

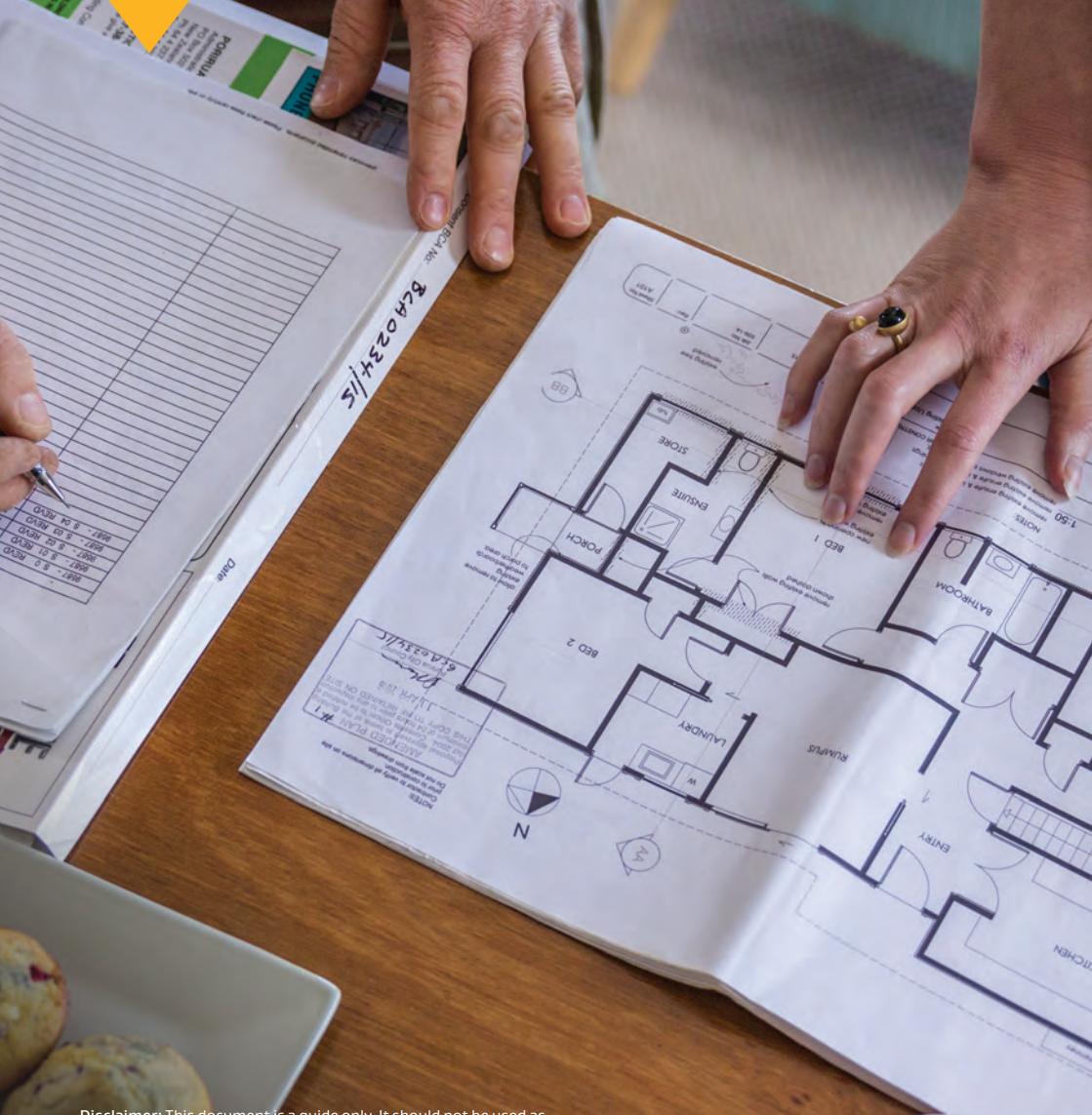
Know your rights

A homeowner's guide to the consumer protection measures when building or renovating



MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

New Zealand Government



Disclaimer: This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

© Crown Copyright 2017

Publication date: Published in February 2017 by the Ministry of Business, Innovation and Employment, Wellington, New Zealand.

Guidance disclaimer: This document is issued as guidance under section 175 of the Building Act 2004. While the Ministry has taken care in preparing this document it should not be relied on as establishing compliance with all relevant clauses of the Building Act or Building Code in all cases that may arise.

