

**BUILDING
OR RENOVATING?**

**DO YOUR
HOME
WORK**

**YOUR FIRST JOB IS TO
UNDERSTAND THE NEW CONSUMER
PROTECTION MEASURES.**

New Zealand Government



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

**THE
BUILDING
LAWS
HAVE
CHANGED**

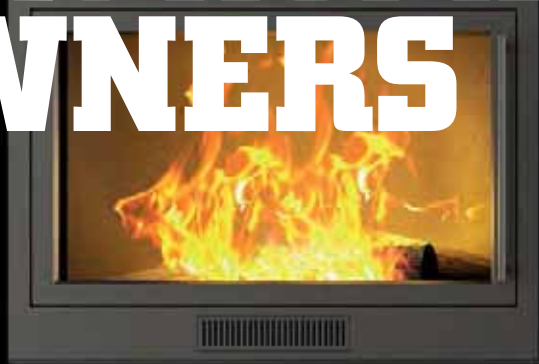


**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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Contents

New protection for homeowners	2
Before building work starts	6
Once building work finishes	18
What if things go wrong?	22
An overview of the building process	26

NEW PROTECTION FOR HOME OWNERS



If you're considering residential building work, from **1 January 2015** you'll be better protected. That's when new consumer protection measures take effect. These changes encourage a professional, no-surprises relationship between you and your contractor. They should also enable you to make informed decisions about building work.

Key changes include:

- You must have a written contract for residential building work costing \$30,000 or more (including GST).
- If the work is \$30,000 (including GST) or more, or if you ask for it, your contractor must give you information about his or her skills, qualifications, licensing status, and the insurance or guarantees they provide in a disclosure statement before you sign a contract.
- Your contractor must also give you information about any ongoing maintenance requirements, insurance policies and guarantees or warranties once the building work has been completed.
- There's an automatic 12-month defect repair period when contractors have to fix any defects you've told them about.
- There are new ways to take action when warranties in the Building Act have not been met.
- Contractors can be fined if they don't comply with the law.

We've written this quick guide to explain these changes and remind you of other important steps in the building process.



Please note that these changes relate to residential building work only. For the latest updates on the new consumer protection measures go to www.doyourhomework.co.nz.

Changes to the Building Act and supporting regulations

The consumer protection measures are included in a new part of the *Building Act 2004* (Part 4A) which comes into force on 1 January 2015.

Other changes affecting homeowners in the last year or so include an updated list of work on homes and outbuildings that do not require a building consent (in Schedule 1 of the Building Act). More low-risk work has been exempted, but there are limits on who can do some potentially higher-risk work and only authorised people (as defined in the *Plumbers, Gasfitters and Drainlayers Act 2006*) can do certain plumbing and drainlaying work without a consent.

FOLLOW THE CODE

Remember, all building work must comply with the Building Code, even if the building work does not require a building consent.

Refer to our latest guidance on building work that does not require a building consent at: www.mbie.govt.nz.



A low-angle, upward-looking photograph of a wooden building's structural frame. The image shows a complex network of light-colored wooden beams and joists against a clear, bright blue sky. The sun is visible in the upper right quadrant, creating a lens flare effect. The text "BEFORE BUILDING WORK STARTS" is overlaid in large, bold, white capital letters on the left side of the image.

BEFORE BUILDING WORK STARTS

Once your design and plans are sorted, the next step in getting your building work done involves approaching potential contractors and getting quotes for the job.

Pricing the job

A quantity surveyor (QS) can give you a reasonable idea of the costs involved in the building work.

You can give contractors the QS estimate of materials required (but not the price) to help them prepare their quotes. A QS can also be used to calculate progress payments and to cost variations during construction.

Choosing someone to do the job – do your homework, get quotes

When looking for a contractor, ask for recommendations from your friends or family. Ask for references and look at examples of previous work. It can also be a good idea to take recommendations from your architect, as it helps to have a contractor who is used to the architect's style of work. Make sure you use a Licensed Building Practitioner for Restricted Building Work. Find out more on page 10.

A quote is based on detailed specifications and is the price you will pay to complete the building work, with the exception of matters outside the builder's reasonable control or additional costs from variations to the contract.

