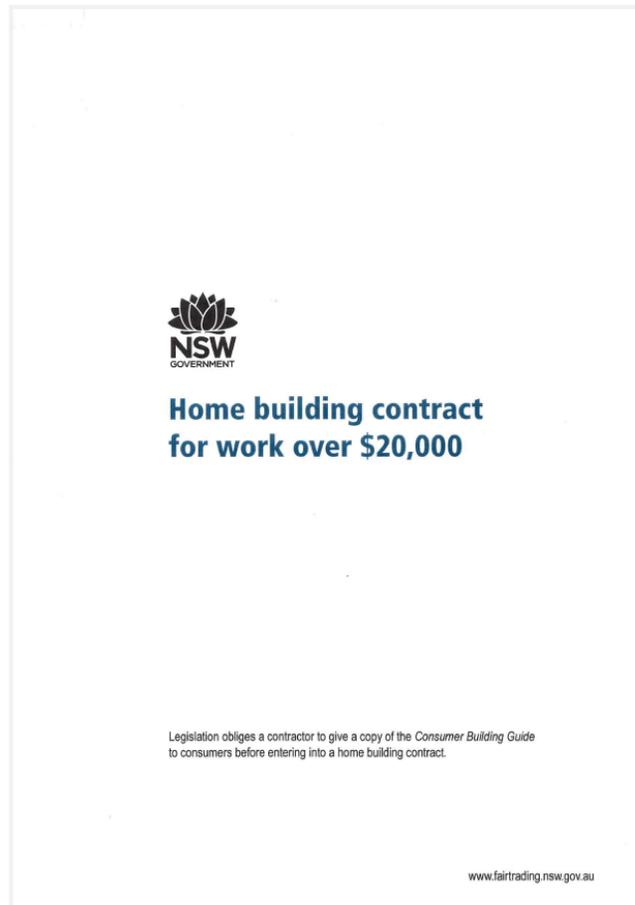


Delay in Home Building: What Your Home Building Contract Says

Is your home building project taking forever to finish? Your [NSW Fair Trading Home Building Contract for Work Over \\$20,000](#) contains clauses that tell you what to do to address the issue of Delay.



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Delay in home building

There is Delay when construction takes longer than the period agreed upon in your contract. In the [Fair Trading](#) Home Building Contract for Work Over \$20,000, you will see how long the building process should be.

You can do this by referring to the clauses on:

- Commencement of Work
- Time for Completion
- Extension of Time, and
- Completion of Work

<p>C <i>Note: The contractor should check that the owner's name stated on the contract is the same as that appearing on the certificate of title for the land. A letter from the lending authority or owner's bank may be requested in relation to capacity to pay.</i></p> <p><i>The contractor must obtain home building compensation insurance or cover and provide proof of this to the owner before starting work or requesting or receiving payment. Failure to take out insurance or cover may affect the contractor's right to payment.</i></p>	<h3 style="text-align: center;">Clause 5</h3> <h4 style="text-align: center;">Commencement of work</h4> <p>The contractor must commence the work within _____ working days from:</p> <ul style="list-style-type: none">• the date of this contract, or• if the approval of the local council or other statutory authority has still to be obtained for the work, the date of written notification of that approval, or• if the consent of the lending authority is required, the date of written notification of consent that the work may proceed whichever is latest. <p>The contractor may, by written notice, request the owner to provide satisfactory evidence of the owner's title to the land and capacity to pay the contract price and for any variations agreed to after the contract is signed.</p> <p>If the owner fails to provide such evidence within 10 business days from receipt of such notice, the contractor may suspend the work under the contract in accordance with Clause 24 or take action to end it in accordance with Clause 26.</p>
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Clause 6 Time for completion

E **Explanation:** The time allowed for completion should be realistic. The contract time should allow for any public holidays or periods when it is known the work will not be performed, for example the building industry shutdown over the Christmas period and industry rostered days off. Instances can occur when the time for completion has to be adjusted. See Clause 7.

The contractor must diligently proceed and complete the work within _____ calendar weeks from the date the work is due to commence as referred to in Clause 5. The period of time allowed for completion has taken into account any public holidays and other days when it is known that work will not be performed. The time for completion may be subject to amendment in accordance with Clause 7.

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Clause 7 Extension of time

E **Explanation:** Delays can occur during the course of the work. The contractor is entitled to apply for a reasonable extension of time for completion.

In order to qualify for an extension of time the contractor must comply with the requirements set out in this clause.

C **Note:** Disagreements may occur if a contractor fails to correctly claim for justified extensions of time. The contractor should ensure that the procedure set out in Clause 7 is always followed.

