



## **Building (Residential Consumer Rights and Remedies) Regulations 2014**

Jerry Mateparae, Governor-General

### **Order in Council**

At Wellington this 1st day of December 2014

Present:

The Right Hon John Key presiding in Council

Pursuant to sections 362D, 362F, 362G, 362T, and 402 of the Building Act 2004, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Building and Housing, makes the following regulations.

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## **Regulations**

### **1 Title**

These regulations are the Building (Residential Consumer Rights and Remedies) Regulations 2014.

### **2 Commencement**

These regulations come into force on 1 January 2015.

### **3 Interpretation**

In these regulations, unless the context otherwise requires,—

**Act** means the Building Act 2004

**prescribed minimum price** means the amount specified in regulation 4.

#### *Residential building contracts*

### **4 Prescribed minimum price**

- (1) For the purposes of sections 362D and 362F of the Act, the prescribed minimum price is \$30,000 inclusive of goods and services tax.
- (2) For the purpose of determining whether the price of building work will be for less than or not less than the prescribed minimum price, the estimated price must be calculated in accordance with section 10(2) of the Goods and Services Tax Act 1985.

### **5 Prescribed disclosure information and prescribed checklist**

- (1) For the purposes of sections 362D and 362F of the Act,—
  - (a) the prescribed disclosure information is the information in the form set out in Schedule 1:
  - (b) the prescribed checklist is the checklist in the form set out in Schedule 2.
- (2) The prescribed disclosure information and prescribed checklist must be disclosed by a building contractor to a client before the contractor and the client enter into a residential building contract if—

- (a) the price for the building work is not less than the prescribed minimum price; or
  - (b) the client requests either the disclosure information or the checklist.
- (3) Despite section 26 of the Interpretation Act 1999, the forms of the prescribed disclosure information and prescribed checklist may not contain any differences from the forms that are prescribed in Schedules 1 and 2.

**6 Prescribed content for residential building contracts for prescribed minimum price or more**

- (1) This regulation applies to every residential building contract where the price for the building work is not less than the prescribed minimum price.
- (2) The contract must contain the following:
- (a) the names of the parties; and
  - (b) each party's—
    - (i) physical address; and
    - (ii) postal address; and
    - (iii) address for service; and
    - (iv) contact telephone number or numbers; and
    - (v) email address; and
  - (c) the address (or location description) of the site where the building work will be carried out; and
  - (d) the date or dates when the contract was signed by both parties; and
  - (e) a description of the building work covered by the contract, including—
    - (i) the materials and products to be used (if known); and
    - (ii) the person or persons who will be carrying out the building work; and
    - (iii) the person or persons who will be supervising the building work (if applicable); and
    - (iv) which party will be responsible for obtaining the building consents and any other approvals required to carry out the building work; and
  - (f) the expected start date of the building work; and
  - (g) the expected completion date of the building work; and
  - (h) the contract price or the method by which the contract price will be calculated (for example, fixed hourly rate with materials invoiced separately); and
  - (i) the number of payments under the contract and, if there is more than 1 payment under the contract,—

- (i) the interval between payments; and
- (ii) the amount of each payment; and
- (iii) the date on which each payment is due; and
- (iv) mechanisms for determining the matters referred to in subparagraphs (i) to (iii); and
- (j) terms prescribing how payments will be invoiced, made, and receipted; and
- (k) terms prescribing how notices are to be given under the contract; and
- (l) mechanisms for negotiating and agreeing on variations to the building work; and
- (m) terms prescribing how possible delays will be dealt with (for example, delays as a result of *force majeure* events); and
- (n) terms prescribing how any defects in the building work will be remedied, including a reference to the existence and application of the implied warranties in sections 362I to 362K of the Act; and
- (o) dispute resolution procedures; and
- (p) an acknowledgement that the building contractor has supplied, and the client has received, the disclosure information and checklist prescribed in regulation 5.

**7 Prescribed clauses deemed to be included in oral residential building contracts for prescribed minimum price or more**

- (1) This regulation applies to a residential building contract where the price for the building work is not less than the prescribed minimum price if there is no written contract as required under section 362F of the Act.
- (2) The contract is deemed to include the terms prescribed in Schedule 3.

