

Negotiating Variations to the Contract: A Guide for Homeowners Under the HIA Contract

Building a dream home can be an exciting yet daunting task, especially when dealing with the complexities of a construction contract. The HIA Contract, a standard form of residential building contract, is often used by builders in New South Wales (NSW), Australia. One of the most important stages of the construction process is Practical Completion, which triggers the payment of the final progress payment and the handover of the property to the homeowner. However, practical completion can be a source of confusion and disputes between homeowners and builders. This guide aims to help homeowners understand the practical completion stage under the HIA Contract, particularly in the context of negotiating variations to the contract. We will discuss the definition of practical completion, how it is achieved, and the differences between practical completion and final completion. Additionally, we will provide tips for homeowners on how to negotiate variations to the contract, and the legal considerations they should be aware of in this process.

Understanding Practical Completion under the HIA Contract

Practical completion is a crucial stage in a construction project under the HIA (Housing Industry Association) building contract. It is the point when the builder completes all the works and obligations under the contract, except for minor defects and omissions that can be rectified without affecting the use of the building. Practical completion is not the same as final completion, which is the stage when all outstanding works and defects are completed and the owner takes possession of the property.

The builder must provide the owner with a written Notice of Practical Completion, which triggers the countdown for the defect liability period, during which the builder is responsible for rectifying defects notified by the owner. It is important for homeowners to understand their rights and obligations regarding practical completion to avoid disputes with their builder and ensure the timely completion of their project.

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Clause 21 of the HIA Building Contract

Clause 21 of the HIA Building Contract outlines the process for achieving practical completion of the project. It sets out the obligations of both the builder and the homeowner during this stage, including completing any outstanding works, rectifying any defects, and obtaining any necessary approvals or certificates. The clause also specifies the timeframe for practical completion and allows for the issuance of a Notice of Practical Completion by the builder once they consider the project to be practically complete. It is essential for homeowners to understand their rights and obligations under Clause 21 of the HIA Building Contract to ensure that they can properly manage the completion of their construction project and avoid any potential disputes with their builder.

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**.
- The owner is responsible to insure the building works from the date of practical completion. See Clause 38.7*
- 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.
- For dispute resolution refer to Clause 35.*
- 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**.

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Negotiating Variations to the Contract

During the construction of a home, it is not uncommon for homeowners to request changes or additional work beyond the original scope of the contract. These changes are called variations, and they can be minor or significant. It is important to understand the procedures for negotiating variations to the contract under the HIA Building Contract.

When a homeowner wishes to make a variation to the contract, they should first notify the builder in writing. The notification should include the details of the proposed variation, the impact it will have on the contract price, and any changes to the practical completion date. The builder will then provide a quote for the variation, which includes the cost of labor and materials required to complete the work.

It is essential to note that variations must be approved and agreed upon by both parties in writing. Failure to do so can lead to disputes, delays, and legal action. Before signing the variation, homeowners should ensure they understand the full cost and implications of the changes they are making to the contract.

If a homeowner disagrees with the builder's quote for a variation, they can obtain independent advice or seek to negotiate with the builder to reach a mutually acceptable price. However, it is important to keep in mind that variations can add time and cost to the project. If the project is already delayed or over budget, it may be best to postpone any additional variations until after practical completion.

Variations to the contract can add flexibility and customization to a building project. However, it is essential to follow the proper procedures outlined in the HIA Building Contract and to ensure that any changes to the contract are agreed upon in writing by both parties. Homeowners should also carefully consider the cost and impact of any variations before signing off on them to avoid any unnecessary delays or disputes.

Despite a well-drafted HIA contract, disputes between homeowners and builders can arise, particularly during the practical completion stage. Homeowners should be aware of common issues that can arise, such as defects in completed work, delays in completion, disagreements over what constitutes practical completion, disputes over the quality of work, failure to comply with contract specifications, non-payment of progress payments, breach of statutory warranties, disagreements over variations to the contract, disagreements over the interpretation of the contract, and failure to obtain the Occupation Certificate.

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Homeowners should consult with a construction lawyer to understand their legal rights and obligations and to negotiate a resolution to these issues. It is important to address these issues promptly to avoid further delay and expense to the project.

Seeking Professional Advice

If you find yourself in a dispute with your builder regarding practical completion under the HIA contract, it is advisable to seek professional advice from a construction solicitor. A solicitor can help you understand your legal rights and obligations, as well as assess your chances of success in any legal action you may take.

Additionally, the Office of Fair Trading and the NSW Civil and Administrative Tribunal (NCAT) can also assist homeowners and builders in resolving disputes under the Home Building Act 1989 (NSW). The Office of Fair Trading provides information on the rights and responsibilities of homeowners and builders, while NCAT provides a low-cost and efficient method of resolving disputes through mediation or adjudication.

It is important to seek professional advice as early as possible in any dispute with your builder, as delaying can lead to further complications and potential legal costs. By seeking professional advice and guidance, you can ensure that your legal rights are protected and that you can achieve a fair and satisfactory outcome to your dispute.

Conclusion

Negotiating variations to a construction contract can be a complex process that requires careful consideration of the terms and conditions of the contract. Homeowners must be familiar with the HIA building contract, particularly Clause 21, to ensure they understand their legal rights and obligations regarding practical completion. It is also essential to seek professional advice from a construction solicitor who can help navigate the process and negotiate on the homeowner's behalf. By doing so, homeowners can avoid common issues that may arise during the practical completion stage, including defects, delays, and disputes over contract specifications. Remember that the Home Building Act 1989 (NSW) provides homeowners with legal protection and dispute resolution mechanisms, and it is crucial to seek assistance from the Office of Fair Trading or the NCAT if necessary. As a construction lawyer with extensive experience advising homeowners and builders, I am here to assist you in negotiating variations to your HIA contract and resolving any disputes that may arise during the construction process. Don't hesitate to reach out for assistance.

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