

Your Rights as a Homeowner under Clause 17 Progress Payment of the NSW HIA Residential Building Contracts for New Dwellings

If you are building your dream home in NSW, you have likely entered into a Home Building Lump Sum Contract. You will receive progress claims from your builder, which detail the amount of payment they are entitled to. This article aims to give you a better understanding of the progress payment process and what your options are if you believe the builder is not entitled to payment.

What is the NSW HIA Residential Building Contracts for New Dwellings?

The NSW HIA Lump Sum Contract is a legal document that sets out the terms and conditions for a construction project. This contract is commonly used for residential building work in New South Wales and is issued by the Housing Industry Association (HIA). The contract outlines the responsibilities of both the homeowner and the builder, including the [progress payment schedule](#) for the project. Clause 17 of the contract governs progress payments, which are payments made by the homeowner to the builder as the construction project progresses. The progress payment system ensures that the builder is paid at key stages of the project, while the homeowner is only required to pay for work that has been completed.

Understanding Progress Payments and Payment Claims

As a homeowner, it is crucial to understand progress payments and payment claims. Progress payments are payments made by the homeowner to the builder throughout the construction process. The progress payment schedule is typically set out in the contract, and the builder must submit a progress claim to the homeowner to request payment for the work completed.

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Your Rights as a Homeowner under Clause 17

Clause 17. Progress Payments

- 17.1 The **owner** must pay the deposit stated in Item 2(b) of Schedule 1 on the later of the day that:
- (a) this **contract** is signed by the **owner**; and
 - (b) warranty insurance described in Schedule 6 is in force and the **owner** is provided with a certificate of insurance for such insurance.
- The deposit is brought to account with the first progress payment.
- 17.2 The **owner** must pay the **contract price** progressively as claimed by the **builder**.
- 17.3 The **builder** must give the **owner** a written claim for a progress payment for the completion of each **stage**.
- 17.4 A progress claim is to state:
- (a) the amount claimed and not paid for the **stage** completed;
 - (b) the amount claimed and not paid for **contract price adjustments**;
 - (c) the amount claimed and not paid for **variations**; and
 - (d) the sum of the above amounts.
- 17.5 The **owner** must pay a progress claim within 5 **working days** of the **builder** giving the claim.

Payment does not mean that the owner accepts the work is done in accordance with the contract. The owner cannot hold any money back on a progress claim.



- 17.6 Other than in relation to the final progress claim:
- (a) payment of a progress claim is on account only; and
 - (b) the **owner** has no right of set off.

As a homeowner, you have several rights under Clause 17 of the NSW HIA Lump Sum Contract. The clause outlines the conditions that must be met before the builder can claim a progress payment. It is important to understand these conditions and your rights as a homeowner before making any payment.

The builder must issue a progress claim

Clause 17.1 of the HIA contract requires the builder to issue a progress claim to the homeowner before they can receive any payment. This progress claim must include:

- The amount claimed (and not paid) for the stage completed
- The amount claimed (and not paid) for contract price adjustments
- The amount claimed (and not paid) for variations
- The sum of the above amounts

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The progress claim must comply with sub clause 17.4

The [payment claim](#) must comply with sub clause 17.4 the HIA lump sum contract, and must also comply with the NSW Building and Construction Industry Security of Payment Act 1999 (SOP Act). This means that the payment claim must be clear, detailed, and contain all the information required by the SOP Act.

You have a right to dispute the payment claim

If you believe that the builder is not entitled to payment, you have the right to dispute the payment claim. You must respond to the payment claim within 10 business days and provide reasons for your dispute. The dispute can be resolved through negotiation, [mediation](#), or [adjudication](#) under the Security of Payment Act.

As a homeowner, you have the right to dispute a progress payment claim if you believe the builder is not entitled to payment. If you encounter any disputes, a construction solicitor, the Office of Fair Trading, or the NSW Civil and Administrative Tribunal (NCAT) can assist in resolving the issue.

Calculating Progress Payments

Calculating progress payments can be a complex process and it is important for homeowners to understand how they are calculated. Generally, progress payments are calculated based on the percentage of the work that has been completed by the builder. This percentage is determined by the progress payment schedule in the contract. The progress payment schedule outlines the amount that is payable at each stage of the project, and is typically broken down into specific percentages for each stage of construction.

Final Progress Payment

The final progress payment is the last payment made to the builder under the contract. It is usually made after the practical completion of the building work and the final inspection of the property. The amount of the final payment is typically the remaining balance of the contract price, less any amounts already paid as progress payments. It is important to note that the final payment is only due if the builder has completed all of the work required under the contract and the homeowner is satisfied with the work. If there are any defects or issues with the work, the homeowner should raise them with the builder before making the final payment. It is recommended that homeowners engage the services of an independent building inspector to conduct a final inspection of the property before making the final payment.

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Security of Payment Act NSW

The [Security of Payment Act 1999 \(NSW\)](#) is a statutory regime designed to promote efficient payment practices within the construction industry. The Act provides for a fast and cost-effective method of resolving payment disputes between parties in construction contracts. In relation to progress payments, the Act establishes a mandatory payment scheme where a contractor can make a payment claim for work carried out and materials supplied. Homeowners are afforded protections under the Act, including the right to receive a payment schedule from the contractor and the ability to suspend work if the contractor fails to comply with the payment schedule. Non-compliance with the Act can result in significant consequences, including the ability for a party to recover payment through legal action. It is important for homeowners to be aware of their rights and obligations under the Act, and seek advice from a construction solicitor if necessary.

Seeking Professional Advice

It is always recommended to seek professional advice if you are facing any issues with progress payments or progress claims. As a homeowner, you may feel overwhelmed by the legal and contractual terminology, and it is important to have a qualified and experienced construction solicitor to guide you through the process. They can provide you with advice on your legal rights, options, and obligations under the contract and relevant legislation. The Office of Fair Trading and the [NSW Civil and Administrative Tribunal \(NCAT\)](#) can also assist in resolving disputes about progress payments and progress claims. Seeking professional advice can help you protect your rights and ensure that you receive fair and just compensation for the work done by the builder. Remember, it is always better to seek advice early on, before the situation escalates and becomes more complicated to resolve.

Conclusion

In conclusion, progress payments and progress claims are important aspects of any construction project. As a homeowner, it is crucial to understand your rights and obligations under the NSW HIA Lump Sum Contract and the Security of Payment Act NSW. Seeking professional advice from a construction solicitor or the [Office of Fair Trading](#) can help resolve any disputes regarding progress payments and progress claims.

Remember, Clause 17 of the NSW HIA Lump Sum Contract outlines the requirements for progress payments, and it is important to ensure that your builder complies with these obligations. Calculating progress payments correctly is also essential to avoid any disputes down the line.

If you are a homeowner who has received a progress claim and believes that the builder is not entitled to payment, it is essential to seek professional advice. As a [construction lawyer](#), I have

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represented many homeowners and builders in NSW and can help ensure that your legal rights are protected.

In summary, if you are a homeowner who is unsure about progress payments or progress claims, [seek professional advice](#) as soon as possible. It is better to be proactive and address any issues early on rather than waiting until they become bigger problems. Remember, building your dream home should be an exciting and enjoyable experience, and understanding your rights and obligations can help ensure that it remains that way.

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