ISBN: 978-1-99-851726-1 (print)

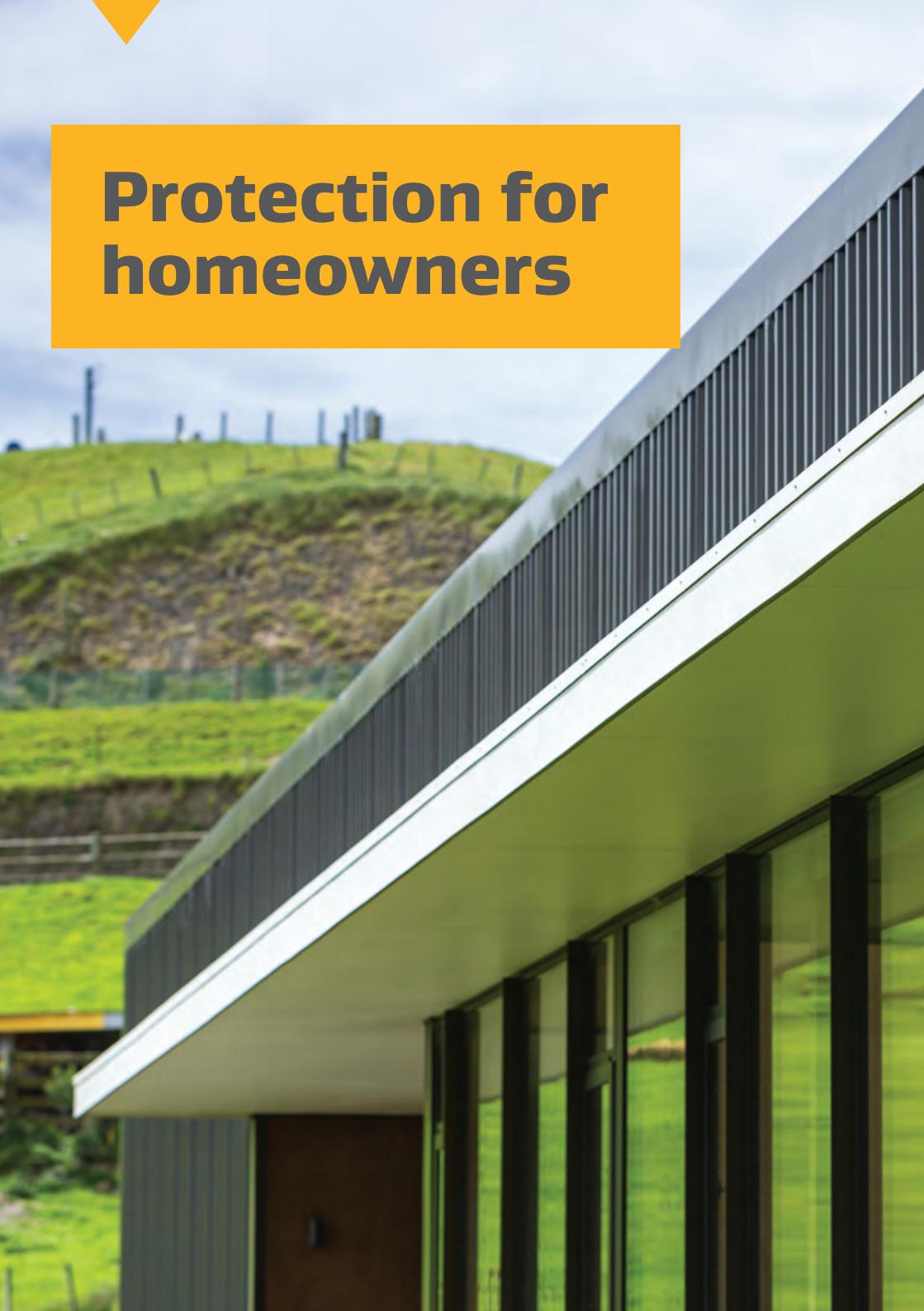
ISBN: 978-1-99-851727-8 (online)

Know how building laws protect homeowners

Contents

Protection for homeowners	2
Before building work starts	6
Once building work finishes	18
If things go wrong	22
An overview of the building process	26

