

CONTRACTORS:

**DO YOUR
HOME
WORK**

**IT'S YOUR BUSINESS TO
UNDERSTAND THE NEW CONSUMER
PROTECTION MEASURES.**

New Zealand Government



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

THE BUILDING LAWS HAVE CHANGED



Licensed Building Practitioners skills maintenance

If you are a Licensed Building Practitioner (LBP) you can gain skills maintenance points for reading this document.



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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The background of the image consists of multiple layers of dark grey, ribbed steel reinforcement bars (rebar) stacked horizontally. Two solid green horizontal bars are positioned above and below the central text. The text is centered and reads:

**NEW
CONSUMER
PROTECTION
MEASURES**

New consumer protection measures for residential building work take effect from **1 January 2015**. These changes should encourage a professional, no-surprises relationship between you (the contractor) and your clients. They will also help homeowners to make informed decisions about building work.

From 1 January 2015 you must:

- Provide a written contract for residential building work costing \$30,000 or more (including GST) whenever you are given the job directly by the homeowner.
- Provide a standard checklist to potential clients if they request it or if the building work is likely to cost \$30,000 or more (before signing a contract).
- Give your clients a disclosure statement including information about your skills, qualifications, licensing status and the insurance or guarantees you provide in a disclosure statement before you sign a contract. You must provide this if the work will cost \$30,000 or more, or if the client requests it.
- Give your clients information about any ongoing maintenance requirements, insurance policies and guarantees or warranties once the building work has been completed.

In addition to these new requirements:

- An automatic 12-month defect repair period starts when the work has been completed. The contracting party must arrange to fix any defects they've been told about.
- The homeowner has new ways to take action when warranties in the Building Act have not been met.
- You can be fined if you don't comply with the law.



Who is considered a contractor?

A contractor is any person or business contracted directly by the client to do residential building work (the construction, alteration, demolition or removal of a building), whether they are doing all or part of this work.



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

Remember, all building work must comply with the Building Code, even if the building work does not require a building consent. Check out our updated guidance on building work that does not require a building consent at www.mbie.govt.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 came into effect in November 2013 including 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, for example certain plumbing and drainlaying work can be done without a consent but only by authorised people (as defined in the *Plumbers, Gasfitters and Drainlayers Act 2006*).



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.



**BEFORE
BUILDING
WORK
STARTS**

Restricted building work

If you're planning on doing or supervising building or design work as part of the construction or alteration of residential buildings, this work may be classified as Restricted Building Work (RBW). You must be an LBP in the appropriate licence class to do or supervise this type of work.

RBW is everything that involves or affects the following:

- **Primary structure** – for example, building work that 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.

BECOME AN LBP

If you're interested in becoming an LBP or you want to find out more about the scheme, go to www.lbp.govt.nz.



As a contractor, it is an offence with **a fine of up to \$20,000** to carry out RBW unless you or someone supervising your work is appropriately licensed.

Each LBP who has carried out or supervised RBW must legally provide a Record of Work to both the homeowner and the relevant territorial authority upon completion. You cannot contract out of this obligation; and could be subject to disciplinary action and any applicable penalty.

Written contracts are mandatory for higher value work

From 1 January 2015, you must provide a written contract for residential building work costing \$30,000 or more (including GST) whenever you have been given the job directly by the homeowner.

If you are a subcontractor reporting to a main contractor, the new requirements do not apply to you – no matter the value of your work.

We encourage you to provide a written contract even if the building work will cost less than \$30,000. Having a written contract helps protect you in case of a payment or quality dispute – it means you have a written and signed record of how much your client has agreed to pay for the building work provided with specific terms and conditions relevant to the project.



Remember that any person or business that contracts directly with the homeowner is responsible for providing a written contract if the building work will cost \$30,000 or more. You can be fined \$500 for not having a written contract with the homeowner when you are required to. See page 12 for information on what your contract should cover.



