

# Breach of Statutory Warranties Under the HIA Contract: What Homeowners Need to Know

Homeowners trust builders to deliver their construction projects, but issues can arise around Practical Completion. This marks the end of the building work, allowing homeowners to take possession of the property. But, disagreement on what constitutes completion and defects are common. This article explores practical completion under the HIA Contract, breach of statutory warranties, and homeowners' legal rights.

## What is Practical Completion?

In a construction project, the term "Practical Completion" refers to the stage where the builder has finished the works in accordance with the contract, except for minor defects or omissions that do not prevent the property from being occupied and used for its intended purpose. Practical completion is not the final completion of the works, as it does not include finishing touches or defects that may arise after the handover of the property. It is an essential milestone in any building project and triggers various contractual obligations and entitlements, including the payment of the final payment, the commencement of the defect liability period, and the issuance of the occupation certificate. Practical completion is a significant concept under the HIA building contract, and its definition, requirements, and consequences are crucial for homeowners and builders to understand.

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## Clause 21. Practical Completion

*Refer to the definition of practical completion in Clause 1.*

- 21.1 The **builder** must give the **owner** a **notice of practical completion** at least **5 working days** prior to **practical completion** being reached.
- 21.2 The **notice of practical completion** is to:
- state the **builder's** assessment of the **date of practical completion**;
  - state the date and time for the **owner** to meet the **builder** on the **site** to carry out an inspection of the **building works**; and
  - have attached the **builder's** final progress claim.
- 21.3 The **owner** must meet the **builder** on the **site** for the inspection at the date and time stated by the **builder** in the **notice of practical completion** or at a date and time otherwise agreed with the **builder** and either:
- pay the amount of the final progress claim; or
  - if the **owner** believes that the **building works** have not reached **practical completion** give the **builder** a written notice detailing anything to be done to reach **practical completion**.
- 21.4 If the **owner** pays the amount of the final progress claim under sub-clause 21.3(a) the **date of practical completion** stated in the **notice of practical completion** is deemed to be the **date of practical completion**.
- 21.5 If the **owner** gives the **builder** a notice under sub-clause 21.3(b) of work to be completed:
- the **builder** must carry out any work required for **practical completion** and give the **owner** a further **notice of practical completion**;
  - if the **builder** does not agree that there is any further work to be carried out to reach **practical completion** the **builder**:
    - must give the **owner** written notice rejecting the **owner's** notice. In this case, such a notice will also serve as notice of the matters in dispute for the purposes of Clause 35;
    - is not obliged to carry out any further work on the **site** while the dispute remains unresolved.
- 21.6 If the **owner** does not pay the amount of the final progress claim under sub-clause 21.3(a) or give the **builder** a notice under sub-clause 21.3(b):
- the amount of the final progress claim is deemed to be a debt due and owing from the **owner** to the **builder**;
  - the **date of practical completion** stated in the **notice of practical completion** is deemed to be the **date of practical completion**; and
  - the **owner** acknowledges the **building works** have reached **practical completion**.
- 21.7 On the **owner** paying the final progress claim, the **builder** must give the keys, certificates, warranty documentation and other documents pertaining to the **building works** to the **owner**.

*The owner is responsible to insure the building works from the date of practical completion. See Clause 38.7*

*For dispute resolution refer to Clause 35.*

## Understanding the HIA Contract

The Housing Industry Association (HIA) provides contracts that builders use for residential building projects. The HIA contract defines the builder's obligations and the homeowner's rights and obligations. It sets out how the builder will construct the building, what standards will be followed, and how payments will be made. The contract also sets out the timeframes for the project, including the practical completion date.

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Homeowners should review the contract carefully before signing and understand what they are agreeing to. If the builder breaches the contract, the homeowner may have legal recourse. Understanding the terms of the HIA contract is crucial to ensuring that the builder is fulfilling their obligations and that the homeowner is protected under the contract.

## Breach of the Statutory Warranties

One of the most important aspects of a residential building contract is the statutory warranty provided to the homeowner. These warranties are set out in the Home Building Act 1989 (NSW) and apply to all residential building work in NSW.

According to the statutory warranties, the builder must make sure that the work is done correctly and with skill, that it is fit for the intended use, and that it matches the plans and specifications. The task must also be finished in a reasonable amount of time and with good, suitable materials for the work in order to be in compliance with the warranties.

The homeowner may have a claim for contract breach against the builder if any of these guarantees are breached. The homeowner has the right to have the work corrected, replaced, or compensated in the event that a statutory guarantee has been breached.

It's important to know that the parties to a contract can't waive or get rid of statutory warranties. The warranties also cannot be reduced or altered in any way by the contract. If a builder tries to exclude or limit the statutory warranties, the contract will be void and unenforceable.

When a homeowner suspects a statutory guarantee has been breached, they should first bring it up with the builder and give them a fair chance to make things right. The homeowner might need to get legal counsel and think about filing a claim against the contractor if they don't fix the problem.

In conclusion, a breach of statutory warranties is a serious matter and can have significant consequences for both the builder and the homeowner. If a homeowner believes there has been a breach of a statutory warranty, they should be informed of their rights under the Home Building Act 1989 (NSW) and seek legal advice.

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## What Homeowners Can Do

There are several actions a homeowner can take to seek resolution if they believe the statutory warranties under the HIA contract have been violated. The law that applies is the Home Building Act of 1989 (NSW), which protects homeowners in residential building contracts in a number of ways.

Firstly, homeowners should seek legal advice from a construction solicitor who specialises in construction law. A solicitor can assist homeowners in understanding their legal rights and options for seeking a remedy. The Office of Fair Trading and the NSW Civil and Administrative Tribunal (NCAT) can also assist homeowners and builders to resolve any dispute about the homeowner's matter.

A homeowner may send a Notice of Defect to the builder, identifying the claimed defect and requesting that it be fixed, if they think the statutory warranties have been breached. If the builder fails to rectify the defect, the homeowner can take further action by lodging a complaint with the Office of Fair Trading or by commencing proceedings in the NCAT.

In addition, homeowners can also seek damages for breach of contract, such as the cost of rectifying defects or the loss of rental income due to delays in completing the project. Homeowners should keep detailed records of all correspondence with the builder and any defects that have been identified to assist in making a claim.

Overall, homeowners have legal rights and protections under the Home Building Act 1989 (NSW) and the HIA contract. By seeking legal advice and taking appropriate steps, homeowners can seek a remedy for any breach of the statutory warranties and ensure that their dream home is completed to the required standards.

## Conclusion

In conclusion, a breach of statutory warranties is a serious matter for homeowners who have invested time, money and emotions into their dream homes. While the process may seem daunting, it is essential for homeowners to understand their legal rights under the HIA contract and the Home Building Act 1989 (NSW). Homeowners should act quickly and seek professional advice from a construction solicitor to protect their interests and ensure the builder remedies any defects.

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The Office of Fair Trading and NCAT can also assist homeowners in resolving disputes with their builders. Remember, timely action is key to ensuring the best outcome for homeowners. If you are facing issues with practical completion or defects in your newly built home, do not hesitate to seek professional legal advice. As a construction solicitor with over 10 years of experience in the field, I can provide you with tailored advice to ensure the best possible outcome.

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