Protection for homeowners



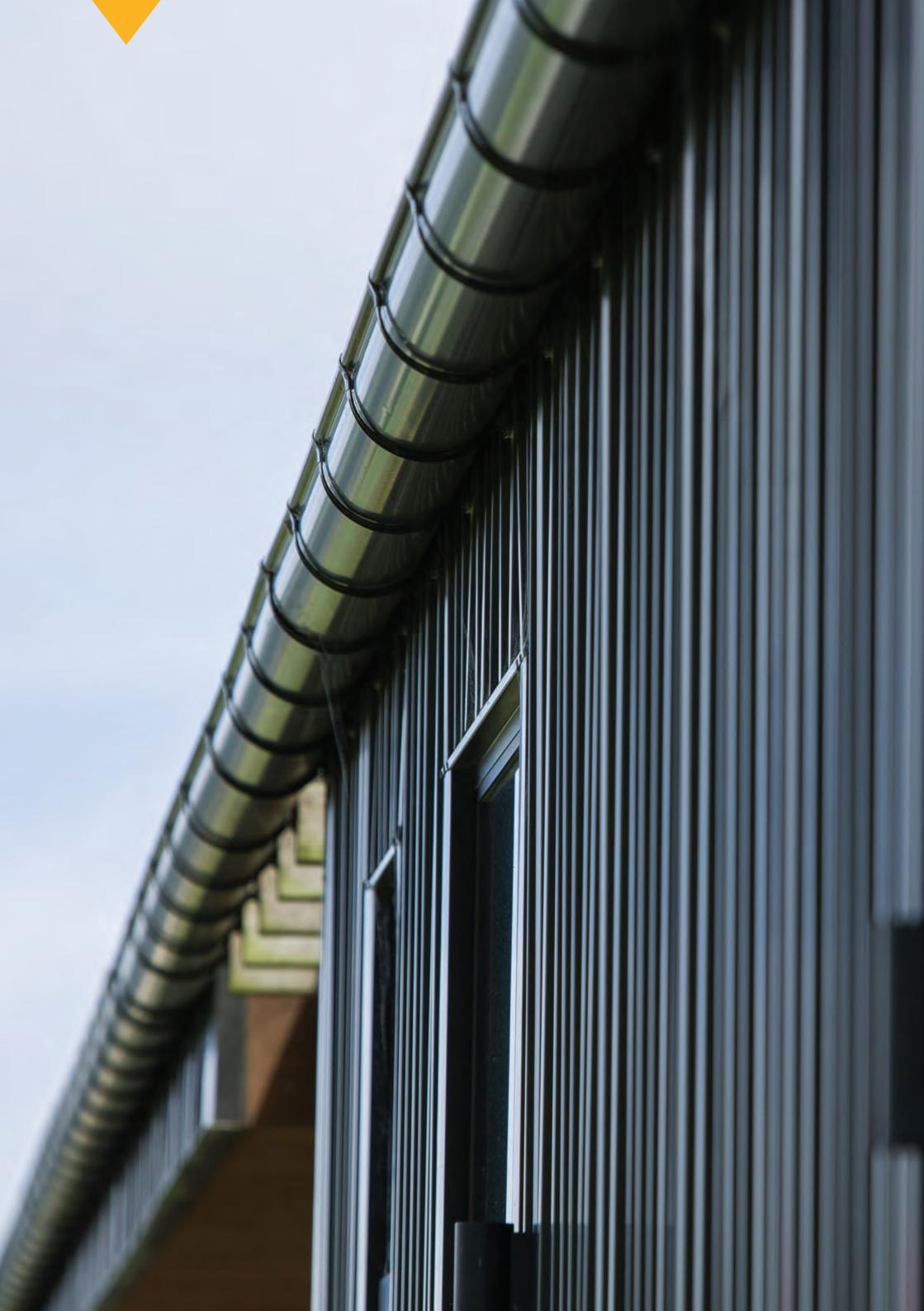
If you're considering residential building work, you need to know about the consumer protection measures. These measures encourage a professional, no-surprises relationship between you and your contractor. They should also help you make informed decisions about building work.

Key measures protecting consumers doing home building work:

1. You must have a written contract for residential building work costing \$30,000 or more, including GST. We recommend you have a contract even if the work will cost less, so everyone has an understanding of obligations, requirements and expectations.
2. Before you sign a contract for work that will cost \$30,000 or more, including GST (or if you ask for it), your contractor must give you:
 - information about his or her skills, qualifications, licensing status, and the insurance or guarantees they provide (it's called a disclosure statement)
 - a checklist that outlines stages of the build and how to protect yourself.
3. Once the building work has been completed, and regardless of the size of the job, your contractor must give you certain information or documents related to the building work. These include ongoing maintenance requirements, guarantees or warranties and any ongoing insurance policies.
4. You have an automatic 12-month defect repair period when contractors have to fix any defects you've told them about in writing.
5. You can take action for up to 10 years if warranties in the Building Act have not been met, even if they're not in your contract (they're called implied warranties).
6. Contractors can be fined if they don't comply with the law.

