist covers legal issues in a general way. You should obtain independent legal advice on your specific contract or situation before taking action in response to this information. BSA disclaims all responsibility and all liability (including, without limitation, liability in negligence) for all expenses, losses, damages and costs which might be incurred by reliance on this information without having sought independent legal advice.

BSA produces a comprehensive New Home Construction Contract and a Renovation, Extension and Repair Contract which are fair to both consumers and contractors and comply with the requirements of the DBC Act. If you will not be using a BSA contract, you should check that your contract has similar terms. Regardless of the contract you use, check that it complies with the requirements set out below.

### Is the work “domestic building work”?

If the work you want done is “domestic building work” valued at more than \$3,300 (including labour and materials at commercial value) you must use a written contract which complies with the DBC Act. Domestic building work is broadly defined in the Act and includes (but is not limited to):

- the erection or construction of a detached dwelling (including a single detached dwelling or duplex);
- work associated with the erection or construction of a detached dwelling;
- the renovation, alteration, extension, improvement or repair of a home (including a single detached dwelling or duplex or home unit);
- work associated with the renovation, alteration, extension, improvement or repair of a home (including kitchen or bathroom refurbishment);
- removal or resiting of a detached dwelling intended to be used as a residence;
- work associated with the removal or resiting of a detached dwelling;
- other associated work including landscaping, paving and the erection or construction of any building or fixture associated with a detached dwelling or home such as a garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
- the provision of services or facilities (e.g. lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage) relating to the erection or construction of a detached dwelling or the renovation, alteration, extension, improvement or repair of a home; and
- site work relating to any of the domestic building work referred to above (including associated work).

You and the contractor must sign the contract **before** any work commences.

The DBC Act requires that your contractor provide a copy of the written, signed contract to you as soon as practicable (but within 5 business days) after you enter into the contract and before work commences.

The Act also requires the contractor to provide you with a BSA-approved Contract Information Statement either before you sign the contract or within 5 business days after entering the contract. The Contract Information Statement is designed to provide helpful information about the rights and duties of home owners and contractors under the contract, and about the building process generally, including dispute resolution procedures.

## Does the contract contain the necessary information?

Before signing the contract, take your time to review it carefully and obtain formal legal advice regarding any provisions you don't understand or are concerned about. Check that each of the following is addressed or included in the contract:

- The contract should state whether or not you are a resident owner (i.e. intend to live in the building within 6 months after the completion of the work).
- The contract should be in English and legible.
- Names and addresses of you and your contractor are included.
- The contractor's licence number is noted on the contract before work starts.
- The contract sets out in full all the terms of your agreement with your contractor, together with a detailed description of the contracted work.
- The date the contract is made is indicated.
- The start and finish dates for the work are stated. In calculating the finish date, or the time required to carry out the contracted work, the contractor must make allowance for certain types of delay (e.g. inclement weather, non-working days, etc.) where there is a reasonable likelihood that the delays may affect the time required to carry out the work. Where such allowances have been made, the contract must state the number of days the contractor has allowed for each type of delay.
- If the start date is unknown, the contract should state:
  - how the start date is to be decided; and
  - the number of days required to finish the work once it is started; and
  - that the building contractor will ensure that work will start as soon as reasonably possible.
- Location of the building site, including lot-on-plan or similar description, is stated.
- Total price and payment provisions are clearly stated. Check that the deposit and any subsequent instalments ("Progress Payments") are in accordance with the requirements of the DBC Act, including:
  - If the contracted work is valued at \$20000 or more the maximum deposit allowed under the DBC Act is 5%;
  - If the domestic building work is valued at less than \$20000 the deposit must not exceed 10%;
  - For work involving the construction of an entire home, the DBC Act also sets out a schedule of progress payments to be made at designated stages in the construction (for more details refer to the section in Part 2 of the BSA Consumer Guide titled *Payments - When and How Much?*, or the BSA Fact Sheet titled *"Deposits and Progress Payments"*).
- Definitions of key terms are included.
- Where required for the work, appropriate plans and specifications are included. These documents must be sufficiently detailed to enable you to obtain any necessary approvals or authorisations from government authorities. Any requirements you may have as to particular finishes (for example, number of coats of paint required) should be stated in the specifications.

