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Fact Sheet 8: What Should I Consider Before Signing a Building Contract?

This fact sheet provides general information and should not be relied upon as a substitute for legal or other professional advice. Building a new home is usually the most expensive and important purchase of a person's life and although there are fees associated with obtaining professional advice, obtaining that advice could save you money and protect you in the long run.

Before signing, there are certain things you might like to consider, they include:

- Have you thoroughly researched the builder you are considering contracting? Consider obtaining as many references as possible. You should also visit the register of building practitioners on the Building Practitioners Board's website to confirm that your builder is registered (you may also wish to monitor this after building work has commenced).
- Does the contract include the matters required in the Building Regulations? i.e. the contract:
 - ❖ is for building work to be carried out on a single project; and
 - ❖ identifies the building contractor; and
 - ❖ specifies the building contractor's registration number; and
 - ❖ specifies the extent and value of the work (you could consider speaking to someone that has knowledge of construction matters who may be able to advise you whether the contract contains enough detail); and
 - ❖ if the contract provides for the payment of a deposit – it specifies the amount of the deposit, which must not be more than 5% of the value of the work; and
 - ❖ the stages of the work to which progress payments are linked; and
 - ❖ the amount of each progress payment; and
 - ❖ sets out a process for resolving disputes between the building contractor and the owner of the land.
- Does the contract specify a start and finish date, or the number of days it will take to complete the work? Consider what happens if there are lengthy delays – are you protected?
- Does it provide for rental subsidy or penalties for late completion?
- What happens if you are late making a progress payment?
- What do particular terms mean and are they clearly defined in the contract? Consider for instance the term "lock up stage" might mean something completely different to you than it does to the builder.
- What standard of work do you expect and is this the same standard required under the contract? Consider that your expectations may be different to what is required at law.
- Do the staged payments match the value of the construction at each stage? Consider what may occur if you pay for more than has been constructed. You could engage the services of a quantity surveyor to advise you on the costs of construction and the total cost each progress payment should be to avoid paying for work not yet constructed. ***The financial effect of paying for work not yet constructed can be disastrous in the event of the death of a builder or the collapse of the company.***
- What happens in the event of the death of the builder or in the event of the collapse of the company?

- Consider approaching your financial lending institution, they may be able to advise you further about progress payments and whether they require inspections at each stage.

What happens when things go wrong?

Contractual disputes

If a dispute arises about the contract, you should look to the dispute resolution clause in your contract to find out how the dispute can be resolved and it is suggested you obtain legal advice. Building Advisory Services is not able to assist parties regarding contractual disputes.

Standard of work performed

If you are not satisfied with the standard of the work performed you can make a complaint to Consumer Affairs (NT).

Negligence, incompetence, professional misconduct and offences against the Building Act

If you believe the registered building practitioner has behaved negligently, incompetently, is guilty of professional misconduct or has committed an offence under the *Building Act* or *Regulations* you can make a written complaint to Building Advisory Services. For more information please see our fact sheet titled "How to make a complaint" at: www.nt.gov.au/lands/building.

When your builder dies, cannot be found or becomes insolvent

The risks and costs associated with entering into a building contract are borne by the parties to the building contract. The Director of Building Control is, however, able to ensure that owners can achieve certification where such an event occurs (where certain conditions specified in the *Building Act* are met). If you would like further information regarding continuing certification where there is an unforeseen event, please see our fact sheet titled "How do I continue with certification when an unforeseen event occurs?".

Home Warranty Insurance & the Home Building Certification Fund

There is no mandatory home warranty insurance scheme operating in the Northern Territory at present. The Northern Territory Government has announced that Home Warranty Insurance will be introduced into Parliament later this year and it is expected to be operational by early 2011.

In the meantime, the Home Building Certification Fund operates in the Northern Territory to protect owners against builders who do not carry out residential building work in compliance with the Building Code. This is different to Home Warranty Insurance as it only relates to *non compliant building work*; it does not cover the additional expenses an owner will incur if a builder dies or disappears or otherwise does not complete the building work.

You can minimise the risks associated with building a new home by ensuring that you have fully considered and researched all aspects of entering into such a transaction. As described above, this could include, but is not limited to; obtaining legal advice, your lending institution's advice, building contractor referees and quantity surveying advice.

For further information about building rules and regulations contact the Building Advisory Services Branch in your region or visit our website : www.nt.gov.au/building

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