We've written this quick guide to explain these measures and remind you of other important steps in the building process.

These measures relate to residential building work only.



Changes to the Building Act and supporting regulations

The consumer protection measures are included in Part 4A of the Building Act 2004, which came into force on 1 January 2015.

Other changes affecting homeowners came into effect in November 2013, including an updated list of work on homes and outbuildings that do not require a building consent (in Schedule 1 of the Building Act).

More low-risk work was exempted, but there are limits on who can do some potentially higher-risk work and only authorised people (as defined in the Plumbers, Gasfitters and Drainlayers Act 2006) can do certain plumbing and drainlaying work without a building consent.

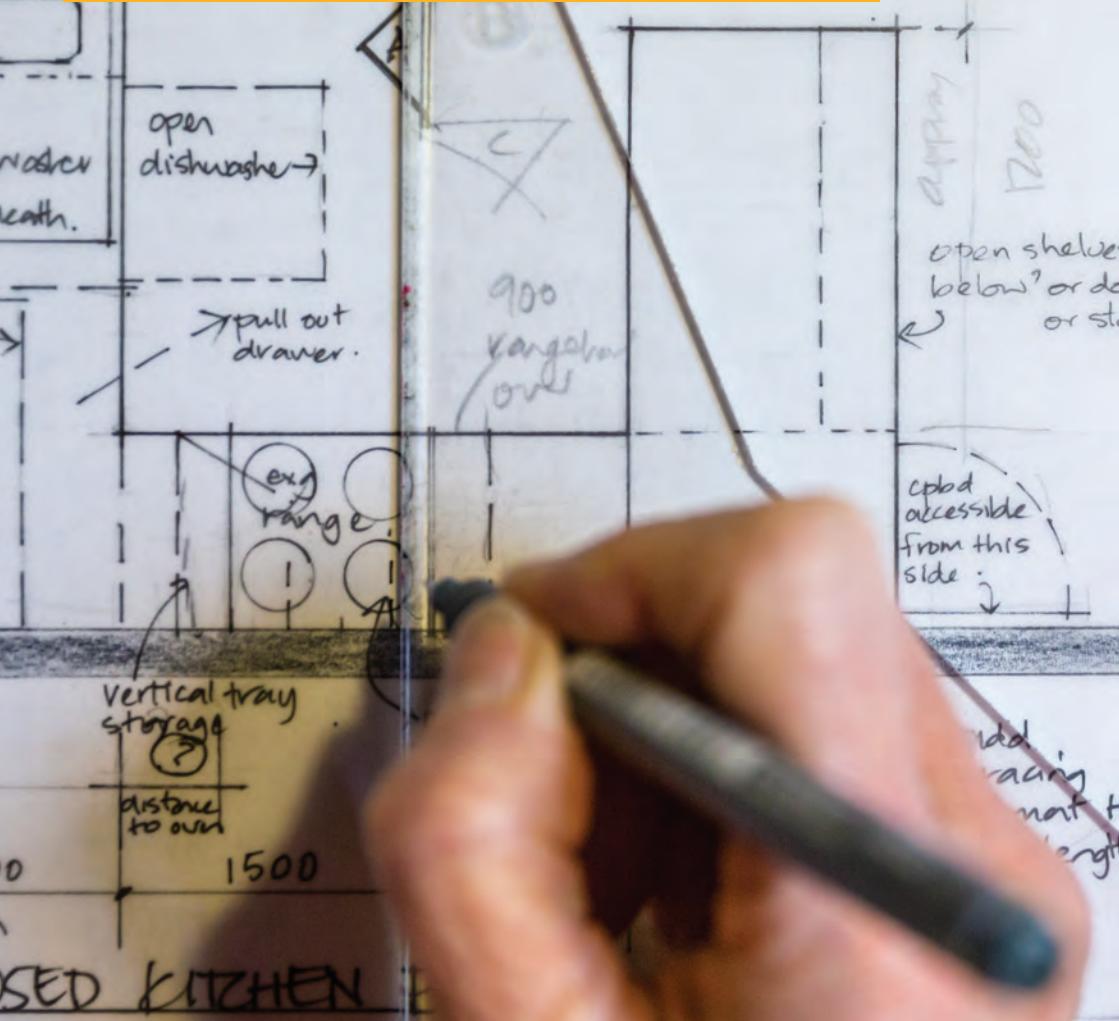
FOLLOW THE BUILDING CODE

Remember, all building work must comply with the Building Code, even if the building work does not require a building consent.

