

Residential Construction Contracts in NSW : A Quick Guide

Types of Construction Contracts

Residential Building contracts may either be:



Standard Form

or



Custom-made

- Standard form contracts are fill-in-the-blank types, issued by industry associations or by the government.
- Custom contracts are drawn up from scratch.

Standard Form Contracts: Quick Facts

1. Standard form contracts may be issued by industry associations such as:



The Master Builders Association of NSW (Master Builders), which is an association of building and construction industry members. It issues home home building contracts like:

Master Builder BH4 Contract



The Housing Industry Association, which is a national industry association of building professionals like trade contractors, developers, design professionals, etc. It issues home building contracts like:

HIA NSW Residential Building Contract for New Dwellings

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2. There is also a suite of standard form contracts jointly published by the Master Builders Australia Limited and the Australian Institute of Architects, for projects administered by an architect. These are Australian Building Industry Contracts (ABIC), which include:



ABIC Simple Works- Housing NSW for small to medium sized projects, such as projects between \$100,000 and \$5 million

ABIC Major Works - Housing NSW, which contains features/clauses that are absent from the Simple Works contract

3. Standard form contracts may also be issued by the government. The Office of Fair Trading NSW, a division of NSW'S Department of Customer Service, issues standard form construction contracts including:



Home Building contract for work over \$20,000

4. Additionally, *Master Builder*, *HIA*, and *Fair Trading* also have home building contracts which may be categorized as:

- **Lump Sum** - under a lump sum contract, the builder agrees to complete the project for a fixed price. The amount is to be agreed upon prior to signing the contract.
- **Cost Plus** - under a cost plus contract, the total project price is undetermined at the outset; hence, the builder will be paid an amount for the work, plus a margin or fee as profit as the project is executed. You will be billed for things like labor and materials as you go along.
- **Small Jobs** - a small jobs contract is for home building projects worth between \$5,000 - \$20,000. Small jobs contracts are usually for home renovations and repairs.

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- **Large Jobs** - a large jobs contract is for home building projects worth more than \$20,000.

Which Contract is Right for Me?

- Construction contracts usually emanate from the builder. This applies to both standard form contracts, and to custom contracts.
- While standard form contracts are generally written to benefit the builder, custom contracts drafted by the builder are 100% skewed towards their benefit, and are the most problematic for the homeowner.
- If a builder offers a custom contract, you need to be on your guard because chances are, it contains any and every clause the builder wants included, which effects redound to his benefit.
- If the contract you are about to sign is a custom contract, it would be best to proceed with caution.
- On the other hand, the home building contract issued by the Office of Fair Trading NSW would be the most objective and fair to all parties concerned.
- The Office of Fair Trading is a government body that protects the rights of small businesses and consumers. They do not make contracts that benefit one party over another - as opposed to industry associations that would naturally protect their own members (builders, contractors, etc.), or the ABIC whose contracts are more beneficial to large homeowners who undertake upscale projects.
- **That said, it would be advisable to choose the contract issued by Fair Trading, and to avoid the builder's custom contract.**

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Key takeaways:

- Master Builder and HIA contracts are generally skewed in favor of builders and contractors, as they are written and issued by industry associations whose purpose is to look after their own members.
- ABICs are skewed more in favor of the homeowner as against the builder; however they are only used in projects administered by an architect - so it's not for everyone.
- Custom contracts are the riskiest, as they are drafted and developed by one party, and include any and all provisions a party wants thrown in, so they may or may not be compliant with industry standards.
- Fair Trading contracts are the most homeowner-friendly, as they are issued by a government body that protects small businesses and consumers alike, and are not partial to any one industry.

How We Can Help

Regardless of what homebuilding contract you choose, we can help you. Contracts Specialist has a team of specialist construction lawyers who can make an in-depth review of your contract and advise you accordingly.

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