

Domestic Building Contracts

"Even-handed" standard form contracts for domestic building have now been introduced in Queensland.

The *Queensland Building Services Authority Act 1991* has been the catalyst for the publication of new, even-handed building contracts. The Act, amongst other things, requires that from 1 July 1992 domestic building contracts for work valued in excess of \$3,000 contain certain minimum requirements, particularly in relation to price. The regulation of key elements in the contract includes that they:

- be in writing and be signed by the consumer and the builder;
- describe sufficiently the required building work;
- be imprinted with the builder's licence and a copy given to the consumer and the Building Services Authority;
- state the contract price and, if the price may vary, draw attention to the provisions which could result in a change to the price;
- when varied, require the variation to be in writing and signed by the parties. A variation which is not signed but is in writing may be relied on by the consumer but not by the builder.

The new Act also contains provisions regulating prime cost items, cost escalation clauses, delay in completion, fixtures and fittings, progress payments, display homes and dispute resolution.

The Building Services Authority, which is a body established by the new Act, has now prepared a suggested contract for use in the construction of new single dwellings or major renovations where there is no supervising architect. The contract can be bought for \$4 from the Authority and its affiliated agents. Features of the contract include:

- division of the contract price between a lump sum component and a component consisting of prime cost and provisional sum estimates which the builder warrants have been prepared with reasonable skill and care. The entitlement to increase the contract price is strictly regulated under the contract;
- the lump sum component is deemed to include everything necessary for the proper completion of the home and for the performance of work under the contract other than those items specifically dealt with as prime cost items or provisional sums;

- if the total amount allowed for prime cost items and provisional sums exceeds 10% as a proportion of the total price, the builder must give the owner a written statement setting out the reasons for the inclusion of each item as a prime cost or provisional sum;
- limiting variations to specified circumstances. In each case, the parties will have elected in the contract schedule who is to bear the risk of these events occurring. Except where the variation is by consent, the contract may be terminated by either party if the result of the variation would be to increase the contract price by more than 10%;
- entitlement of the owner to terminate the contract if loan approval has not been obtained;
- where the contract is not being financed, the parties have the option to require the owner to deposit a stipulated amount in a joint bank account to ensure payment to the builder;
- streamlined provisions dealing with practical completion, delays to progress of the works and liquidated damages.

To conform with the new statutory requirements, the Queensland Division of the Housing Industry Association and the Queensland Master Builders' Association have also recently published new contracts for residential building.

The HIA published in July 1992 a new edition of its Residential Building Agreement which essentially amends the earlier version to comply with the statutory requirements.

The QMBA Conditions of Building Contract (the latest edition known as B.S.A.2) has been modelled on the Building Services Authority's contract and has accompanying explanatory notes to assist consumers.

The QMBA also published in October 1992 a cost-plus contract for domestic building which adopts a similar format to its lump sum contract. The Building Services Authority is currently drafting a cost-plus contract to cater for those consumers preferring this project delivery approach.

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