**8 Prescribed clauses deemed to be included in incomplete written residential building contracts for prescribed minimum price or more**

- (1) This regulation applies to a residential building contract where the price for the building work is not less than the prescribed minimum price if there is a written contract but it does not contain all of the matters specified in regulation 6.
- (2) The contract is deemed to include—
  - (a) the terms in clauses 1.1 and 1.2 of Schedule 3 if the contract does not expressly specify which party will be responsible for obtaining the building consents or other approvals required to carry out the building work;
  - (b) the terms in clause 3 of Schedule 3 if the contract does not specify mechanisms for negotiating and agreeing on variations to the building work;
  - (c) the terms in clause 4 of Schedule 3 to the extent that the contract does not contain terms relating to the matters referred to in clause 6(2)(i):

- (d) the terms in clause 5 of Schedule 3 if the contract does not contain terms specifying which person or persons will carry out or supervise the building work;
- (e) the terms in clause 6 of Schedule 3 if the contract does not contain dispute resolution procedures;
- (f) the terms in clause 7 of Schedule 3 if the contract does not contain terms prescribing how notices are to be given under the contract.

**9 Prescribed information and documentation to be supplied on completion of building work**

For the purposes of section 362T of the Act, the following information and documentation is the prescribed information and documentation that a building contractor must provide to a client on the completion of building work:

- (a) a copy of every policy of insurance—
  - (i) that the building contractor holds in relation to the building work; and
  - (ii) that is current (ie, subsisting) on completion; and
- (b) a copy of any guarantees or warranties that apply to materials or services that comprise the building work, including information about—
  - (i) whether the guarantees or warranties are transferable;
  - (ii) how to make claims under the guarantees or warranties;
  - (iii) whether the guarantees or warranties need to be signed and returned to the issuers in order to be valid; and
- (c) information about the processes and materials that must be used to maintain elements of the building work if—
  - (i) maintenance is required to meet the durability requirements of the building code; or
  - (ii) the validity of any applicable guarantee or warranty could be affected by how and whether maintenance is carried out.

## Schedule 1

### Prescribed disclosure information

r 5(1)(a)

#### Form

#### Prescribed disclosure information

*Section 362D, Building Act 2004*

#### **Information about the building contractor**

Name of building contractor (full legal name):

Type of business: individual/partnership/limited liability company:\*

Date partnership/company\* formed, if applicable:

Postal address:

Telephone number:

Email address:

\*Select one.

#### **Key contact person (if identified at the time when this information is provided)**

*(Information about the key contact person, being a person who will manage or supervise the building work and who is available to the client to discuss any aspect of the building project)*

Name of key contact person:

Telephone number:

Mobile telephone number:

Role in the building project (for example, "project manager", "site foreman"):

Relevant qualifications, skills, and experience:

Licensed building practitioner number (if any):

**Note:** The building contractor must notify the client if the key contact person changes.

**Insurance policies**

*(Details of every insurance policy or policies that the building contractor has, or intends to obtain, in relation to the building work)*

*Complete for each policy:*

Type of policy: [*specify: eg, contract works, professional indemnity, public liability*]

Amount of cover:

Relevant exclusions on policy coverage, if any:

**Information about any guarantees or warranties**

*(Information about any guarantees or warranties the building contractor offers in relation to the building work)*

*Complete for each guarantee or warranty:*

Nature or type of guarantee or warranty: [*specify: eg, guarantee, product warranty, completed work warranty*]

If guarantee or warranty is a product warranty, specify the product:

Period of guarantee or warranty cover:

Limits or exclusions on cover, if any:

## Schedule 2

### Prescribed checklist

r 5(1)(b)

#### About this checklist

A building contractor is required to provide you with this checklist and other prescribed information under the Building Act 2004 before you sign a contract for the building work if—

- (a) you request this checklist and the prescribed disclosure information; or
- (b) the building work is going to cost \$30,000 or more (including GST).

The building contractor is the person or company you have asked to do building work for you.