Calculating the cost

When you're pricing a job, the price should be the total cost of all the building work (including supplies, fixtures and fittings) plus GST. This is regardless of whether all or part of the work is being done by a subcontractor. The cost of the subcontractors' work can only be excluded if the subcontractor enters into a separate contract with the client.

Attempting to avoid your obligations by splitting work into separate contracts of less than \$30,000 will not be to your advantage. A written contract protects you as much as it does the client.



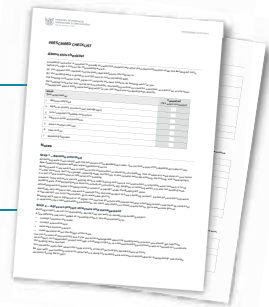
Make sure you've included GST in your price.

Before signing the contract

From 1 January 2015 you must give your client a disclosure statement with information about your business and a standard checklist **before** agreeing a residential building contract if:

- The building work will cost \$30,000 or more (including GST) or
- The client has asked for these documents.

You can be fined **\$500 per offence** for not supplying homeowners with a checklist or disclosure statement if you are required to.



Standard checklist

The standard checklist has been prepared by the Ministry and includes information on how the building project will be structured and managed, having a written contract, and resolving disputes. This is a standard document that you can easily print or email to clients directly from our website.

✓ DO YOUR HOMEWORK GET THE CHECKLIST

- The checklist is available at www.doyourhomework.co.nz.
- You must not make any changes to the checklist (ie you cannot add your business logo or contact details).
- Make sure you have given your client a copy of this (either printed or electronic). You may be fined \$500 if you don't.

Disclosure statement

By law, if you are going to contract directly with the homeowner you must give them a disclosure statement that includes:

- Your full legal name; whether you are trading as an individual, partnership or limited liability company; the address of your business and when it was formed; and contact information, including phone numbers and email address.
- 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; their LBP number (if applicable); and their contact phone numbers.
- Information about insurance policies you have, or intend to have, for the building work. This must specify the amount of the cover and any relevant exclusions on policy coverage.
- Information about any guarantees or warranties you offer in relation to the building work. This must include the period of time the guarantee or warranty is offered for and any limits or exclusions. If it is a product warranty, you must specify what products are covered.

If you have been hired by the main contractor, you do not need to provide this information.

Anyone who knowingly provides false or misleading information, or who knowingly leaves out information they are required to provide in the disclosure statement, is liable on conviction to a **fine of up to \$20,000**.

DO YOUR HOMEWORK SORT A DISCLOSURE STATEMENT

- **You can find a disclosure statement template online at www.doyourhomework.co.nz.** You can use this to produce your own disclosure statement covering the requirements and give a copy to every new client before the contract is signed if the building work will cost \$30,000 or more, or if the client requests it.
- If your business is not an individual, partnership or limited liability company, you will need to write 'none of these' against the relevant question and provide a description of your entity (eg a trust).
- You can't include other information in the disclosure statement, but this is a good time to provide additional information to your client about your business – you can attach other documents.
- Make sure you haven't left anything out as this could be a problem later on. Remember that you could be liable for a fine of up to \$20,000 for providing false or misleading information, or for knowingly leaving out information.
- Contact your insurance company for a copy of your insurance certificate, and then use this information to help complete your disclosure statement.
- It's a good idea to make a master copy of your disclosure statement and then amend it for each individual job – this can save you time and money.
- If you're a bigger company and you don't know who the key contact person will be at the quoting stage, provide this information to the best of your knowledge. Make sure you give your client an updated disclosure statement when you sign the contract if the information has been updated or changed.
- You can be fined \$500 for not providing the disclosure statement, so make sure you get on to it for each and every client.
- For additional help, check out our guidance at www.doyourhomework.co.nz.



What should your written contract cover?

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 the building work will be carried out.
- The **date(s)** the contract has been 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 the supplier).
- A **description of the building work** that you 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 building work.
- How **notices and certificates** will be given by one party to the other.
- The **payment process**, including dates or stages for payment and how payments will be invoiced, made and received.
- How **defects** in the building work will be remedied, including reference to the existence and application of the implied warranties in sections 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.

