

Terminating Your Standard Form Construction Contract: a Step by Step Guide

If your Home Builder has breached your contract or has caused defective works or damage to your property, or the project is substantially delayed or progressing slowly, you may have a right to terminate your contract - but only after certain steps are taken.

Standard Form Contracts

Standard form Residential Building contracts are those issued by government bodies like Fair Trading, or industry associations like Master Builder and Housing Industry Association.

These contracts are already pre-printed and need only be filled by the parties as they see fit.

Standard form home building contracts relating to residential building projects contain termination clauses, which lay out the procedure for effecting a valid termination of contract.

Here, we break down for you, in simple steps, how to terminate your standard form construction contract.

Contract Termination, in General

The most commonly-used standard form construction contracts are:

- Master Builders Association (Master Builder) BC4 contract
- Housing Industry Authority (HIA) NSW Residential Building Contract for New Dwellings
- NSW Fair Trading Home Building Contract for Work Over \$20,000

All of them require, for a valid termination of contract, the following:

- default or breach on the part of the builder or contractor
- a Notice of Breach to be given to the erring builder or contractor
- a certain timeframe for the builder or contractor to rectify the building defects

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- a Notice of Termination if the builder or contractor fails to rectify the defects within the given timeframe

The difference is in the details, which will be discussed below.

Master Builder

The BC4 contract issued by the Master Builders Association in NSW allows the homeowner to terminate the contract on the ground of Builder's default.

Examples of default are:

- Master Builders Association (Master Builder) BC4 contract
- Housing Industry Authority (HIA) NSW Residential Building Contract for New Dwellings
- NSW Fair Trading Home Building Contract for Work Over \$20,000

The termination won't be automatic, though. There is a process to be followed and conditions to be fulfilled, for a valid termination to be effected.

Here's how:

Step 1. Send your Builder a written Notice of Breach.

- The notice may include the following:
 - A. a detailed list of all the defects and fault attributable to your Builder
 - B. an invitation to your Builder to settle the dispute
 - *getting together to amicably settle the dispute must be done within 10 business days from the time Builder receives this notice
 - C. a statement of your intention to terminate the contract
 - *if Builder doesn't rectify the situation within the period prescribed in the Contract (this might be 25 business days) from receipt of this notice.

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- The notice must be sent through any of the means specified in your BC4 contract.

Step 2. Wait 25 business days from the time your Builder receives the Notice of Breach.

- Give your Builder 25 business days from receipt of notice, to rectify the situation and repair the damage.

Step 3. Send your Builder a written Notice of Termination.

- If and only if your Builder fails or refuses to remove or repair the damaged works within 25 business days from the time he receives the Notice of Breach.
- Your BC4 contract provides a list of when notices are deemed received.

HIA

The Housing Industry Authority NSW issues a Residential Building Contract for New Dwellings, whose termination process is similar to the above, but with a different timeline.

Step 1. Send your Builder a written Notice of Breach.

- The notice must contain the following:
 - A. a detailed list of all the defects and fault attributable to your Builder
 - B. an invitation to your Builder to settle the dispute

* getting together to amicably settle the dispute must be done within 10 business days from the time Builder receives this notice

- C. a statement of your intention to terminate the contract

* if Builder doesn't rectify the situation within 10 business days from receipt of this notice.

The notice must be sent through any of the means specified in your HIA contract.

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Step 2. Wait 10 business days from the time your Builder receives the Notice of Breach.

- Give your Builder 10 business days from receipt of notice, to rectify the situation and repair the damage.

Step 3. Send your Builder a written Notice of Termination.

- If and only if your Builder fails or refuses to remove or repair the damaged works within 10 business days from the time he receives the Notice of Breach.
- Your HIA contract provides a list of when notices are deemed received.

Fair Trading

The NSW Fair Trading Home Building Contract for Work Over \$20,000 also has a similar termination process as the previous two contracts (Master Builder and HIA), but the parties are the Owner (you) and the Contractor.

Here's how termination may be effected:

Step 1. Send your Contractor a written Notice of Breach.

- The notice must contain the same details as discussed above
- The notice must be sent through any of the means specified in your Fair Trading contract.

Step 2. Wait 10 business days from the time your Contractor receives the Notice of Breach.

- Give your Contractor 10 business days from receipt of notice, to rectify the situation and repair the damage.

Step 3. Send your Contractor a written Notice of Termination.

- If and only if they fail or refuse to remove or repair the damaged works within 10 business days from the time they receive the Notice of Breach.
- Your Fair Trading contract provides a list of when notices are deemed received.

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Key Takeaways

Before ending your standard form contract for breach committed by your Contractor or Builder, you need to:

1. send them a Notice of Breach/Dispute
2. try and settle the dispute amicably
3. give them time to rectify the situation (25 business days for Master Builder; 10 business days for HIA and Fair Trading).

If they still fail to repair the damage within the specified timeframe, then and only then may you send a Notice of Termination and validly terminate the same.

How We Can Help

If you would like to know more, or if you are currently in dispute with your Builder or Contractor and would like to explore your options, feel free to give us a call. First consult is absolutely free.

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