

# Building contracts checklist

- If the total cost of your project is more than \$10,000, the builder must use a major domestic building contract – even if the contract is split into several smaller amounts
- Your contract must include what has been agreed, plus the plans and specifications and any other information that clarifies terms and conditions
- Include in your contract all details of your fittings, fixtures and finishes (including the make and model of appliances)
- Regardless of the building contract price, there are requirements for deposits and warranties

## When do I need a building contract?

**By law, the builder must use a major domestic building contract for work worth more than \$10,000, including:**

- erecting or constructing a home and associated landscaping, paving, retaining structures, driveways, fencing, lighting, heating, air conditioning, water supply or sewerage
- renovations, alterations, extensions, repairs and any other improvements; for example, a swimming pool, kitchen renovations, outdoor living areas
- work associated with renovation, alteration, extension or repair of a home
- demolition or removal of a home or part of a home
- preparation of plans or specifications by the builder or tradesperson (a registered architect, engineer or draftsman will use their own contract)
- if the contract has been split into several smaller amounts worth less than \$10,000 – for example, a pre-construction contract worth \$4,000 and the main contract worth \$7,000. As the total price is more than \$10,000, the builder must use a major domestic building contract.

## **We recommend you:**

- choose your builder, all your fixtures and fittings (also called 'selections'), then include all works in one major domestic building contract
- list the specific details of your choices or selections (such as make, model, colour or style) in your contract
- where possible, avoid making your selections of fixtures and fittings at a later date (after you have signed your contract)
- state in the contract who is responsible for supplying goods, such as ovens, tiles or tapware

- identify any additional council requirements for your area – for example, termite or fire protection requirements, or development levy
- use a written contract for all building works, including those under \$10,000.

## Pre-construction contracts

Your builder must obtain a soil report and foundation data to design the footings and to give you an adequate estimate of the cost. They may ask you to sign a document to authorise this.

However, if the pre-construction contract includes design or specification work, obtaining permits or other building work, it is a building contract.

If a contract includes domestic building work and the price is more than \$10,000:

- it is a major domestic building contract
- you have rights under the *Domestic Building Contracts Act 1995* and the Australian Consumer Law.

**We recommend you get legal and technical advice before you sign**, even though it means you no longer have five days to change your mind (view our [Getting out of a building contract checklist page \(https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/getting-out-of-a-building-contract\)](https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/getting-out-of-a-building-contract)). If the document includes developing the design or drawing plans and specifications, due to copyright you may not be able to use these if you proceed with a different builder. You also may not get a refund on the cost of developing these plans.

## Prime cost items

Prime cost items are your selections of fixtures and fittings (for example: ovens, taps and tiles) that are listed items in the contract but which are not specifically identified and costed. This is because you or your builder could not determine or agree the make, model or exact price of the item at the time you signed the contract – you could only estimate the price, which could be less than the final cost.

Where possible, avoid prime cost items. Try to include the specific details of your selections (such as make, model, colour and style) in your contract, so that the building cost is final.

**Get a copy of any invoice, receipt or other document that shows the cost of any prime cost item.**

## Provisional sum items

Provisional sum items are items listed in the contract for possible additional work, such as excavation, where the builder cannot give you an exact price of the work at the time you sign the contract – they can only make a reasonable estimate of the cost.

Where possible, do not agree to provisional sum items as they can make your final cost higher.

For example, it is common for excavation work to be included as a provisional sum item. Be aware that this cost could increase substantially if additional excavation work is needed because rock was not determined in the soil report. Make sure that your builder has obtained a comprehensive soil report in order to give you a reasonable estimate of costs. If you are unsure, you may wish to seek advice from an independent building consultant who can advise you during the contract period.

**Your builder must make a 'reasonable allowance' for the nature and location of the building site when estimating supply and delivery in the contract price – for example, your builder must allow for transport costs if you are building on a rural property.**

## Major domestic building contract checklist

### The contract must be in writing and must:

- be written in clear English
- set out in full all the terms of the contract
- give detailed descriptions of the work to be carried out
- state the names and addresses of the parties to the contract
- state the builder's registration number as it appears on the builder's registration certificate
- state the contract price
- state the amount of the deposit and progress payments as required by law
- state the date the contract is effective (the date on which both parties have signed the contract)
- give clear advice about the five-day cooling-off period
- include definitions of words and key phrases used in the contract
- set out implied warranties
- contain an [Approved checklist \(Word, 100KB\)](https://www.consumer.vic.gov.au/library/forms/businesses/builders-and-tradespeople/contract-checklist.doc) (<https://www.consumer.vic.gov.au/library/forms/businesses/builders-and-tradespeople/contract-checklist.doc>).