If the work is delayed by:

- inclement weather or conditions resulting from inclement weather
- any order of a court or tribunal that the work be suspended, unless that order resulted from the fault of the contractor
- any act or omission of the owner
- any industrial dispute affecting the progress of the work (not being a dispute limited to the site or limited to employees of the contractor)
- the unavailability of materials necessary for the continuation of the work, unless due to the fault of the contractor
- a variation to the work
- a suspension of the work by contractor under Clause 24, or
- any other matter, cause or thing beyond the control of the contractor, the contractor will be entitled to a reasonable extension of time to complete the work. **Both the contractor and owner (if applicable) must take all reasonable steps to minimise any delay to the work.**

If the contractor wishes to claim an extension of time, the contractor must notify the owner in writing of the cause and estimated length of the delay within 10 business days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.

If the owner does not, within a further 10 business days, notify the contractor in writing that the extension of time sought is unreasonable, the completion date for the contract will be extended by the period notified to the owner.

If the owner gives the contractor written notice disputing the extension of time claimed, and no agreement can be reached on the time to be allowed, the dispute must be dealt with in accordance with the dispute resolution procedure (Clause 27).

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O *Explanation: Should any defects or omissions become apparent after completion, refer to the Defects Rectification clause (Clause 23).*

Explanation: Under the Home Building Act 1989 the contractor is required to give the warranties set out in this clause.

The statutory warranties in the contract are as printed in the Home Building Act. They require the contractor to provide a product as agreed, in a suitable state, fit for its intended purpose, complying with all relevant laws and within the agreed time, or if not agreed a time that is reasonable

C *Paragraph (f) on this page relates to work where the owner makes known to the contractor the intended purpose of the works or the result the owner expects to achieve with the work. This warranty requires the contractor to use appropriate expertise to provide the stated and expected results.*

Clause 8 Completion of work

The work will be complete when the contractor has finished the work in accordance with the contract documents and any variations, there are no omissions or defects that prevent the work from being reasonably capable of being used for its intended purpose, any damage of the kind referred to in [Clause 19](#) has been repaired, and all rubbish and surplus material has been removed from the site.

When the contractor believes the work is complete, the contractor must notify the owner in writing certifying that the work has been completed in accordance with this contract. Within 10 business days of receipt of written notice from the contractor, the owner must advise the contractor in writing of any items of work the owner considers to be incomplete or defective. If the owner does not so notify the contractor, the work will be taken to be complete.

The contractor must complete any outstanding work promptly and again notify the owner in writing. Unless the owner notifies the contractor in writing that any item is still incomplete or defective within a further 10 business days from receipt of notification by the contractor, the work will be taken to be complete.

Should there be any dispute between the parties as to whether the work has been completed, it must be dealt with in accordance with the dispute resolution procedure ([Clause 27](#)).

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Statutory Warranties

Additionally, the Fair Trading home building contract sets out the [Statutory Warranties](#) that require a Builder to finish construction by the date agreed upon, or within a reasonable time. These Statutory Warranties are provided by NSW law (Home Building Act), and parties may not opt out of them.

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Note: Any legal action for a breach of statutory warranties must be taken before the end of the warranty period for the breach ie. 6 years for a breach resulting in a major defect (as defined in the Home Building Act 1989) or 2 years in any other case.

The warranty period starts on completion of the relevant work to which it relates (but this does not prevent proceedings from being commenced before completion of the work). However, if the work is not completed, the warranty period starts on:

- (i) the date the contract is terminated, or
- (ii) if the contract is not terminated – the date on which work under the contract ceased, or
- (iii) if the contract is not terminated and work under the contract was not commenced – the date of the contract.

Other than in the case of non-completion of work, if the breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period. A breach becomes apparent when the owner of the property becomes aware (or ought reasonably to have become aware) of the breach

Clause 9 Statutory warranties

The contractor warrants that:

- (a) the work will be done with due care and skill and in accordance with the plans and specifics set out in the contract
- (b) all materials supplied by the contractor will be good and suitable for the purpose for which they are used and, unless otherwise stated in the contract, those materials will be new
- (c) the work will be done in accordance with, and will comply with, the Home Building Act or any other law
- (d) the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time
- (e) if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling
- (f) the work and any materials used in doing the work will be reasonably fit for the specific purpose or result, if the owner expressly makes known to the contractor or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the contractor, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the contractor's skill and judgment.

These warranties do not in any way reduce or limit the contractor's obligations in relation to workmanship, materials, completion or other matters specified in Clauses 2 and 3 or elsewhere in this contract. No provision of this contract can reduce, restrict or remove these statutory warranties.

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When is there Delay?