Get at least three detailed quotes (including a breakdown of labour and materials) not just estimates for the building work. You will need to give the contractor a copy of the detailed drawings, specifications and QS estimates (if you have them) alongside information about the building site. **The more information you give them, the more reliable the quote will be.**

Make sure you check if GST is included or excluded in the quote price if you're not sure. Ask for the contractor's hourly rate (including GST) so that you know how much to expect to pay if you want any additional work to be done.

Reviewing the quote

When considering and comparing quotes, money shouldn't be the only factor in choosing your contractor. Compare quotes on more than just price; think about their levels of experience and reliability, what fixtures and fittings they suggest and check their references. Look at the details and make sure that they cover the **same scope of building work** and the same materials and fixtures so you are comparing 'like with like'. If any quote is significantly higher or lower than the others, ask why.

It's important that you're happy with the specified fixtures and finishes in the quote because, once you've signed the contract, changing these will be a variation of the contract (and will probably cost more). If any part of the quote is unclear, ask for more details.

When choosing materials for your building work, contractors will be influenced by a number of factors, including:

- Their past experience with the products.
- The wholesale price of the products.
- The time – and labour cost – taken in getting quotes from multiple sources.
- Terms of trade available from various sources.
- Loyalty schemes (such as rebates for buying a lot of product) available from various merchants.

BUILDING WORK?

'Building work' covers many different trades and is any work for, or in connection with the construction, alteration, demolition or removal of a building. Buildings include structures that are not occupied by people, such as fences and retaining walls.

Ask your potential contractors:

- Why they propose to get building materials and fixtures from a particular source.
- If the benefits of buying materials and fixtures from that source have been reflected in the quote.

It's important to understand 'contingency' or 'PC sums' on the quote could be either provisional sums or prime cost sums.

- **A provisional sum** sets aside money for specific building work when there is not enough detail to provide a fixed price (ie the item has not yet been purchased or chosen and the installation cost is unknown). Ask the contractor to confirm that the amount quoted will be adequate for the quality of goods you are expecting.
- **A prime cost sum** sets aside a fixed amount for a certain item (eg kitchen sink) so that you can choose these yourself. If you choose a product that costs more than the allocated prime cost sum, you will need to pay extra to use these in your home. A prime cost sum does not include any installation costs.

If you're not confident asking difficult questions or negotiating the terms of your contract, ask someone you trust to help you.

When you've made your decision and chosen your contractor, you should send written notification to those who missed out.

DEFINING A CONTRACTOR

The contractor is the person or company you have asked to do or manage building work for you. The contractor may not be a builder; it could be a plumber, electrician or other tradesperson you are dealing with directly.

Restricted building work

You need to start thinking about Restricted Building Work (RBW) right from the start of your project. You must use a Licensed Building Practitioner (LBP) to do or supervise the RBW.

If you are using a designer, they must identify all the RBW on your job when they fill in their Certificate of Work (part of the documentation required for building consent). They'll do this when they draw up your building plans.

Restricted building work is everything that involves or affects the following:

- **Primary structure** – for example, this work contributes to the resistance of vertical and horizontal loads (such as walls, foundations, floors and roofs)
- **Weathertightness** – any work done to the outside of the building to protect it from the weather or elements
- **Design of fire safety systems** – this work involves elements intended to protect people and property from fire (eg escape routes) in multi-unit residential buildings.

LBPs are designers, carpenters, brick and blocklayers, roofers, external plasterers, or site and foundations specialists who have been assessed to be competent to carry out work essential to a building's structure.

FIND AN LBP

Ask your builder to produce their Licensed Building Practitioner identification OR check the LBP register at www.lbp.govt.nz. This website also contains more info on DIY and responsibilities for 'owner-builders'.







Before signing the written contract

From 1 January 2015, the contractor must give you information about their business and a standard checklist **before** you sign a residential building contract if:

- Your building work will cost \$30,000 or more (including GST) or
- You ask for these documents.

It's important to clarify roles and responsibilities for your building work up-front when getting your quote and signing your contract. For example, the homeowner is responsible for obtaining any required building or resource consents, although often people ask their contractor or project manager to get these.