DO YOUR HOMEWORK SORT YOUR CONTRACT

- You can purchase NZS 3902:2004 Housing, Alterations and Small Business contract from Standards New Zealand at www.standards.co.nz.
- Check with your industry association (if you are a member) as they may have a standard form contract you can use.
- Ask your lawyer about creating your own contract and make sure it covers all the required minimum clauses.
- We also recommend you talk to your lawyer before signing a contract for a particular project.

The minimum content only covers the basics. Take time to make sure your contract is suitable for the building work you are undertaking. We also recommend getting legal advice about what should be in it.


You can be fined \$500 for not having a written contract with the homeowner if it is required.

Default clauses can be considered part of your contract

If you haven't met your requirements under the Building Act and don't have a written contract, or if the contract doesn't include the minimum content specified in the Act, there are new default clauses that will automatically be considered to be part of your contract.

These clauses only apply if you don't have a written contract or if there is no clause on the same topic in your contract. Put another way, a default clause won't override an existing clause in your contract on a similar topic.

The default clauses cover many aspects of a building project; including that the contractor is responsible for obtaining all consents and approvals on behalf of the client, and that the contractor may not submit a final payment claim until the Code Compliance Certificate has been provided.



Don't rely on the default clauses to be the terms and conditions for your contract. They may not be favourable to your situation or appropriate for the building project. Go to www.doyourhomework.co.nz for details of the new default clauses.



Implied warranties

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

There are new ways for homeowners to take action when the warranties have not been met. These are in addition to any legal action they can take against you for a breach of contract.

The implied warranties are listed in section 362I of the Building Act. They must be met for all residential building work.



For the full list of implied warranties go to www.doyourhomework.co.nz.

Photo ©Chris Daniels (www.chrisdaniels.co.nz)



**ONCE
BUILDING
WORK
FINISHES**

Information you must give the homeowner

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

- A copy of any current insurance policy you hold for the building work completed under the contract. This does not include policies that expire before 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 could affect any guarantee or warranty.

DO YOUR HOMEWORK

- Make copies of any insurance policy certificates you have for the building work you carried out, and any guarantees or warranties for the materials or services you used. Give these to your client at the end of the job.
- Source information on product maintenance from the manufacturer or supplier, and then give a copy to the homeowner. You might find this information online (for example, BRANZ maintenance schedule) or through the product supplier.
- This is an additional requirement over and above any maintenance information supporting a consent application.
- It's okay to provide information on maintenance and insurances as you go, but it's easier to save this up and hand it over in a tidy packet when the project is finished. That way, you also know exactly what you've provided.
- Neglecting to provide this information could mean **a fine of \$500**.

12 month defect repair period

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

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

How the process works

If you are the main contractor or you have been contracted directly by the homeowner, they must notify you in writing of any problems. It's then up to you to arrange and manage the repairs, including any issues with subcontractors.

If you're a subcontractor, the homeowner must advise the main contractor, not you, of any problems.

When does the clock start?

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



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

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. Check this out at www.mbie.govt.nz.

Once the defect repair period ends

Implied warranties in the Building Act apply for up to 10 years, so you will still be required to remedy defective work after the defect repair period ends. If you do not agree the work or product is defective and the 12 month repair period has lapsed, the homeowner must prove there is a defect before you are required to have it fixed (ie it becomes their responsibility to prove that there is a problem).

YOUR RESPONSIBILITIES:

- Remember you are required by law to fix any defective building work.
- It is a good idea to do a walk through with your client after each milestone to show them progress and to check the quality of the work. It will be much easier (and more time and cost effective) to repair any defective work or products as you go. If you wait until the end of the project, you may have to leave work on other projects to come back and fix something.
- Remember that when clients visit you on site, your obligations under the Health and Safety in Employment Act 1992 apply. This means taking care to ensure that visitors aren't harmed by any hazards in the workplace that you control.
- If you are the main contractor, you will need to organise the repair of anything faulty for the homeowner. You are responsible for the work done by your subcontractors, so make sure you keep an eye on the quality of their work.
- If a product is defective, it has to be remedied. It is your responsibility to arrange a replacement for any product you supplied. Our guidance on acceptable levels of workmanship and tolerances (at www.mbie.govt.nz) can help you with this if you're unsure.