Refer to guidance on work that does not require a building consent at: www.building.govt.nz/projects-and-consents/planning-a-successful-build



Before building work starts



Make sure you're clear on your budget and priorities before you start, and that your design professional knows them too. Once your design and plans are sorted, the next step is to approach potential contractors and get quotes for the job.

Pricing the job

Using your plans, a quantity surveyor (QS) can give you a reasonable idea of the costs involved in the building work. You can give contractors the QS estimate of materials required (but not the price) to help them prepare their quotes. A QS can also calculate progress payments and cost variations during construction.

Choosing someone to do the job – do your homework, get quotes

When looking for a contractor, ask friends, family or neighbours for recommendations. Ask for references and look at examples of previous work. You could also take recommendations from your design professional, as it can help to have a building contractor who is used to their style of work. Make sure you use a Licensed Building Practitioner for Restricted Building Work. Find out more on page 11.

A quote is based on detailed specifications and is the price you will pay to complete the building work, with the exception of matters outside the builder's reasonable control or additional costs from variations to the contract.

Get more than one detailed quote (including a breakdown of labour and materials) not just estimates for the building work. You will need to give contractors a copy of the detailed drawings, specifications and QS materials estimate (if you have one) alongside information about the building site. **The more information you give them, the more reliable the quote should be.**

Check whether the quote price includes GST.

And ask for the contractor's hourly rate (including GST) so that you can calculate how much you might have to pay if you want any additional work done.

Reviewing the quote

When considering and comparing quotes, money shouldn't be the only factor in choosing your contractor. Compare quotes on more than just price; think about their levels of experience and reliability, what fixtures and fittings they suggest and check their references. Look at the details and make sure that they cover the same scope of building work and the same materials and fixtures so you are comparing 'like with like'. If any quote is significantly higher or lower than the others, ask why.

It's important that you're happy with everything in the quote because, once you've signed the contract, changing anything will be a variation to the contract (and will probably cost you more in time and money). If any part of the quote is unclear, ask for more details.

When choosing materials for your building work, contractors will be influenced by a number of factors, including:

- their past experience with the products
- the wholesale price of the products
- the time – and labour cost – taken in getting quotes from multiple sources
- terms of trade available from various sources
- loyalty schemes (such as rebates for buying a lot of product) available from various merchants.

WHAT IS BUILDING WORK?

The Building Act defines 'building work' as covering many different trades and as any work for or in connection with the construction, alteration, demolition or removal of a building. Buildings include structures that are not occupied by people, such as fences and retaining walls.

The requirement to have a written contract for residential building work costing \$30,000 or more (including GST) does not include design work (Building Act section 362B). However, we recommend you have a contract with anyone you are paying directly in relation to a build or renovation.

Ask your potential contractors:

- why they propose to get building materials and fixtures from a particular source
- if they receive any benefits from buying materials and fixtures from that source, and whether that has been reflected in the quote.

It's important to understand 'contingency' or 'PC sums' on the quote could be either provisional sums or prime cost sums.

A provisional sum sets aside money for specific building work when there is not enough detail to provide a fixed price (ie the item has not yet been purchased or chosen and the installation cost is unknown). Ask the contractor to confirm that the amount quoted will be adequate for the quality of goods you are expecting.

A prime cost sum sets aside a fixed amount for a certain item (eg kitchen sink) so that you can choose these yourself. If you choose a product that costs more than the allocated prime cost sum, you will need to pay extra to use these in your home. A prime cost sum does not include any installation costs.

If you're not confident asking difficult questions or negotiating the terms of your contract, ask someone you trust to help you.

When you've made your decision and chosen your contractor, you should send written notification to those who missed out.

DEFINING A CONTRACTOR

The contractor is the person or company you have contracted to do or manage your building work. The contractor may not be a builder; they could be a plumber, electrician or other tradesperson you are contracting with directly.



Restricted Building Work

You need to start thinking about Restricted Building Work (RBW) from the start of your project. You must use a Licensed Building Practitioner (LBP) to do or supervise the RBW.



**LICENSED
BUILDING
PRACTITIONERS**
Building confidence

If you are using a designer, they must identify all the RBW on your job when they fill in their Certificate of Work (part of the documentation required for building consent). They'll do this when they draw up your building plans.

Restricted building work is everything that involves or affects the following:

- Primary structure – for example, this work contributes to the resistance of vertical and horizontal loads (such as walls, foundations, floors and roofs).
- Weathertightness – any work done to the outside of the building to protect it from the weather or elements.
- Design of fire safety systems – this work involves elements intended to protect people and property from fire (eg escape routes) in multi-unit residential buildings.

