



LICENSED  
BUILDING  
PRACTITIONERS



# Consumer protection

With new consumer protection provisions now in place, you must be up to speed with the changes.

**THE BUILDING ACT 2004** (the Act) was amended and new consumer protection measures were added in Part 4A of the Act as of 1 January 2015. All residential building work agreements entered into from that date fall under these new provisions.

### **When provisions do and don't apply**

The Building Act says that other laws, like the Consumer Guarantees Act, are not affected by these new provisions and may still apply to your work. The consumer protection measures set out in the Act do not apply to design work by itself (but may apply to a project manager who has engaged someone to prepare drawings).

Importantly, the measures only apply to someone who contracts directly to a client, not a subcontractor or employee. The measures also only apply to residential building work (meaning work for, or in connection with, the construction, alteration, demolition or removal of a building).

### **Disclosure statement and checklist**

A disclosure statement is part of the pre-contract information set out in section

362D of the Act. It must be provided to a client if the building work will be more than \$30,000 (including GST) or if the client asks for it. We suggest keeping it updated so you can easily provide it when needed.

The checklist is also part of the pre-contract information stated in section 362D of the Act. It also must be provided for building work with a price over \$30,000 (including GST) or if the client asks for it. We suggest providing one sooner rather than later!

Both the disclosure statement template and checklist are available on the MBIE website ([www.building.govt.nz](http://www.building.govt.nz)). You must use the official versions - you cannot change them or add or subtract information.

Failure to provide these documents to clients can result in an infringement offence and a fee of \$500 for each of the disclosure statement and checklist, so be proactive.

### **Written contract needed over \$30,000**

A written contract is mandatory for all residential building work with a value over \$30,000 (including GST). This requirement is set out by sections 362E-F of the Act.

While a written contract is only required

for work over \$30,000 (including GST), it is a good idea to have a written contract for any building work. If things go wrong, you will have a clearer path to resolve any disputes. This can be less stressful and less costly than without the help of a contract!

A written contract must have certain information that is prescribed in the regulations - this information can be found on the MBIE website. If a contract does not have that information, some of the terms are implied by the Act. This means that, even if you haven't written them in, the Act says that they still apply to your contract.

You could get a contract from your industry organisation, or Standards New Zealand have default contracts for purchase for around \$85.50. Alternatively, you could have a lawyer write one up for you.

Failure to ensure there is a written contract for building work over \$30,000 (including GST) can result in an infringement offence and a fee of \$500.

### **Provide post-construction information**

Information is required to be provided to clients after the work is completed,

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regardless of the value of the work. The information that you must provide to the client is set out by section 362T of the Act:

- A copy of any current insurance policy that you hold in relation to the building work being done (however, not a policy that expires on completion of the work).
- A copy of any guarantees or warranties that apply to materials or services that comprise the building work.
- Information about the materials and method to be used to maintain any element of the building work to the durability requirements of the Building Code.

Failure to provide these documents to clients can result in an infringement offence and a fee of \$500.

### **Want more information?**

That's the main points covered for you. If you want to get more information about the other elements of the provisions (such as the implied warranty under the Act or the dispute resolution suggestions), please read the MBIE guidance document *Contractors: Do your homework*. There's also one for homeowners, *Building or renovating? Do your homework*. Both of these guidance documents are available on [www.building.govt.nz](http://www.building.govt.nz).

If a dispute arises from a contract, seek legal advice for specific information. ◀

### **Quiz**

1. Does the \$30,000 value of the work include or exclude GST?
2. What kind of work do these consumer protection measures cover?
3. Who do these measures apply to on a project?
  - a. The main contractor on a multi-storey commercial project.
  - b. The plumber.
  - c. The homeowner's best friend.
  - d. Anyone who contracts directly to the client to do residential building work.
4. You have to have a written contract for all building work. True or false?
5. Can you break down the cost of a job into smaller amounts (like \$20,000) multiple times to get around these provisions?

- for the client.
- the total of all building work being done by the building contractor
5. No! The \$30,000 (including GST) threshold is calculated based on GST.
  - contract if the value of the work is more than \$30,000 including
  4. False. While it's a good idea, you are only obliged to have a written
  3. d)
  - not include design work in isolation.
  - that does not need a consent and work by subcontractors. It does
  - project management, retaining walls and fences, building work
  2. All kinds of building work to a residential house. This includes
  1. It includes GST.

### **ANSWERS:**