The building contractor may not be an actual builder. The building contractor could be a plumber, an electrician, or any other tradesperson who is doing some building work for you and whom you are dealing with directly.

#### Steps

*(See notes below)*

- 1 Become informed
- 2 Agree on project structure and management
- 3 Hire competent building contractors
- 4 Agree on price and payments
- 5 Have a written contract
- 6 Take control
- 7 Resolving disputes

#### Completed

*(Tick when completed)*

### *Notes*

#### Step 1—Become informed

*All building work must comply with the provisions of the Building Act 2004. You can find a copy of the Building Act 2004 on the New Zealand Legislation website: <http://www.legislation.govt.nz>*

Building work is any work done in relation to the construction or alteration of a building. This includes any work done on your home or other structure, such as a garage, retaining walls, and fences. It also includes work like painting, decorating, and landscaping if it is part of the construction or alteration of a building.

However, if the only work you are getting done is redecorating and there is no construction or alteration work involved, it is not building work. If landscaping work does not include any structures (eg, pergolas or retaining walls), it is also not building work.

*All building work requires a building consent unless it is exempt under the Building Act 2004.*

Generally, only simple or low-risk work is exempt from the requirement to have a building consent. Certain gas and electrical work is also exempt. For more information, go to <http://www.building.govt.nz>

Building work that is significant or of higher risk (such as structural alterations) requires a building consent and must be carried out or supervised by a licensed building practitioner. For more information on these requirements, go to <http://www.building.govt.nz>

### **Step 2—Agree on project structure and management**

*Building projects do not run themselves. Decide how you want to manage the building project.*

A few different roles are needed on a building project. You need someone to—

- manage timelines and costs:
- manage subcontractors:
- liaise with the local council:
- make decisions about the design of the work.

You can do some of this yourself, but if you are not knowledgeable about the building work process, you should get help from an architect, an independent project manager, a building company, or a licensed building practitioner who is licensed to co-ordinate the building work involved.

You should be really clear about the scope and size of the project and get detailed plans up front.

Be clear with your building contractor about who is doing the building work and who is responsible for making design and change decisions during the project.

### **Step 3—Hire competent building contractors**

*Ensure that your building contractor has the skills and resources to carry out the project.*

You should—

- ask around about the building contractor and get references for other work that the building contractor has done:
- find out if the building contractor is a licensed building practitioner or has other appropriate qualifications. For more information about licensed building practitioners, go to <http://www.building.govt.nz>
- determine whether the building contractor has sufficient insurance to cover the work while it is being carried out:
- ask about the building contractor's employees and what sub-contractors the building contractor will use on the project:

- if the building contractor is a company, look up its company records on the Companies Office’s Internet site. If your search raises concerns, ask the building contractor to explain.

#### **Step 4—Agree on price and payments**

*The contract should clearly state what payments are required and when. Where possible, a fixed price is preferable. The lowest price is not always the best price.*

You should—

- get detailed quotes (not estimates) for the building work:
- when comparing quotes, ensure that the scope of the building work and the materials and fixtures that you are comparing are the same across quotes so that you are “comparing apples with apples”:
- make sure you have the funds to pay for the project before the work begins and that you understand the payment terms agreed with the building contractor:
- think carefully before agreeing to pay more than the cost of the work that has been completed and the costs of any materials that have been supplied at the time you make the payment.

#### **Step 5—Have a written contract**

You should have a written contract. The contract should include items such as—

- a description of the building work:
- the start and completion dates for the building work:
- how variations to the building work will be agreed:
- the payment process, including dates or stages for payment and how payments will be invoiced, made and receipted:
- the dispute resolution processes to be followed.

You should obtain legal advice to ensure that you understand your rights and obligations and that the contract complies with all legal requirements.