LBPs are designers, carpenters, brick and blocklayers, roofers, external plasterers, or site and foundations specialists who have been assessed to be competent to carry out work essential to a building's structure.

FIND AN LBP

Learn more about restricted building work at www.building.govt.nz/lbp. This website also contains information on DIY and responsibilities for 'owner-builders'.



Ask your builder to produce their Licensed Building Practitioner identification OR check the LBP register at www.lbp.govt.nz



Before signing the written contract

The contractor must give you information about their business and a standard checklist **before** you sign a residential building contract if either:

- your building work will cost \$30,000 or more (including GST)
- you ask for these documents.

Make sure you check through this information and are confident the building contractor has the skills and resources to carry out the project. Also check council files on their previous jobs. The checklist says to check a building company's records on the Companies Office website. You could also check the Insolvency Register to see if the building contractor has been previously declared bankrupt.

It's also important to clarify roles and responsibilities for your building work upfront when getting your quote and signing your contract.

For example, the homeowner is responsible for obtaining any required building or resource consents, although often people ask their contractor or project manager to get these.

It's a good idea to make sure both parties are clear on expected outcomes for the project; do you expect the contractor to be working on the building project until the Code Compliance Certificate is issued? If this hasn't been specified, the contractor may begin work for other clients.

Keep a clear written record of what has been decided and agreed.

Any change to the building work listed in your contract is a contract variation, and needs to be put in writing to your contractor. It's important to check on the price and timeline implications of any variations.

Any work on an insured home that involves the structure or weathertightness should be notified to your insurer.

Contractors can be fined for not supplying you with a checklist or disclosure statement if they are required to.

Standard checklist

A checklist has been prepared by the Ministry of Business, Innovation and Employment (MBIE) covering the content required by law and includes information on how building projects are managed, hiring contractors, what should be covered in a written contract and resolving disputes.



Go to www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/consumer-protection-disclosure-and-checklist to view the checklist.



DISCLOSURE STATEMENT:

By law, the contractor must give you a disclosure statement that includes:

- The name of the contractor and/or the legal name of their business entity; whether they are trading as an individual, partnership or Limited Liability Company; the business address and contact details and when it was formed.
- Information about the key contact person (eg the project manager or site foreman) who will be involved in carrying out or supervising the building work, including their relevant qualifications, skills and experience.
- Information about insurance policies the contractor has, or intends to have, in relation to the building work – this must specify the amount of the cover and any relevant exclusions on policy coverage.
- Information about any guarantees or warranties the contractor offers in relation to the building work – this must specify the period of time the guarantee or warranty is offered for and any limits or exclusions on coverage.

Only the party you are contracting with has to provide this information (ie your contractor may have hired other workers to help complete your building work, but they do not need to disclose this information).

If any of the disclosure information seems unusual, query it with the contractor. Anyone who knowingly provides false or misleading information, or who knowingly leaves out information, is liable on conviction to a fine of up to \$50,000 for individuals, or \$150,000 for organisations.

What your written contract should cover

Written contracts are mandatory if your residential building work will cost \$30,000 or more (including GST).

Your contract must include the following:

- names, physical and postal addresses (including the address for the delivery of notices) of both parties, and all relevant contact details (eg phone numbers and email addresses)
- address or location description of the site where building work will be carried out
- date(s) the contract is signed by both parties
- expected start and completion date and how possible delays will be dealt with
- contract price or the method by which the contract price will be calculated (eg fixed hourly rate with materials invoiced separately by supplier)
- description of the building work that your contractor will complete including the materials and products to be used (if known)
- which party will be responsible for obtaining building consents, and any other approvals required, to carry out the building work
- who will carry out and/or supervise the work
- how notices and certificates will be given by one party to the other

ASK FOR A CONTRACT

Even if your building work will cost less than \$30,000, we encourage you to ask for a written contract as it can help avoid misunderstandings later on. It is the responsibility of the contractor to provide the written contract.

- The payment process, including dates or stages for payment and how payments will be invoiced, made and receipted
- How defects in the building work will be remedied, including reference to the existence and application of the implied warranties in section 361I to 362K of the Building Act
- The dispute resolution process to be followed if there is a disagreement
- How variations to the building work covered by the contract will be agreed before work continues
- An acknowledgement that the client has received the checklist and disclosure statement from the contractor.

