

How to Terminate Your Building Contract

Homeowners have the right to get out of their domestic building contracts. Find out what these rights are and how you may exercise them.

Homeowner's Right to Terminate

When am I allowed to terminate my building contract?

You are allowed to terminate your contract in certain instances provided by law, and in certain instances provided in your contract.

Homeowner's Right to Terminate the Building Contract	
Under the Law	Under the Contract
During the Cooling Off Period	Termination Clause
When COMPLETION TIME or COSTS Blow Out for Unforeseen Reasons	ADR Clause

Under the Law

The Domestic Building Contracts Act 1995 (the Act) allows you to terminate your major domestic building contract in two instances:

1. During the "cooling-off period," for any reason

The Domestic Building Contracts Act 1995 (the Act) allows you to terminate your major domestic building contract in two instances:

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Some key points:

- The cooling off period is a 5-day period within which you can terminate the contract for any reason, without penalty.
- The 5-day cooling off period is 5 business days, counted the day after you receive a copy of the contract signed by the builder (regardless of when you signed it).
- All major building contracts must contain a provision informing you of your right to withdraw from said contract within the 5-day cooling off period.
- If your contract does not contain such provision, you may withdraw from the contract within 7 days of becoming aware of the absence of such provision.
- Standard form contracts always contain a provision for the 5-day cooling off period.

How to effect termination:

Notify your builder in writing if you decide to withdraw from the contract, any time during the 5-day cooling off period

Notice to Withdraw must be sent to the builder through any of the following means: by giving it to the builder in person

- by sending it to the builder's address
- by sending it to the builder by registered post
- by serving it on the builder in the way stated in your contract

2. When completion time or costs blow out for unforeseen reasons

You may still terminate your domestic building contract beyond the cooling off period on any of the following grounds:

- a. completion time unreasonably exceeds that which was agreed upon, for unforeseen reasons, or
- b. costs skyrocket, for unforeseen reasons

Some key points:

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Blown out costs mean that the contract price rises by 15% or more after entering into the contract.

Unreasonably delayed completion time means the contract is not completed within 1.5 times the period it was due for completion

Both cases must be due to something unforeseeable by the builder when he entered into the contract.

In computing the price or time increase, the following must not be included:

- a prime cost item or provisional sum
- variations to the building plans or specifications, that you requested

You will still be required to pay the builder a reasonable price for the work actually completed.

How to effect termination:

- Give the builder a signed Notice that you are ending the contract based on section 41 of the Act.
- Include all details of the ground relied upon.
- The Notice may be given to the builder in the same manner as enumerated above (terminating the contract during the cooling off period).

Under the contract

Most construction contracts contain provisions that detail the rights of the parties in case one of them commits breach.

Specifically, they enumerate the grounds for termination, and the procedure for terminating the contract.

They are usually embodied in a termination clause, or in some cases, in an ADR (Alternative Dispute Resolution) clause.

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Termination Clause

While a termination clause allows a party to terminate the contract for breach, not all types of breach give rise to a right to terminate. In most cases, the breach must be substantial, for the injured party to validly invoke termination.

How to Effect Termination:

- Serve the builder a Notice of Default or a Notice of Intention to Terminate.
- Include all the grounds that form your basis for terminating the contract.
- The Notice must be served on the builder in the manner specified in the contract.

Some key considerations:

Most termination clauses would require you to give the builder a period of time to rectify the situation, before you can terminate.

In such case, your Notice of Default or Notice of Intention to Terminate must indicate that the builder's failure to comply with the directive to repair the damage within a specified period, will trigger the service of a second notice formally terminating the contract

Note that in this case, it is the failure of the builder to rectify the situation or repair the damage to the works (after the lapse of the period of time given in the Notice of Default), that gives you the right to terminate the contract.

ADR Clause

Some contracts require that the parties first undergo Alternative Dispute Resolution (ADR) before they can go about terminating the contract.

How to Effect Termination:

- Give Notice to the builder that you are invoking the relevant ADR provision for a breach they committed. Include all grounds relied upon.

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- In some cases, the contract-mandated ADR procedure involves several mandatory stages; first, a meet-up between the parties to discuss a solution, and if that fails, then they need to attend a form of ADR like mediation or conciliation, before they can exercise their termination right.

How We Can Help

If you are currently in dispute with your contractor and would like to explore your options, feel free to give us a call. First consult is absolutely free.

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