It's also a good idea to make sure both parties are clear on expected outcomes for the project; do you expect the contractor to be working on the building project until the Code Compliance Certificate is issued? If this hasn't been specified, the contractor may begin work for other clients.

Keep a clear record of what has been decided and agreed. Any change to the building work listed in your contract is a contract variation, and needs to be put in writing to your contractor. It's important to check on the price and timeline implications of any variations.

Contractors can be fined for not supplying you with a checklist or disclosure statement if they are required to.

Standard checklist

A checklist has been prepared by the Ministry covering the content required by law and includes information on how building projects are managed, hiring contractors, what should be covered in a written contract and resolving disputes.

Go to www.doyourhomework.co.nz to view the Ministry's checklist.



DISCLOSURE STATEMENT:

By law, the contractor must give you a disclosure statement that includes:

- The name of the contractor and/or the legal name of their business entity; whether they are trading as an individual, partnership or Limited Liability Company; the business address and contact details and when it was formed.
- Information about the key contact person (eg the project manager or site foreman) who will be involved in carrying out or supervising the building work, including their relevant qualifications, skills and experience.
- Information about insurance policies the contractor has, or intends to have, in relation to the building work – this must specify the amount of the cover and any relevant exclusions on policy coverage.
- Information about any guarantees or warranties the contractor offers in relation to the building work – this must specify the period of time the guarantee or warranty is offered for and any limits or exclusions on coverage.

Only the party you are contracting with has to provide this information (ie your contractor may have hired other workers to help complete your building work, but they do not need to disclose this information).

If any of the disclosure information seems unusual, query it with the contractor. Anyone who knowingly provides false or misleading information, or who knowingly leaves out information, is liable on conviction to a fine of up to \$20,000.

What your written contract should cover

Written contracts are mandatory for certain work. From 1 January 2015, you must have a written contract if your residential building work will cost \$30,000 or more (including GST).

All contracts for \$30,000 or more must contain key information

Your contract must include the following:

- Names, physical and postal addresses (including the address for the delivery of notices) of both parties, and all relevant contact details (eg phone numbers and email addresses).
- The address or location description of the site where building work will be carried out.
- The date(s) the contract is signed by both parties.
- The expected start and completion date and how possible delays will be dealt with.
- The contract price or the method by which the contract price will be calculated (eg fixed hourly rate with materials invoiced separately by supplier).
- A description of the building work that your contractor will complete including the materials and products to be used (if known).
- Which party will be responsible for obtaining building consents, and any other approvals required, to carry out the building work.
- Who will be carrying out and/or supervising the work.
- How notices and certificates will be given by one party to the other.

ASK FOR A CONTRACT

Even if your building work will cost less than \$30,000, we encourage you to ask for a written contract as it can help avoid misunderstandings later on. It is the responsibility of the contractor to provide the written contract.

- The payment process, including dates or stages for payment and how payments will be invoiced, made and receipted.
- How defects in the building work will be remedied, including reference to the existence and application of the implied warranties in section 362I to 362K of the Building Act.
- The dispute resolution process to be followed if there is a disagreement.
- How variations to the building work covered by the contract will be agreed before work continues.
- An acknowledgement that the client has received the checklist and disclosure statement from the contractor.

If you don't have a written contract or if your written contract doesn't include the minimum content specified in the Act, there are new default clauses which will be considered to be part of your contract. A default clause won't override an existing clause in your contract on a similar topic.

GET LEGAL ADVICE

The minimum content only covers the basics. Take time to make sure your contract is suitable for the building work you are undertaking. It is especially important to check the scope of works included in the contract, as this is all your contractor has to carry out.

Always get legal advice before you sign a contract.



Go to www.doyourhomework.co.nz for details of the new default clauses.

Implied warranties

The law sets out implied warranties that apply for up to 10 years to all residential building work, regardless of whether or not you have a written contract, or what the terms of your contract are.

Implied warranties cover almost all aspects of building work, from compliance with the Building Code to good workmanship and timely completion of building work. A breach of these warranties is a breach of your contract.

There are new ways to take action when the warranties have not been met. These are in addition to any legal action taken against your contractor for a breach of contract.

