

Understanding Extensions of Time

[Extensions of time \(EOT\)](#) refer to the additional time given to complete the construction project beyond the original agreed completion date. EOTs are granted when there are delays caused by unforeseen circumstances, which are beyond the control of the contractor. The conditions for granting EOTs are usually stated in the construction contract. It is essential for contractors to understand the basic rules and procedures involved in requesting and granting EOTs. Failure to follow the correct process could result in the contractor being held responsible for delays, and may face penalties or legal action from the homeowner.

When Can a Contractor Request an EOT

When an unforeseeable delay in the project's conclusion occurs, the contractor has the right to ask for an extension of time (EOT). The reasons for delay could vary, from inclement [weather conditions](#) to unexpected events like changes in regulations or a [shortage of materials](#). It is important to note that not all delays qualify for an EOT, as some may be deemed the contractor's fault. Therefore, it is crucial to review the contract's terms and conditions to determine the specific criteria for granting an EOT.

In general, most contracts permit EOTs to be given when the delay is brought on by an unforeseen circumstance. (Event under the Contract that entitles a claim for EOT). Natural catastrophes, terrorist attacks, changes in laws or regulations, or any other Event under the Contract may give rise to a claim for EOT. Contractors may also request EOTs for events which are not necessarily outside their control, but still cause delays. These events could include delays in the issuance of permits or approvals or changes requested by the owner.

When requesting an EOT, the contractor must provide evidence of the delay's cause and how it was beyond their control. The request must also include a detailed plan outlining how the contractor intends to complete the project, taking the additional time into account. It is essential to follow any specific procedures outlined in the contract for requesting EOTs, including providing notice to the owner within a specified timeframe. Failure to adhere to the proper procedures could result in the EOT request being denied or disputed.

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In summary, contractors can request EOTs when there is a delay beyond their control. It is important to provide evidence of the delay's cause and follow the contract's specific procedures for requesting an EOT.

Common Causes of Delays

[Delays can occur during any construction project](#), regardless of its size or scope. It is important for contractors to understand the common causes of delays to anticipate and prevent them as much as possible. Here are a few typical reasons for delays:

Weather: Bad weather, such as a lot of rain, strong winds, or a lot of heat, can delay construction jobs. It may not be safe to work during extreme weather conditions, and the construction work may have to be halted.

Changes in Scope: If changes are made after the job has already commenced, they may cause delays. A change in scope may require additional permits or approvals, and this can cause delays in the construction work.

Material Shortages: Delays can also occur if there are material shortages. A contractor might have to order more materials if they are out of stock, which could extend the completion date of the job.

Design Issues: Design issues can also cause delays. If there is a problem with the design, the construction work may need to stop until the issue is resolved.

Permit and Approval Delays: Delays can also be caused by issues with [permits and approvals](#). Construction work may be delayed if the required permits and approvals are not obtained in a timely manner.

Labor Shortages: [Shortages in labor](#) can also cause delays in construction projects. The project might take longer to finish than anticipated if the contractor does not have enough employees to finish it. It is important for contractors to keep these common causes of delays in mind and plan accordingly. Proper planning can help anticipate potential issues and prevent delays in the construction work. If a delay does arise, contractors must follow the correct steps to ask for a delay, as specified in their contract.

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What Are the Consequences of Not Granting an EOT

Contractors may request an extension of time (EOT) to finish a construction job if it is delayed. However, if the EOT is not granted, the consequences for the contractor can be severe.

One possible consequence is that the contractor may incur liquidated damages. These are damages that are predetermined in the contract and are payable to the owner for each day that the contractor exceeds the completion date. Depending on the contract, liquidated damages may range in amount, but they can be substantial, particularly for bigger projects. For example, in HIA NSW Fixed Price contracts, the default amount of liquidated damages is 1% per working day calculated on a daily basis.

Another consequence of not granting an EOT is that the contractor may be in breach of contract. Legal action against the contractor may follow, which could be expensive and time-consuming. The contractor may even lose everything if the owner decides to end the agreement.

It is important to note that not all delays will entitle the contractor to an EOT. The contract will usually specify the circumstances in which an EOT can be granted. The contractor might not be eligible for an EOT and might also be held responsible for liquidated damages or contract breach if they don't adhere to these requirements.

