

HOW TO TERMINATE A BUILDING CONTRACT

In most cases when consumers enter into a contract with a licensed builder or tradesperson to carry out building work there are no issues and everyone is happy with the result.

Unfortunately, there are a small number of cases where the progress or quality of work is below standard or does not otherwise accord with the agreement between the parties. Further, in some cases, the situation becomes so serious that the consumer may consider terminating the building contract altogether.

When can a consumer terminate a contract?

In general terms, a consumer may lawfully terminate a building contract if:

- There is a clause in the building contract that gives a right to terminate in the circumstances; or
- There is a right to terminate in the circumstances that is not stated in the contract but is allowed under the common law or legislation.

The law governing contract termination can be quite complex. This is particularly so when the common law is being relied on.

Examples of where a right to terminate may be possible under the common law include if the building contractor has made it clear (verbally or through their actions) that they are unwilling to complete the contracted works. There may also be cases where the building contractor is unable to complete the work because, for example, they have died, disappeared, become insolvent or lost their licence.

What are the risks when terminating a building contract?

A decision to terminate a building contract is not

something that should be taken lightly. One of the most important risks to address when deciding whether to terminate a building contract is to make sure that you have a lawfully valid ground to do so. An attempt to terminate a contract where there is no lawful ground could leave you open for legal action and payment of damages and other costs.

Another risk when terminating a building contract is that the notice of termination to the building contractor may not accord with the contract requirements or other applicable laws. If a notice does not comply with these requirements it will be invalid and the contract will continue.

It is also important before deciding to terminate a contract that you explore all other options that may be available, including early dispute resolution. Please note that the Commission offers a free early dispute resolution service to assist consumers and building contractors who are experiencing problems during construction to amicably resolve their differences. For more information on this service, please contact the Commission on telephone 139 333.

Should a solicitor be engaged to terminate a contract?

Given the risks and legal complexity typically involved in terminating a building contract, it is recommended that a solicitor be engaged to assist and provide advice about termination. If you don't have your own solicitor, the Queensland Law Society will be able to help you in finding one. The contact number for the Queensland Law Society is (07) 3842 5842.

Is it necessary to terminate a building contract to obtain assistance under the Queensland Home Warranty Scheme?

The Queensland Home Warranty Scheme provides assistance to consumers in the event of a building contractor failing to complete a contract for residential construction work or carrying out defective residential construction work. The assistance available will depend on the relevant legislation and the terms of the consumer's policy.

Under the law, the Scheme cannot provide assistance to a consumer for loss suffered as a result of a building contractor failing to complete

work unless the consumer has lawfully terminated the building contract. If the date of the contract is on or after 28 October 2016, the consumer does not have to terminate the contract if the contractor:

- has died, or in the case of a company, has been deregistered
- has had their licence cancelled and they are bankrupt, or in the case of a company, in liquidation.

Further, the termination must occur within 2 years of the date of payment of the insurance premium or the date of entering into the contract, whichever is the earlier.

Also, the Scheme cannot assist a consumer to remedy defects in partially completed work where the building contract has not come to an end. In many instances, this can only occur if the consumer lawfully terminates the contract.