**WHAT IF
THINGS GO
WRONG?**

You have a number of options if you are in dispute with your client. Some of the basic steps are set out in the standard checklist you provided before building work started.

Refer to your contract and talk to your client

If you have concerns, start by discussing them with the client directly (or with the main contractor if you are a subcontractor). Many complaints and disputes result from misunderstandings, such as:

- Not understanding the terms agreed in the contract.
- Homeowners having unrealistic expectations about the level of quality they can expect for the amount of money they have agreed to pay (for example; if they get four quotes and choose the cheapest one, they may not have taken into account that the cheaper option may use lower quality materials).
- Homeowners not understanding the impact of asking for changes after the initial quote or contract was done.
- Homeowners not being sufficiently clear about the work they want you to do.

Follow the dispute resolution process in the contract

If you are still unhappy after talking things through, your next step is to check the contract to see what (if any) dispute resolution process you should use. If a dispute resolution process is stated in the contract, begin that process.

More steps to consider

Seeking mediation

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

Any one of the following groups would be able to provide you with a list of suitable mediators or appoint a mediator if required:

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

A number of private mediation services are also available.

If the issue remains unresolved, how you progress your complaint will depend on what it's about. You should seek independent advice as to what option is best suited to your situation.

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.

It's worth getting some legal advice if you are considering taking the matter to the District Court.

Resolving payment disputes

The homeowner is legally liable for the amounts due under the contract as a debt. The most effective way to enforce payment is to use the payment claim process, under the Construction Contracts Act. The client can object to a payment claim under the Act, but must do this in a written payment schedule that indicates what they are prepared to pay (which could be nothing).

The amount the client is prepared to pay is called the scheduled amount.

The written payment schedule must show:

- How they calculated the scheduled amount.
- Their reason for the difference from your claimed amount.
- If they are withholding payment on any basis, their reasons for this.

Seek legal advice on your options if you dispute the information or reasons in the client's payment schedule, or the client:

- Doesn't give you a written payment schedule and doesn't pay, or
- Gives you a written payment schedule but doesn't pay the scheduled amount.

For example, you can apply for adjudication under the Act. You can also go to court to recover the debt, along with any costs.

Applying for adjudication

Under the Construction Contracts Act 2002, you can refer a dispute to adjudication. This involves an independent person making a decision on the dispute.

Adjudication is a relatively quick process, as decisions are usually made within 20 to 40 working days.

The adjudicator's decision is binding, meaning that any payment ordered by the adjudicator will need to be paid. However, the same issues can also be revisited in Court proceedings.

It is up to both parties either to select an adjudicator or to agree on the organisation they will ask to nominate one. If you can't agree about this, the claimant can request that an "authorised nominating authority" selects an adjudicator.

There are a number of private organisations and individuals who provide adjudication services and who can help you choose an adjudicator. These include:

- Arbitrators' and Mediators' Institute of New Zealand Inc. (AMINZ).
- Building Disputes Tribunal.
- Adjudicators Association of New Zealand (AANZ).
- Royal Institute of Chartered Surveyors (RICS).

CHEAT SHEET

- 1 First contact with homeowner
Give checklist
- 2 When quoting
Give disclosure statement
- 3 Awarded job
- 4 Prepare and sign written contract
Make any amendments to disclosure statement
Ensure contract complies with minimum requirements
- 5 Check for consent
(If required)
- 6 Carry out building work
Provide homeowner and council with Record of Work (if required)
- 7 Provide post-build information
Give copies of any:
Insurance certificates
Guarantees or warranties
Maintenance information
- 8 Get paid
- 9 Fix any defects



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



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