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LawTalk Blog



Defects with your home building works? Does the builder have to return and fix them?

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The law which covers domestic construction work (often referred to as residential building work) in South Australia is the *Building Work Contractors Act 1995* ("the Act").

Section 37 of the Act sets out remedies which the Court can order in respect of defective building works.

Will the Court order my builder to return and fix the building defects?

If the Court is satisfied that it is practicable for the defective works to be remedied by further building work, then the Court can make an order requiring remedial work to fix the issues, and the Court may require the original builder to perform that remedial work. If an order is made, the Court will specify what works are to be completed and a time frame within which the work must be completed.

What happens if the Court does not believe the builder can appropriately fix the building defects?

If the Magistrates Court is of the opinion that the builder is not likely to perform the remedial work properly, it can require the builder to employ, **at the builder's own expense**, a licensed building work contractor to do the remedial work. Again, any order will specify what works are to be done and in what time frame they are to be completed.

What requirement does the builder have to the Court, to show that the building defects have been attended to?

If the Magistrates Court orders either the original builder to perform remedial work, or to cause remedial work to be performed (that is, pay for a building contractor to complete the works), it may further order the original builder to provide to the Court, within a specified time after completion of the work, a certificate of any third party which holds qualifications specified in the order, certifying that the remedial work has been performed properly and in accordance with the order. Types of third party contractors may include building experts, engineers, architects and the like.

Will all building defects be remedied by further building works?

In some cases, orders for remedial works are inappropriate.

Examples include where work is not actually defective but rather, does not comply with contractual obligations; for example misplaced windows or incorrect brickwork.

In such cases, the Court may make an order requiring the payment of an amount due under the contract or an order requiring the payment of an amount for compensation for the breach.

It should be noted that in most [domestic construction disputes](#), it is the builder's strong preference to be permitted to carry out remedial works (rather than paying compensation), as doing so is often considerably cheaper than having a third party undertake those works or having to pay compensation. If you do not wish to have the builder return to your property to undertake further works, you should seek legal advice about your options.

What if I bring in another builder to remedy building defects, without orders of the Court?

Most builders brought in to rectify another builder's work are reluctant to do so without a price premium; that is, they will charge you a premium for the further works. This is because they are inheriting the risk of responsibility for the first builder's defective work.

Often in building construction disputes, the end result is that the home owner only ends up receiving "that which they should have received in the first place" but with the addition of costs and delays.

For that reason, it is critical to deal with any building defects promptly and effectively. Having a building inspector review each stage of construction prior to making a progress payment is extremely good insurance against significant defects emerging later, when it is too late to do anything about them in a cost effective manner.

As the home owner, you also have responsibilities with your building works

It should be noted that the Court also considers the home owner's conduct when addressing rectification works. Quite often, the standard expected by a home owner is that of perfection, whereas the Court only requires compliance to reasonable industry

standard and building codes.

If a home owner unreasonably refuses to allow the builder to undertake rectification works, it may later impact on any compensation the home owner can claim or the relief which the Court is prepared to grant in respect of any rectification work.

If you are building a house and the construction is not proceeding as you had hoped, the earlier you speak to a building expert and a lawyer experienced in building disputes, the better. At Andersons, we have contact with multiple building experts who frequently give evidence in Court and direct builders who have undertaken defective works as to how such defects should be rectified.

It may be that small construction hiccups can be cured easily and early. Even if it is a large problem, the sooner it is addressed the more likely a cost effective resolution can be reached. At Andersons, we pride ourselves on having assisted many South Australian home owners to get the home they have dreamed of, even when initially there were considerable problems with the building works.

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