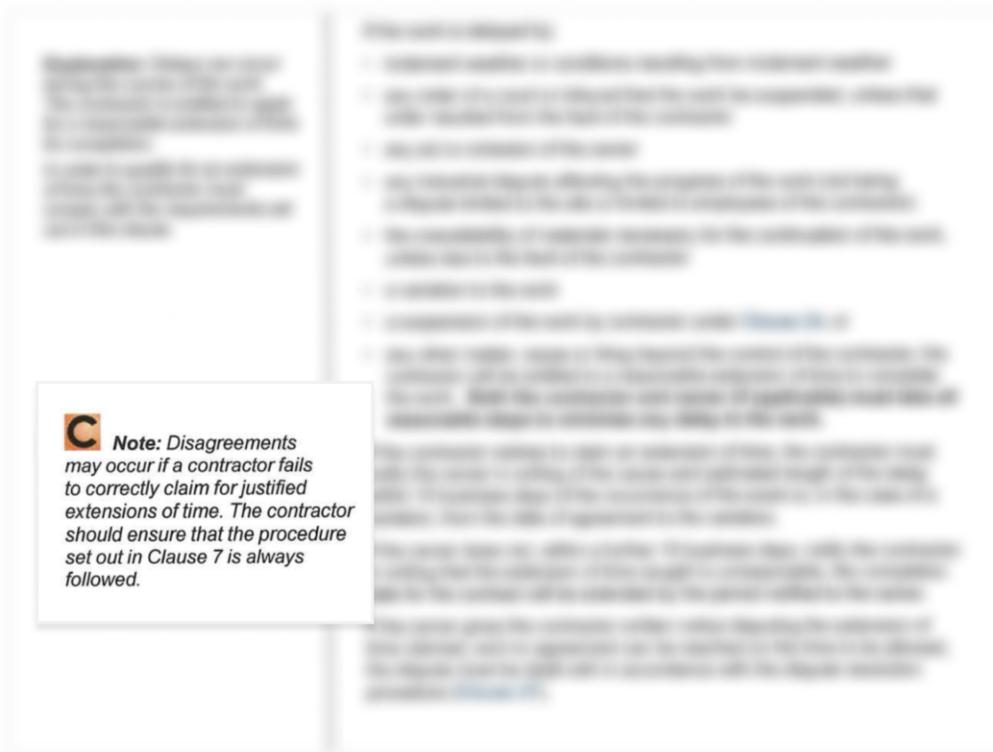
There is Delay when construction is not completed within the Time for Completion agreed upon in the contract.

When Delay turns to dispute

Delay turns into a building dispute if the Delay is not covered by a Notice for Extension of Time under Clause 7 of the contract.

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How to settle dispute from Delay

The first step in resolving any residential construction dispute is to put in genuine effort to talk and come up with a solution that is amenable to both parties. Open, honest communication is key.

If efforts at amicable negotiation fails, recourse may be had under the Fair Trading contract's dispute resolution clause.

This involves sending the Builder a written notice containing the items in dispute. This will be followed by an informal attempt at dispute resolution. If that fails, the parties may undergo [mediation, expert appraisal of work, or similar](#).

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Clause 27 Disputes

Note: If you have a dispute you should first discuss the matter with the other party. Serious disputes can often be avoided by good communication between owner and contractor. It is suggested that in the event of a dispute the parties meet as soon as possible and by discussion endeavour to resolve the matter. Make sure you understand your obligations under the contract. If necessary, obtain independent advice. The dispute resolution procedure is aimed at reducing the need for possible costly litigation. Fair Trading can investigate a complaint from an owner and may issue an order requiring a contractor to rectify or complete work or to rectify any damage. For further details refer to Part 3A Division 2 Home Building Act 1989.

 If the dispute cannot be resolved informally the owner may contact Fair Trading for information.

Note: A copy of any notice given under the contract should be kept. Where a notice is given other than by handing to the other party, the person who gave notice should follow up to ensure it is received.

If the owner or contractor considers that a dispute has arisen in relation to any matter covered by this contract, either during the progress of the work, after completion of the work or after the contract has been terminated, that person must promptly give to the other party written notice of the items of dispute.

If the dispute is not resolved informally following such notification, the parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the work.

If the parties do not agree to confer with a third party to assist in the resolution of the dispute, or if the dispute is not resolved following the assistance of such a third party, the owner may notify Fair Trading that a building dispute exists and seek the assistance of Fair Trading to resolve the dispute.

Even if a dispute has arisen the parties must, unless acting in accordance with an express provision of this contract, continue to perform their obligations under the contract so that the work is completed satisfactorily within the agreed time.

Clause 28 Giving of notices

If the contract requires or permits a party to give a notice, consent, or other communication in writing to the other party, it must be given by either:

- handing it to the other party
- leaving it with a person, apparently over the age of 16, at the other party's business or residential address, or
- by registered post to the last known address of the other party.

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If after undergoing the above, the dispute remains unresolved, you have recourse with the [Office of Fair Trading](#), the [NCAT](#), and the courts - in that order.

How we can help

Contracts Specialist is a Construction Law firm with over ten years experience. We have the necessary expertise and skill set to help you in matters involving [residential building contracts](#) and building disputes. If you require assistance with construction matters, feel free to give us a call. First consult is free.

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