Government
of South Australia

Attorney-General's
Department

BUILDING EXTENDING RENOVATING A HOME

A CONSUMER GUIDE

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July 2006

www.cbs.sa.gov.au

This booklet has been written for people who are considering:

building, extending
or renovating a home.

Much of the information about research, planning and documentation refers not only to building a home, but to doing extensions and renovations also. Therefore we recommend you refer to earlier sections for information that is common to all building projects.

A glossary of terms that explains in simple language many of the contract terms, building terms and references referred to throughout the booklet, is featured at the end of the booklet.

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Research and Planning

So you've decided to build, extend or renovate? Congratulations! It could well be the most exciting and rewarding project you ever undertake. But it is also likely to be one of the biggest and most complicated financial decisions you'll ever make – so it is important to get it right.

Managed well, the home you build or renovate could turn out to be a rewarding investment over the long term. But to do this you need to know your rights and how to exercise them during the entire building process.

This booklet has been designed to help arm you with that knowledge. Good luck!

When building, extending or renovating a home:

- be well informed of your rights
- be prepared to negotiate
- always use a licensed, reputable builder
- don't be afraid to ask questions if you are unsure
- don't rush your decision making
- read everything before you sign anything
- get everything – including all quotes and decisions – in writing.

QUICK TIP: It's important to spend time working out what you need in a home - and what you can afford - before you commit to the project.

Before you start to build

Location

The first big decision you will need to make is where you want to build your home. Tackle the exercise in much the same way you would if you were buying an existing home. Make a list of the locations that appeal to you and that are in your price range. Think about the facilities you need now – and in the future. For example, does the area have good transport nearby? How far is it from your workplace? What about shops and parks, schools and child care facilities? Finally, take in the bigger picture. For example, does the area have a lot of commercial properties that may affect your quality of life in the future?

QUICK TIP: The location of your home is your first big decision. Spend time getting it right. Speak to family, friends and people who live in the areas you like. Ask them what's good about living in the area, and what's not so good. Think about what you want from your suburb – now and in the future.

Buying land

There are a number of things to consider before you set out to build a home. It will help if you know where you want to build, and what size and type of home you want to build. These factors will affect the price of building, which in turn will affect the amount of deposit you will need.

Before buying land, consider the availability and cost of connecting and maintaining services such as:

- water
- electricity
- gas
- telephone
- sewerage
- fire control.

Look at lots of different blocks of land before you make a final decision. Critically evaluate each one. Compare prices, size of the land, views and location. Try not to let emotion get in the way of a sensible and well thought out purchase.

There are a number of considerations that need to be included in your decision making process. For example:

- building and zoning regulations
- existence of trees and whether they can remain or will have to be removed (usually with council permission) prior to building
- the slope of the land as steep sites tend to increase building costs
- soil stability
- any creeks, dams or watercourses on or near the site
- flood restrictions, which may affect finance and insurance
- site access for heavy machinery such as bulldozers, bobcats, concrete trucks and construction equipment
- exact boundaries of the land. A registered surveyor should be employed to check and peg these out
- easements which may restrict what/where you can build
- the position of any pre-laid services, such as underground power
- quality of views.

Cooling-off rights

If you buy land in South Australia you are entitled to a cooling-off period. A cooling-off period allows you to reconsider the purchase, conduct further inspections, or just change your mind if you feel you have made a hasty decision. However, this does not apply if the land was bought at auction.

The *Land & Business (Sale & Conveyancing) Act 1994* Form 1 details your right to cool off and how you must go about serving a cooling-off notice.

The cooling-off period expires at the end of the second clear business day after the contract was signed (if you received the Form 1 prior to making the contract); or at the end of the second clear business day after the Form 1 was served on you (if you received the Form 1 after making the contract).

The cooling-off notice must be in writing and must be served on the vendor or the vendor's agent, either personally, by certified mail or by facsimile. Precise details of how the notice is to be served are set out in the Form 1. There is no special wording for the notice and no reason has to be given.

If a property is to be offered for sale by auction but you make a successful offer before the auction, a cooling-off period does apply unless you waive that right after obtaining independent legal advice.