If you think your contractor has breached these warranties, your first step should be to begin the dispute resolution process outlined in your written contract.



Implied warranties set out in the Building Act must be met for all residential building work. For the full list of implied warranties go to www.doyourhomework.co.nz.



ONCE BUILDING WORK FINISHES



Information your contractor must give you

From 1 January 2015, your contractor must give you the following information and documents once the building work is completed, regardless of the price of the work:

- A copy of any current insurance policy they hold for the building work completed under the contract. This does not include policies that expire when the work is completed.
- A copy of any guarantees or warranties for materials or services used in the building work, including information about how to make a claim, if the guarantee or warranty is transferable, and if it must be signed and returned to the issuer.
- Information about the processes and materials to be used to maintain the building work; particularly if maintenance is required to meet the requirements of the building code or maintenance that could affect any guarantee or warranty.

[Make sure you get some information on how to maintain your home and that you budget for this work – it's an ongoing cost.](#)

Defect repair period of 12 months

From 1 January 2015, there is a new defect repair period of 12 months from the date your building work is complete.

If you tell contractors about any defective work before the 12 months are up, they must put it right within a reasonable timeframe from receiving written notification. It is the contractors' responsibility to prove that any defects are through no fault of their own (or their product) if there is a dispute.

How the process works

You must notify your contractor of any problems in writing. It is up to them to arrange and manage the repairs, including any defects in work done by subcontractors.

If you've contracted other tradespeople directly, you'll need to contact them yourself (in writing) about the defective building work.

When does the clock start?

The completion date is when all the physical building work agreed to by you and the contractor has been finished.

The 12-month defect repair period applies to all residential building work, regardless of the price.

Once the defect repair period ends

Implied warranties in the Building Act apply for up to 10 years, so the contractor is still obliged to fix defective work after the defect repair period ends. The only difference is that it becomes your responsibility to prove that there is a defect if the contractor does not agree the work is defective.

ACCEPTABLE LEVELS OF WORKMANSHIP

The Ministry has produced guidance on acceptable levels of workmanship and tolerances to help contractors and homeowners determine what is, and what isn't defective building work. This is available online at www.mbie.govt.nz.





**WHAT IF
THINGS GO
WRONG?**

You have a number of options if you are in dispute with your contractor. Some of the basic steps are set out in the checklist you should have received at the start of the build process.

Refer to your contract and talk to your contractor

If you have concerns about building work that has been carried out, start by checking the terms agreed in your contract and discussing matters with your contractor. Many complaints and disputes result from misunderstandings, such as:

- Not understanding the terms agreed in the contract.
- Having unrealistic expectations about the level of quality you can expect for the amount of money you have agreed to pay.
- Not understanding the impact of asking for changes after the initial quote or contract was done.
- Not being clear about the work you want them to do.

Follow the dispute resolution process in the contract

If you are still unhappy after talking it through with the contractor, the next step is to check the contract to see what (if any) dispute resolution process you should use and begin that process.

More steps to consider

If the issue remains unresolved, then how you progress your concerns will depend on who or what you are concerned about and how much you are prepared to spend to get it resolved.

Complaining about the conduct of a Licensed Building Practitioner (LBP)

If your contractor is an LBP and you believe they were negligent or incompetent, you can complain to the Building Practitioners Board. They can investigate the LBP and discipline them, but they can't award you any compensation or make the practitioner fix defective work.

Complaining to the contractor's trade or professional association

If the contractor is a member of a trade or professional association you can complain to these bodies. They may offer dispute resolution services and/or guarantees which cover work done by their members.

Breaches of implied warranties

From 1 January 2015, there are new ways to take action when the implied warranties under the Building Act have not been met. These cover:

- What happens when the breach can be remedied.
- What happens when the breach is substantial or cannot be remedied.
- What a substantial breach is.

You can read more about the implied warranties at www.doyourhomework.co.nz.

Seeking mediation

You can try to come to an agreement with the help of a mediator even if your contract does not provide for it, or if you have no written contract, but both parties have to agree to this.

Mediators are appointed by the:

- New Zealand Law Society
- LEADR (an Australasian association of dispute resolvers) or
- AMINZ (Arbitrators' and Mediators' Institute of New Zealand Inc.)

or through private mediation services.

