

Building disputes – what to look out for when building a house

What are the key issues in building disputes?

A recent rise in builders experiencing financial difficulties has left some homeowners high and dry, and others nervous about their build.

Examples include Felmeri Homes entering liquidation earlier this year, and the suspension of 7 Star Construction's building licence following prolonged delays on various projects.

Historically, construction delays were an indicator that the builder was experiencing financial difficulty. Nowadays, the ongoing effects of covid and shortages in materials and labour mean delays are more common, and don't necessarily flag financial strife on the builder's part.

Unfortunately, cases where builders fail to obtain building indemnity insurance, or even forge insurance certificates, are becoming far more common. This leaves the homeowner with no insurance

to fall back on in the event that the builder becomes insolvent or disappears.

Part of the problem is that builders are facing increasing financial pressure in the current economic climate. From the builder's perspective, they need to remain competitive on price, but the price quoted at the beginning of the work (especially in the cases of fixed fee contracts) is no longer profitable by the end. This can result in a vicious cycle of signing on new clients to remain afloat, and ultimately can lead to the builder becoming insolvent.

Where does this leave homeowners?

The *Building Work Contractors Act 1995* (SA) governs domestic building work in South Australia, and sets out warranties that apply to every building contract, including:

- That the work will be completed in a timely manner;
- That the work will be performed with due skill and diligence;
- That the work will be performed in accordance with acceptable standards and the agreed plans; and
- That the materials used will be good and proper.

If those warranties are breached, the **homeowner should take swift action** in seeking legal advice and enforcing their rights. Waiting to "see what happens" or expecting that early problems will be fixed at handover tend to worsen the problem.

We recommend obtaining a **building inspection report** at each step of construction and before progress payments are made, so the homeowner can be aware of any defective works or delays during the course of the build.

What to do before you enter a building contract

Building contracts come in many forms, and can often be complex documents. If you are considering signing a building contract, it is more important than ever to **obtain legal advice before committing** to the builder.

Some contracts are more favourable to the builder, and some better protect the rights of the homeowner. Minor contractual amendments can significantly impact the legal options of either party during the build, so we always recommend obtaining legal advice before signing.

Finally, homeowners should **independently verify that building indemnity insurance is in place**. We recommend contacting the insurer directly to confirm an insurance policy covers the project, rather than relying on documents provided by the builder.

To find out more about building indemnity insurance and why it matters, see our earlier article published here.

How can Andersons help?

If you require any assistance with a building dispute, or a building contract, you can **contact our expert commercial law team here**.

The information in this article is general in nature and was accurate at the time of publication. Laws and circumstances can change. For advice specific to your situation, please seek professional legal advice.