**Note:** The Building Act 2004 requires that there must be a written contract for residential building work with a value of \$30,000 or more (including GST), and the Building (Residential Consumer Rights and Remedies) Regulations 2014 prescribe matters that must be included in every contract for residential building work with a value of \$30,000 or more. You can find a copy of the Building Act 2004 and the Building (Residential Consumer Rights and Remedies) Regulations 2014 on the New Zealand Legislation website: <http://www.legislation.govt.nz>

#### **Step 6—Take control**

All residential building work is covered by implied warranties prescribed by the Building Act 2004 that address matters such as workmanship and building work being fit for purpose. For more information, go to <http://www.building.govt.nz>

You should—

- make sure there is a clear line of communication with the building contractor through the site foreman, the project manager, or any other person who has authority to speak on behalf of the building contractor. (This person should be identified as the “key contact person” in the prescribed disclosure information that the building contractor has provided along with this checklist):
- when you are making decisions along the way, be clear as to whether those decisions will affect your contract and costs. If you do decide to make a change, keep track of the effect of that change.

**Step 7—Resolving disputes**

*It is in both your interests and the building contractor’s interests to keep the building project running smoothly and to deal with any disputes as they arise.*

If you have concerns about the building project, raise them with the building contractor (or the key contact person) as soon as possible.

Raise your concerns in good faith and use the dispute resolution processes agreed to in your contract. For information on your options, go to <http://www.building.govt.nz>

If you have received an invoice that you have concerns about, clearly outline your concerns to the building contractor in writing.

If you fail to make a payment when it is due, the building contractor might start dispute resolution proceedings before you have a chance to explain why you have not paid. (Simply withholding payment when there is a dispute will often make the situation worse.)

**Further information**

For more information, go to <http://www.building.govt.nz> or call the Ministry of Business, Innovation, and Employment on 0800 242 243.

## Schedule 3

### Implied terms

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#### 1 Building consents

- 1.1 The building contractor undertakes to obtain all necessary approvals, including building consents, before commencing the building work.
- 1.2 If any approval or consent is issued subject to conditions, the building contractor must, as soon as practicable, advise the client by notice of those conditions.
- 1.3 If any approval or consent is issued subject to any conditions that will require a variation to the building work, the building contractor must advise the client, by notice, no later than 10 working days after the date the consent is issued, of—
- (a) the building work that will be required to achieve the variation; and
  - (b) the effect (ie, the increase or decrease), if any, on the quoted or estimated price for the building work; and
  - (c) the effect, if any, on the due date or the estimated due date for completion of the building work.
- 1.4 If the terms of the variation are not agreed within 10 working days of notice being given under clause 1.3, either party may, by notice, cancel the contract.
- 1.5 Notices under this clause must be in writing, despite anything to the contrary in the contract.

#### 2 Code compliance certificates

- 2.1 The building contractor undertakes to obtain all code compliance certificates.
- 2.2 The building contractor must provide the code compliance certificates to the client before the building contractor submits its final payment claim under the contract.

#### 3 Variations

- 3.1 The client may ask the building contractor to carry out variations to the building work.
- 3.2 If a variation requested by the client will affect either—
- (a) the quoted or estimated price for the building work; or
  - (b) the due date or the estimated due date for completion of the building work,—
- the building contractor must, within 10 working days after receiving the client's variation, advise the client by notice of the matters set out in clause 3.3.
- 3.3 If clause 3.2 applies, the building contractor must advise the client by notice of—

- (a) the building work that will be required to achieve the variation; and
  - (b) any additional approvals or consents that will be needed; and
  - (c) the effect, if any, on any existing approvals or consents for the building work; and
  - (d) the effect (ie, the increase or decrease), if any, on the building contractor's quoted or estimated price for the building work; and
  - (e) the effect, if any, on the due date or the estimated due date for completion of the building work.
- 3.4 The client may agree to the variation either by notice or by countersigning the notice provided under clause 3.2.

