

Getting the contract right

Soon written contracts will be required for even quite small building projects. Whether you use a standard contract or have your own one drawn up, there are several factors to consider if you want the contract to be trouble-free.

CONSTRUCTION DISPUTES often arise out of misunderstandings about matters such as the scope of the work and changes as the project proceeds. Clearly documented building contracts help to limit these. Good contracts are also invaluable in making a client feel secure that their project is being professionally managed.

Once the Building Amendment Bill (No 4) 2011 is passed, building contractors will be required to have written contracts for all residential building work that has a certain value - currently indicated at \$20,000. This is a good opportunity for builders and other building professionals to consider whether or not their current documentation is satisfactory.

The statutory level proposed under the Bill is not very high. It is often smaller jobs that can be the most problematic if things go wrong, and it can be uneconomic to spend further funds on a dispute. A clear written contract can help prevent losses that may otherwise be written off.

Building contractors should look to use written contracts for all jobs, whether they are small or large, commercial or residential.

Standard contracts available to use

Numerous standard contracts are available. Building contractors who are members of associations such as the Certified Builders Association of New Zealand or the Registered Master Builders Association will have access to their standard form contracts.



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Good standard contracts are also available for purchase from Standards New Zealand or the New Zealand Institute of Architects (including work where architects are not

involved). Alternatively, you can elect to develop your own contract documents.

Is the contract up to the job?

Whether a building contractor uses a common standard form contract or their own written contracts, it is important to consider if the contract documentation is appropriate for a particular job.

In many cases, standard contract documents will require adjustment to account for requirements of a particular project. It's also crucial to always accurately record the roles of all participants in the project.

Full contract or labour only

A builder may be engaged under a full construction contract, responsible for supplying all the materials and engaging and managing the subtrades. In this case, the builder will not only have to ensure that the contractual chain is clear with their owner or principal, they will also need to take care in entering into subcontracts.

Alternatively, a builder may be engaged on a labour-only basis where the owner or

principal or someone appointed by them performs a head contractor role and organises the materials and other contractors.

Labour-only contracts may not be suitable, though, where an owner principal lacks experience in managing a building contract. Building contractors might be wary about being exposed to this type of arrangement unless there is a party involved with the appropriate skills to oversee the project.

Standard contracts for larger projects

In commercial projects and larger residential projects, architects and engineers are often involved as administrators to the contract. The standard form contracts produced by the New Zealand Institute of Architects contemplate an architect's involvement in a contract administration role while the commonly used New Zealand standard NZS 3910:2003 uses an engineer as a principal's representative.

The alternative New Zealand standard commonly used in commercial projects is NZS 3915:2005. This has the principal administering the contract itself. Both the New Zealand Institute of Architects and New Zealand Standards also have forms of contracts available that are more suited to smaller works and that might be suitable for residential projects.

Another alternative source of contract documents that might be useful in larger projects is international contracts such as the International Federation of Consulting Engineers (FIDIC) documents.

Again, it is crucial to ensure that any standard contract is properly adapted to suit a particular project. A common adjustment,

for example, is where the contractor is also taking part in some aspect of the design of the project. In this case, it is often best practice to include further clauses about the contractor's particular design role and responsibilities.

When to get legal advice

In larger projects, it will often be necessary for both parties to take legal advice on the development of the contract to ensure it is suitable for the project, as well as advice from professional parties such as architects, engineers and quantity surveyors.

Many residential owners ask their legal advisors to review standard form building contracts. If a building contractor is asked to adjust certain clauses or add further clauses, it is again advisable for the building contractor to take advice on the implications of doing so. Sometimes, even a minor adjustment to a contract can affect other clauses in the contract or detract from a party's rights.

A good contract is money well spent

No one standard contract is likely to be a perfect fit for every project. Contracts need to be carefully considered and tailored to suit. Clear written contracts usually benefit both parties to the contract, however, providing ready answers to issues that arise during the works or setting out a clear means of resolving any disputes.

Good contracts are an investment. Although there may be an initial cost involved in obtaining and developing a good suite of contractual documents, used well, they are likely to produce longer-term gains. ◀