You also have no right to cool off if you buy:

- after the auction but on the same day the auction was held
- in the name of a company
- by assignment, or
- by tender or option to purchase.

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Building options

There are a number of options to choose from when building a home. For example:

1. house and land packages
2. land now, home later
3. buying off the plan
4. display homes
5. custom built homes
6. kit homes
7. transportable homes
8. owner-building.

House and land packages

House and land packages can be marketed in a range of ways, so what you're offered by one project builder might not necessarily be the same as what you're being offered by another. Take your time and compare the options. Always seek legal advice before entering into a contract.

House and land packages may be offered as a total deal. For example, a developer will own the land and a project builder will market 'house and land' packages within that housing development. In some cases you may be able to purchase the land from a developer/builder and still choose to use your own builder.

House and land packages may be offered with a pre-determined home design that is chosen and built by the project builder to suit the size, shape and orientation of the building block. Usually the project will have been approved by Council for development, and the purchaser has a clear 'street-scape' vision of what the finished appearance of the housing development will be.

Land now, home later

Another option is to buy a block of land now and then build later. This gives you a chance to save more and have a reduced mortgage when the time comes to build your home. Be mindful, however, of any conditional clauses on your land contract that may stipulate a time frame within which building work must start or be completed.

Remember that you will need to pay annual service fees for the block even when there is no home on the land. These fees include council rates and water and sewerage fees.

Buying off the plan

Buying off the plan involves paying a deposit for a home and then paying the balance on completion of the home.

The advantage is that you generally get to choose from a wide range of layouts, aspects and internal finishes. Often, you can negotiate to choose floor coverings, taps, tiles or paint colours that are not in the schedule. You may initially be relying on an artist's impression of your future home and layout, but further down the track you will have access to architectural plans and details.

Purchasing a property is always a complex decision with many pitfalls for the unwary, but the risk is greater if you cannot even inspect the property that you are buying.

When buying off the plan you will usually sign a basic domestic building contract (which will include a description of the land), pay a deposit and then pay the balance when the home is completed.

The most significant difference between buying off the plan when the sub-division is still under construction is that there may be conditions or caveats that are difficult to identify clearly and are outside the builder's or developer's control (such as the position of underground power, storm water easements etc).

In these cases it is important to understand what you can do if the site you signed for turns out to be unacceptable. Most builders and developers will offer alternative sites should these issues arise. The details are often difficult to finalise until after the subdivision plan has been lodged with the Development Assessment Commission and a development number is issued. Refer to http://www.planning.sa.gov.au/dac/ for further information.

QUICK TIP: Ensure that you know which properties have been sold before you sign up. You should also feel confident that the developer has enough money to finish the project.

Display homes

Most display homes are showcased in display villages where a range of different home designs and layouts are available for public viewing.

Display homes, sometimes called project or 'spec' homes, are designed and built by project builders. Because of the high volume of homes they build, they can offer very reasonable prices compared, say, to custom built homes.

It is a good idea to look at a number of homes by various builders before you narrow your choice down to three or four homes. Once you've done that, get out the floor plans for the homes and compare room sizes to get a feel for whether your furniture and lifestyle will suit the home. Imagine the home in the colours you would choose, and try to see past the furniture and furnishings in the display home you viewed.

Next, find out exactly what is included in the home and determine whether the building company will allow any changes to the plan, fixtures or building materials. Obtain a written quotation from the builder so that you are ready to negotiate with your bank or loan provider.

The three or four builders you have chosen should now be asked to quote on building the house on your block of land. This is important, because the price tag of display homes does not include site costs.

Custom built homes

If you want an individual home built specifically to your personal tastes, you will need to have it custom built. Custom builders differ from project home builders in that they tend to build only a handful of houses each year. Most of the houses will be one-offs. Because of this they tend to be more expensive than project homes. If you decide to go with a custom built home you will need to come up with a suitable design.

An architect or draftsperson can help you design a home and draw up plans, or you can draw them up yourself. Alternatively, many builders provide architectural services.

QUICK TIP: Drawing the plans yourself is not recommended unless you know what you are doing. Remember that the plans and specifications and technical details will be used by the council to approve the project and by the builder to quote and build.