### The contract should also, when applicable to the proposed work:

- include plans and specifications containing enough information to get a building permit for the work
- set out details of the required domestic building insurance, if the contract is for more than \$16,000
- state the number of days allowed for each type of foreseeable delay and inclement weather
- state a start and finish date, with allowances for delays. If the start date is not known, the contract must state:
  - how the start date will be determined

- that the builder will do everything that is reasonably possible to start work as soon as possible
- the number of days required to finish the work once it has started.

**Make sure:**

- the builder is currently registered with the Victorian Building Authority if the contract is more than \$10,000, or if the contract is to re-stump, re-block, demolish or remove a home
- the builder has confirmed the site is suitable for the proposed work and has obtained foundation data and a soil report. It is their responsibility to satisfy themselves that the foundation data is accurate
- the work has the required building and/or planning permits, or the contract states who is responsible for obtaining these
- the work is clearly and comprehensively described in the contract, including plans or specifications and any other relevant documents
- you have included all special requirements and finishes in the plans and specifications
- fixtures and fittings included in the contract but not specifically identified, or of unknown price, are clearly stated as provisional sum items or prime cost items and adequate costs are allowed for these
- for work worth more than \$16,000, the builder has provided a current certificate of domestic building insurance covering the building project's address
- the requested deposit is within the legal limit
- the price and timing of progress payments are legal and clearly stated
- you understand the procedure for changes to the contract
- you and the builder share an understanding of what is 'reasonable access' to the building site.

The builder or tradesperson must give you a copy of the contract when you have both signed it.

Seek legal advice if your builder asks you to sign a cost-plus contract (where the builder charges by the hour and you do not have a fixed price). Cost-plus contracts are only allowed for renovation projects worth over \$1 million, and then only in very limited circumstances.

A building lawyer can help you understand and negotiate your contract – even though seeking legal advice means you no longer have five days to change your mind (cool off) after signing the contract. View our [Getting out of a building contract checklist page \(https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/getting-out-of-a-building-contract\)](https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/getting-out-of-a-building-contract).

**For works under \$10,000, make sure:**

- you have a written contract that clearly specifies the work to be done and the total cost

- any agreed changes are in writing, including the associated costs.

For more information on what fees and charges should be included in a contract, visit our [Contracts for building projects page](https://www.consumer.vic.gov.au/housing/building-and-renovating/plan-and-manage-your-building-project/contracts) (<https://www.consumer.vic.gov.au/housing/building-and-renovating/plan-and-manage-your-building-project/contracts>).

For more information on details of deposits and progress payments required by law, visit our [Paying for building work page](https://www.consumer.vic.gov.au/housing/building-and-renovating/plan-and-manage-your-building-project/deposits-and-payments) (<https://www.consumer.vic.gov.au/housing/building-and-renovating/plan-and-manage-your-building-project/deposits-and-payments>).

For more information on illegal and unfair terms in a contract, visit our [When do I need a building contract page](#).

## Changing your contract

The law only allows certain changes to a signed domestic building contract. View our [Changing a major domestic building contract checklist page](https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/changing-a-major-domestic-building-contract) (<https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/changing-a-major-domestic-building-contract>).

You have five business days after receiving a signed copy of the building contract to withdraw without penalty, unless you sought legal advice on the contract before you signed.

## Getting out of your contract

You have five business days after receiving a signed copy of the contract to withdraw without penalty. This is your 'cooling-off period'.

View our [Getting out of a building contract checklist page](https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/getting-out-of-a-building-contract) (<https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/getting-out-of-a-building-contract>).

## Related information

- Find a building lawyer - Law Institute of Victoria website (<http://www.liv.asn.au/>)

Last updated: 19 April 2021

The department acknowledges Aboriginal and Torres Strait Islander people as the Traditional Custodians of the land and acknowledges and pays respect to their Elders, past and present.