If you don't have a written contract or if your written contract doesn't include the minimum content specified in the Act, there are default clauses which will be considered to be part of your contract. A default clause won't override an existing clause in your contract on a similar topic.

GET LEGAL ADVICE

The minimum contract content only covers the basics. Take time to make sure your contract is suitable for the building work you are undertaking. It is especially important to check the scope of works included in the contract, as this is all your contractor has to carry out.

Always get legal advice before you sign a contract.

Go to www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/contracts-for-your-building-project/ for details of the default clauses.





Implied warranties

The law sets out implied warranties that apply for up to 10 years to all residential building work, regardless of whether or not you have a written contract, or the terms of your contract.

Implied warranties cover almost all aspects of building work, from compliance with the Building Code to good workmanship and timely completion of building work. A breach of these warranties is a breach of your contract.

There are ways to take action when the warranties have not been met. These are in addition to any legal action taken against your contractor for a breach of contract.

If you think your contractor has breached these warranties, your first step should be to begin the dispute resolution process outlined in your written contract.

Implied warranties set out in the Building Act must be met for all residential building work. For the full list of implied warranties go to www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/contracts-for-your-building-project



**Once building
work finishes**



Information your contractor must give you

Your contractor must give you the following information and documents once the building work is completed, regardless of the price of the work:

- A copy of any current insurance policy they hold for the building work completed under the contract. This does not include policies that expire when the work is completed.
- A copy of any guarantees or warranties for materials or services used in the building work, including information about how to make a claim, if the guarantee or warranty is transferable, and if it must be signed and returned to the issuer.
- Information about the processes and materials to be used to maintain the building work; particularly if maintenance is required to meet the requirements of the building code or maintenance that could affect any guarantee or warranty.

Make sure you get information on how to maintain your home and that you budget for this work – it's an ongoing cost.

Defect repair period of 12 months

There is a defect repair period of 12 months from the date your building work is complete (effective 1 January 2015). If you tell contractors about any defective work before the 12 months are up, they must put it right within a reasonable timeframe from receiving written notification. If there is a dispute, it is the contractors' responsibility to prove that any defects are through no fault of their own (or their product).



How the process works

You must notify your contractor of any problems in writing. It is up to them to arrange and manage the repairs, including any defects in work done by subcontractors.

If you've contracted other tradespeople directly, you'll need to advise them yourself (in writing) about the defective building work.

When the clock starts

The completion date is when all the physical building work agreed to by you and the contractor has been finished.

The 12-month defect repair period applies to all residential building work, regardless of the price.

Once the defect repair period ends

Implied warranties in the Building Act apply for up to 10 years, so the contractor is still obliged to fix defective work after the defect repair period ends. The main difference is that it becomes your responsibility to prove that there is a defect if the contractor does not agree the work is defective.

ACCEPTABLE LEVELS OF WORKMANSHIP

MBIE has produced guidance on acceptable levels of workmanship and tolerances to help contractors and homeowners determine what is, and isn't, defective building work. This is available online at www.building.govt.nz/projects-and-consents/sign-off-and-maintenance/completing-your-project/how-to-identify-defects/





If things
go wrong

You have a number of options if you are in dispute with your contractor. Some of the basic steps are set out in the checklist you should have received at the start of the build process.

Refer to your contract and talk to your contractor

If you have concerns about building work that has been carried out, start by checking the terms agreed in your contract and discussing matters with your contractor.

Many complaints and disputes result from misunderstandings, such as:

- not understanding the terms agreed in the contract
- unrealistic expectations about the level of quality you can expect for the amount of money you have agreed to pay
- not understanding the impact of asking for changes after the initial quote or contract was agreed
- not being clear about the work you want them to do.

Follow the dispute resolution process in the contract

If you are still unhappy after talking it through with the contractor, the next step is to check the contract to see what (if any) dispute resolution process you should use and begin that process.

YOU CAN READ MORE ABOUT RESOLVING PROBLEMS AT

www.building.govt.nz/resolving-problems/



More steps to consider

If the issue remains unresolved, then how you progress your concerns will depend on who or what you are concerned about and how much you are prepared to spend to get it resolved.

Complaining about a building contractor

You can lodge a complaint with MBIE if your building contractor has not provided you with their disclosure statement, standard checklist or a written contract and you asked for this, or your building work cost \$30,000 or more (including GST).

Complaining about the conduct of a Licensed Building Practitioner (LBP)

If your contractor is an LBP and you believe they were negligent or incompetent, you can complain to the Building Practitioners Board. They can investigate the LBP and discipline them, but they can't award you any compensation or make the practitioner fix defective work.