#### 4 Payments

- 4.1 The building contractor is entitled to progress payments in accordance with this clause.
- 4.2 The amount of a progress payment must be calculated by reference to—
- (a) the relevant period; and
  - (b) the value of the construction work carried out, or to be carried out, during that period; and
  - (c) any other relevant provisions of the contract.
- 4.3 For the purpose of clause 4.2,—
- (a) the **relevant period** is—
    - (i) the period beginning on the day of the month on which construction work was first carried out under the contract and ending on the last day of that month (ie, the first period); and
    - (ii) each subsequent month:
  - (b) the **value of construction work** must be calculated with reference to—
    - (i) either—
      - (A) the contract price for the work and any other rates or prices set out in the contract; or
      - (B) if the contract does not expressly provide for the matters referred in subparagraph (A), the reasonable value of the work; and
    - (ii) any variation to the construction work authorised under the contract; and
    - (iii) if any work is defective, the estimated cost of rectifying the defect.
- 4.4 Progress payments are payable 20 working days after a written demand for payment (made in accordance with the contract) is received or deemed to be received.

- 4.5 The building contractor is entitled to submit payment claims in accordance with Part 2 of the Construction Contracts Act 2002.

## **5 Subcontractors**

- 5.1 The building contractor may engage a subcontractor or subcontractors to undertake any part or parts of the building work. However, the building contractor may not subcontract the whole or substantially the whole of the building work.
- 5.2 If the building contractor elects to subcontract any part or parts of the building work, the building contractor remains responsible and liable to the client for—
- (a) any building work undertaken by the subcontractor or subcontractors; and
  - (b) the quality and performance of any materials supplied by the subcontractor or subcontractors.

## **6 Dispute resolution**

- 6.1 If the building contractor or the client considers that a matter in relation to the contract is in dispute, that party must serve notice on the other party advising the other party of the nature of the dispute.
- 6.2 Both parties must use their best efforts to resolve any dispute through good faith negotiations.
- 6.3 If a dispute cannot be resolved within 10 working days of notice being given under clause 6.1, either party may serve written notice on the other referring the dispute to mediation.
- 6.4 The mediator must be agreed between the parties. However, if the parties cannot agree on a mediator within 5 working days of the matter being referred to mediation, a mediator must be appointed by the President of the Arbitrators and Mediators Institute of New Zealand.
- 6.5 Each party must pay its own costs associated with the mediation.
- 6.6 Despite the dispute, each party must continue to perform its obligations under the contract as far as practicable given the nature of the dispute.

## **7 Notices**

- 7.1 All notices under this contract must be in writing and either delivered by hand or sent by fax, email, or post to a contact address that has been provided by the relevant party.
- 7.2 A notice is deemed to be received,—
- (a) if it is personally delivered, when delivered; or
  - (b) if it is posted, 3 working days after posting; or

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- (c) if it is sent by fax, on production of a transmission report (by the machine from which the fax was sent) that indicates that the fax was sent in its entirety; or
  - (d) if it is sent by email, when the email leaves the communications system of the sender, provided that the sender—
    - (i) does not receive any error message relating to the sending of the email; and
    - (ii) receives confirmation that the email was delivered (which confirmation may include an automated delivery receipt from the communications system of the recipient).
- 7.3 Despite clause 7.2, any notice received after 5 pm, or received on a day that is not a working day, is deemed not to have been received until 9 am on the next working day.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 January 2015, are the Building (Residential Consumer Rights and Remedies) Regulations 2014. For the purposes of Part 4A of the Building Act 2004 (the **Act**), which concerns consumer rights and remedies in relation to residential building work, these regulations prescribe—

- the minimum price for residential building contracts for building work that must be in writing, must be dated, and must contain certain minimum content:
- a checklist and certain disclosure information that must be provided by a building contractor to a client—
  - if the client requests it; or
  - if the building work is for not less than the prescribed minimum price:
- minimum content for residential building contracts for not less than the prescribed minimum price:
- implied terms for residential building contracts for not less than the prescribed minimum price where the contract does not contain the prescribed minimum content:
- information and documentation that must be provided by a building contractor to a client on the completion of building work.

### Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements in July and November 2010 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/building-and-construction/ris-bar-proposals-for-reform-agency.pdf>
- <http://www.mbie.govt.nz/publications-research/publications/building-and-construction/ris-dbh-bar-ensuring-compliance-consumer-protection-nov10.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dbh-bar2-jul10.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-dbh-barcp2-nov10.pdf>

2014/361

**Building (Residential Consumer Rights and Remedies)  
Regulations 2014**

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These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Wellington, New Zealand:

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