Approaching the Disputes Tribunal or District Court

You can take a dispute to the Disputes Tribunal if your claim is for up to \$15,000 (or \$20,000 if both parties agree). If your claim is for more than this or if you need to enforce the Disputes Tribunal's decision, you can go to the District Court.

You should get legal advice if you are considering taking the matter to the District Court.



Your first step should be to talk to your contractor and check the details of your contract for any dispute resolution process. If you believe your contractor has breached the contract or any of the implied warranties in the Building Act, and if they refuse to address the issue, get legal advice as soon as possible.



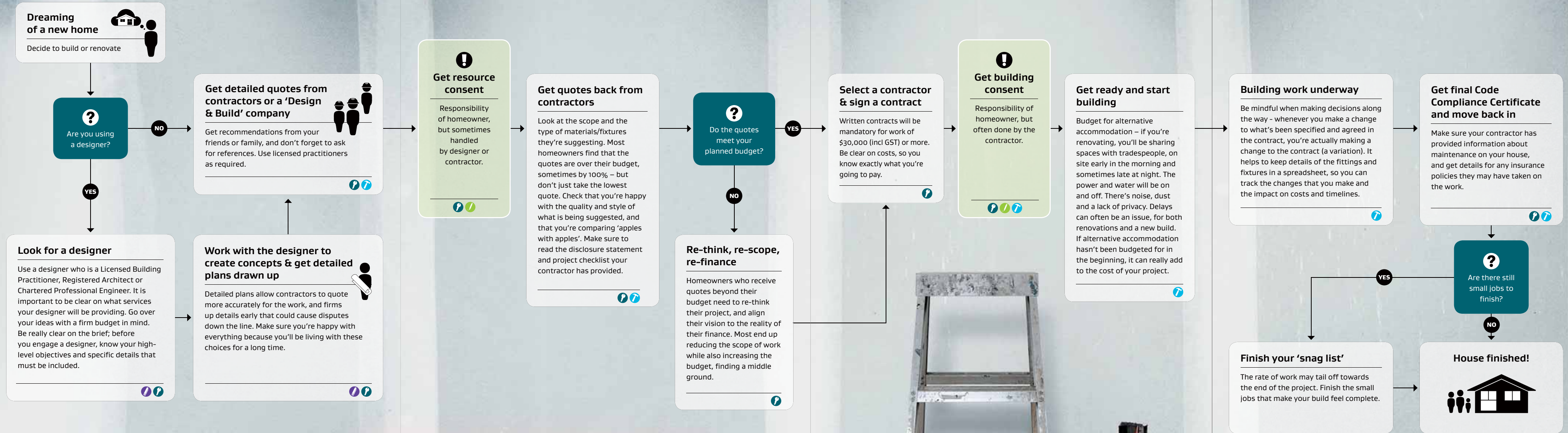
Dreaming of a new home?

THE BUILDING PROCESS: AN OVERVIEW



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The Building Process: An overview



Who's responsible:

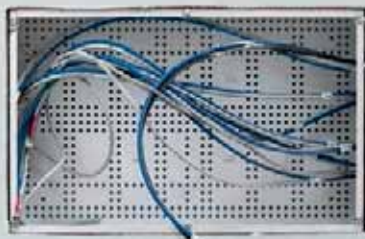
Building Consent Authority
 Contractor
 Designer
 Homeowner

The Building Process: An overview



Who's responsible:

Building Consent Authority
 Contractor
 Designer
 Homeowner



FIND OUT MORE

For more information about the new consumer
protection measures:
www.doyourhomework.co.nz.

Ministry of Business, Innovation and Employment
www.mbie.govt.nz 0800 24 22 43



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This guide by the Ministry of Business, Innovation and Employment (the Ministry) is intended as a general guide to the consumer protection measures of the Building Act 2004 (the Building Act) and has been written in accordance with section 175 (which relates to guidance published by the Ministry's Chief Executive). While the Ministry has taken every care in preparing this document, it should not be relied upon as establishing all the requirements of the Building Act. Readers should always refer to the Building Act and associated regulations as the source document and be aware that for specific situations or problems it may be necessary to seek independent legal advice.