To avoid these consequences, it is important for contractors to follow the procedures for requesting an EOT and to provide evidence to support their claim. Additionally, they ought to notify the owner of any delays and make every effort to lessen their effects.

Disputing a Notification of an EOT

Knowing your rights and obligations as a contractor in such a circumstance is essential because contesting a notification of an EOT can be a difficult process. Homeowners can dispute a notification of an extension of time by a builder if they have valid reasons to do so.

One of the most common reasons for disputing an EOT is that the period of extension is not reasonable. If the contractor is asking for an extension that seems excessive or unnecessary, the homeowner may dispute it. Similarly, if the delay is not caused by an

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event covered by the contract, such as weather or other external factors, the homeowner may dispute the EOT. Finally, if the cause of the delay is within the builder's control, such as poor planning or mismanagement, the homeowner may dispute the EOT.

It is essential that you provide evidence to show that external factors, and not your own underperformance, caused the delay. This evidence could include weather reports, delivery receipts, or other documentation that supports your claim. In order to come to a fair agreement, you should also be ready to haggle with the homeowner in good faith.

If you and the homeowner are unable to settle the issue, you might need to turn to a lawyer to help you. This might entail submitting the dispute to arbitration or mediation, or even proceeding to court. To safeguard your rights and image as a contractor, it is crucial to adhere to the correct procedures and act honestly at all times.

The Procedure for Requesting an EOT

The procedure for requesting an EOT is typically outlined in the contract between the parties. The contractor should refer to this document to ensure that they follow the correct procedure when requesting an extension. In general, the process involves providing written notice to the owner or the owner's representatives (such as, the architect, project manager, etc.) outlining the reasons for the delay, and the number of additional days needed to complete the work.

The contractor must provide evidence to show that external factors, and not their own underperformance, caused the delay. The request should include information on the cause of the delay, how it happened, any measures done to stop it, and an updated timeline for when the work will be finished.

It is also important to provide as much notice as possible when requesting an extension of time, to allow the owner or the owner's representatives (such as, the architect, project manager, etc.) to plan accordingly. This notice period is often specified in the contract, so the contractor should ensure they comply with these requirements.

The owner or the owner's representatives (such as the architect, project manager, etc.), after the request for an EOT has been made, will evaluate the request and determine whether it complies with the conditions specified in the contract. If the request is approved, the owner or the owner's representatives (such as, the architect, project

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manager, etc.) will issue a written confirmation of the extension, which will usually include details of the new completion date. The contractor may need to think about their options, such as contesting the decision or negotiating a new completion date, if the request is rejected.

Providing Evidence of External Factors

Providing evidence of external factors that caused delays in the construction project is critical in the request for an extension of time. The contractor needs to establish that the delay was beyond their control and not due to their own performance. The evidence should be in writing and provide a clear description of the cause and how it impacted the project's progress.

The evidence can come in various forms, including reports, photographs, or documentation from external parties such as suppliers, consultants, or authorities. It is crucial to remember that the proof must be pertinent to the reason for the delay and must unmistakably show that the contractor was not to blame.

For instance, if bad weather was to blame for the delay, the contractor should provide weather reports or pictures to demonstrate how it affected the project's development. If a subcontractor's late delivery of goods was to blame for the delay, the contractor must provide documentation from the subcontractor outlining the issue and any steps taken to address it.

In addition to providing evidence of the external factors, the contractor should also provide details of any steps taken to avoid or mitigate the impact of the delay. This can include efforts to accelerate the work schedule, bringing in additional resources or equipment, or adjusting the work plan to minimize the delay's impact.

Providing clear and compelling evidence of external factors and the steps taken to mitigate the impact of the delay can increase the likelihood of a successful EOT request. It is essential to provide this evidence in a timely manner and comply with any notice requirements in the construction contract.

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Conclusion

In conclusion, understanding the basic rules of Extensions of Time is crucial for contractors to ensure that their projects are completed without facing any legal disputes. Contractors should be aware of the various causes of delays and understand when they can request an EOT. It is essential to comply with the procedural requirements and provide sufficient evidence of external factors causing delays. There may be serious repercussions if commercial obligations and the law are broken. I frequently give homeowners, builders, and contractors legal and contractual advice as a solicitor and building lawyer with more than ten years of expertise. Please don't hesitate to get in touch with me if you need any legal counsel or assistance regarding Extension of Time issues.

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