Complaining to the contractor's trade or professional association

If the contractor is a member of a trade or professional association you can complain to these bodies. They may offer dispute resolution services and/or guarantees which cover work done by their members.

Breaches of implied warranties

You can also take action when the implied warranties under the Building Act have not been met. These cover:

- what happens when the breach can be remedied
- what happens when the breach is substantial or cannot be remedied
- what a substantial breach is.

YOU CAN READ MORE ABOUT THE IMPLIED WARRANTIES AT:

www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/implied-warranties-and-defects/



Seeking mediation

You can try to come to an agreement with the help of a mediator even if your contract does not provide for it, or if you have no written contract, but both parties have to agree to this.

Mediators are appointed by either:

- New Zealand Law Society
- LEADR (an Australasian association of dispute resolvers)
- AMINZ (Arbitrators' and Mediators' Institute of New Zealand Inc.)
- private mediation services.

Approaching the Disputes Tribunal or District Court

You can take a dispute to the Disputes Tribunal if your claim is for up to \$15,000 (or \$20,000 if both parties agree). If your claim is for more than this or if you need to enforce the Disputes Tribunal's decision, you can go to the District Court. You should get legal advice if you are considering taking the matter to the District Court.

PLANNING HOME BUILDING WORK?



NO

YES

LOOK FOR A DESIGNER

Use a designer Licensed Building Practitioner (LBP), such as a Registered Architect or Chartered Professional Engineer. It's important to understand the services they'll provide. Explain your ideas with a firm budget in mind and be really clear on the brief. Before engaging anyone, know your high-level objectives and any specific requirements.



GET DETAILED QUOTES FROM CONTRACTORS OR A 'DESIGN & BUILD' COMPANY

Get recommendations from friends or family, and remember to ask for references. Use LBPs for Restricted Building Work.



WORK WITH THE DESIGNER TO CREATE CONCEPTS & GET DETAILED PLANS DRAWN UP



Detailed plans allow contractors to quote more accurately for the work, and firm up details early that could cause disputes down the line. Make sure you're happy with everything because you'll be living with these choices for a long time.



WHO'S RESPONSIBLE:

Building Consent Authority

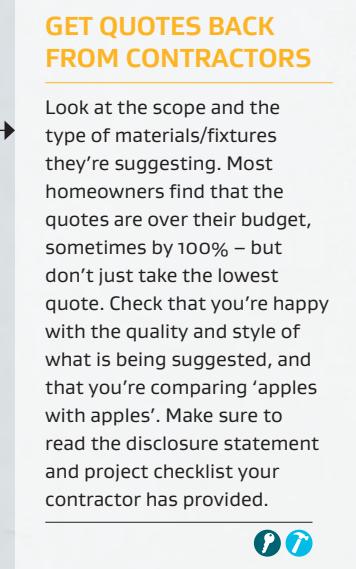
Contractor

Designer

Homeowner



The Building Process:



An overview

SELECT A CONTRACTOR & SIGN A CONTRACT

Written contracts are mandatory for residential building work costing \$30,000 or more (incl GST). Be clear on costs, so you know what you're going to pay.



! NEED BUILDING CONSENT?

Talk to your council. It's the responsibility of the homeowner, but is often done by the contractor.



GET READY AND START BUILDING

Budget for alternative accommodation – if you're renovating, you'll be sharing spaces with tradespeople, on site early in the morning and sometimes late at night. The power and water will be on and off. There's noise, dust and a lack of privacy. Delays can often be an issue, for both renovations and a new build. If alternative accommodation hasn't been budgeted for in the beginning, it can really add to the cost of your project.



BUILDING WORK UNDERWAY

Be mindful when making decisions
– whenever you make a change to what's been specified in the contract or building consent, it's a variation that could add cost or time. It helps to track details of fittings and fixtures, and any changes, in a spreadsheet. And keep a list of jobs that must be done before the build is complete (sometimes called a snag list).



FINISH YOUR 'SNAG LIST'

The rate of work may tail off towards the end of the project. Finish the small jobs that make your build feel complete.

YES



GET FINAL CODE COMPLIANCE CERTIFICATE AND MOVE BACK IN

Make sure your contractor has completed all the work required for the code compliance certificate and given you any essential paperwork. They must also provide information about maintenance and details of any current insurance policies they may have taken out on the work.



ARE THERE STILL
SMALL JOBS TO
FINISH?

NO

House finished!





For more information about the building process go to
building.govt.nz

Ministry of Business, Innovation and Employment
www.mbie.govt.nz 0800 24 22 43