- ❑ The contract lists and describes any fixtures or fittings which are not included (e.g. if you decide to delete the standard kitchen appliances normally provided by a project builder and replace them with appliances that you will source and install yourself).
- ❑ If the work includes, alters or may adversely affect footings or a concrete slab, the contractor must obtain appropriate foundations data before entering the contract. This includes soil test data, contour surveys and other geotechnical information. The contractor must provide you with a copy of this information. The cost for this is normally covered by a preliminary agreement or included in your deposit payment (check with the builder).
- ❑ “Variations” (i.e. any changes to the work to be done under the contract), whether initiated by the builder or the home owner, must be fully detailed in writing and should be supported by plans and specifications where these are required for the work. Variations form part of the contract documentation. Your contractor must put any variations they request in writing as soon as practicable and, if the variation means additional work, it is to be done before that work is started except where the work is urgent and it is not practicable to put it in writing first. (**NOTE:** the contractor cannot request payment until after the variation work has commenced). Your contractor must give you a copy of the variation document as soon as practicable and at least within 5 business days from when the document is signed. The variation document must:
  - be in English and legible;
  - be signed by your contractor;
  - describe the variation;
  - state the reason for the variation (if sought by the contractor);
  - provide a reasonable estimate of any delay to the work which may result from the variation;
  - state the change to the contract price or set out the method for calculating the price change; and
  - state when the price for the variation is to be paid or credited.
- ❑ Prime Cost Items and Provisional Sums, if included in the contract, are listed on separate schedules.
- ❑ If the contract price is subject to change, the contract must include a warning which:
  - states that the contract price is subject to change; and
  - states the provisions of the contract that allow for the contract price to be changed; and
  - appears as near as practicable to the first reference in the contract to the contract price.
- ❑ The contract must contain a conspicuous notice advising you, the building owner, of your right to withdraw from the contract under the “cooling-off” provisions of the DBC Act which provide:
  - You may withdraw from the contract within 5 business days of receiving, from the contractor, a copy of both the signed contract and a BSA-approved Contract Information Statement;
  - To withdraw you must advise the contractor in writing within the cooling-off period of 5 business days;
  - If you withdraw the contractor is entitled to payment of \$100 plus all out-of-pocket expenses reasonably incurred prior to the date of withdrawal;
  - If your contract does not contain a cooling-off notice, you are entitled to withdraw within 7 calendar days of becoming aware that the contract should have contained the notice;
  - You do not have a right to withdraw if you and your contractor have previously entered into a contract with substantially the same terms and relating to the same detached dwelling, home or land; or you have received independent legal advice about the contract before entering into it (or have told the contractor you have received such advice).
  - You may waive your right to withdraw from a repair contract by providing a written waiver notice to the contractor (this decision should be carefully considered).

- ❑ The following statutory warranties must be set out in the contract:
  - 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;
  - The contractor will carry out the work in an appropriate and skilful way with reasonable care and skill;
  - If plans and specifications form part of the contract, work will be carried out in accordance with the plans and specifications;
  - Any provisional sums included in the contract have been calculated with reasonable care and skill; and
  - The home, renovation or extension will be suitable for occupation on completion.

See the section titled *Warranties* in Part 4 of the *BSA Consumer Guide* available free from BSA's website for further details.

**Warning:** These statutory warranties expire in 6½ years from the date the subject work is finished, or, if the subject work is not finished, in 6½ years from the stated completion date or period.

Make sure you use that time to address any problems.

## Contract termination under the DBC Act

Section 90 of the DBC Act gives home owners 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 duration of the contracted work** (if it 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 the contractor 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.

**NOTE:** It is essential that you obtain formal legal advice before taking action to terminate the contract for any reason, as improper termination may result in significant costs and risks for home owners, including loss of protection under the Queensland Home Warranty Scheme.

## Where can I get more information and contractual advice?

For further details on contract requirements, or the meaning of specific provisions in a particular contract, it is essential that you obtain formal legal advice.