Kit homes

Kit homes include the plans and components of a house delivered to your site, ready for you or a builder to construct. A key advantage is that everything you need to build the home can usually be delivered at once on one or two trucks – making it an option more commonly seen in country rather than city areas.

Before you decide on a kit home, it is a good idea to talk to people who have already bought from the same company. Ask them a few questions such as how the home was actually assembled, whether all the components were supplied, what the quality was like, what they had to provide themselves, how easy it was to build, what was not included, what the quality of the instruction manual was like, and so on.

Before you commit to purchasing a kit home, obtain a copy of the inventory and building manual to read thoroughly. Make yourself familiar with the kit home concept and check whether items such as footings, slab/floor, wiring/switches/electrical accessories, sanitaryware, plumbing/taps/fittings, built-ins, kitchens, tiles, paint, etc are included.

If a kit home company offers to erect your home for you, make sure the builder they use has a building work contractor's licence in South Australia. Alternatively you may choose to erect the kit home yourself as an owner-builder, or contract with a local builder. Again, ensure that the builder is properly licensed. If you erect the kit home yourself you will need to appoint a registered Building Work Supervisor to certify the work.

Whichever option you choose, make sure you obtain an independent assessment of the total cost of construction and follow the same guidelines as you would in building any type of home.

QUICK TIP: Remember, you are responsible for general insurance (fire, theft, etc) of the kit home once it leaves the factory.

QUICK TIP: Council will require any structure to be certified by a building supervisor. This will be reflected at the time of resale in the *Land and Business (Sale & Conveyancing) Act 1994* (Form 1).

Transportable homes

Transportable homes are prefabricated and delivered as portable homes. Delivery and positioning will generally be included in the contract price.

A number of transportable home builders offer the option of constructing the home on site, but this usually depends on a number of factors such as site accessibility, transport and distance.

QUICK TIP: Before you sign a contract for a transportable home, clarify who is responsible for the connection of services, termite protection and any additional work that may be needed to make the house meet council requirements.

Owner-builder

Many people opt to owner-build their home. Owner-builders do not need to hold formal trade qualifications, unless they are required for specialist work, such as plumbing, gas fitting and electrical work.

If you are confident and competent to do so, you may decide to perform all the building work on the home yourself. Alternatively, one or more licensed builders can be contracted to do all or some stages of the building project.

If you contract out any building work costing $12,000 or more, your contractor must complete a Domestic Building Work Contract with you. If council approval is required the builder must take out Building Indemnity Insurance to the value of the contract. It is important to note that Building Indemnity Insurance can only be taken out by a person, business or company that holds a builder's licence. Owner-builders cannot obtain Building Indemnity Insurance.

Lock-up stage includes the floor, walls, roof, eaves, doors and windows, as well as some electrical, gas fitting, drainage and plumbing. With the exception of plumbing, gas fitting and electrical work, the owner can arrange to finish the house, but only in circumstances where they feel totally confident of the processes required.

While it is acknowledged that owners sometimes engage licensed builders to construct their house to lock-up stage

and then arrange to complete the work themselves, this approach may present problems, which may affect the integrity of the building. Poor attention to the drainage and disposal of stormwater may affect footings. Failure to undertake adequate perimeter termite protection may also place any timber construction at risk. A number of regulations also apply to the construction of certain retaining walls, and the failure of any of the external building works may place your warranty at risk.

Owner-builder projects generally take longer and cost more than planned but financial savings can be made if the owner-builder has significant building expertise. It is a complex task, however, and if mistakes are made, precious savings can be lost.

Owner-building a home can be stressful, particularly on relationships with family and friends. It requires a great deal of time, effort and patience for all concerned.

As an owner-builder, you can expect your responsibilities to include the following:

- provide plans, specifications, and engineering and technical details (if applicable)
- comply with house energy rating requirements
- lodge plans and other relevant documentation with local council
- call for tenders and quotes
- obtain finance
- obtain water and sewerage diagrams and all other approvals from the appropriate authorities, such as the local council and water authority
- decide on a quote, and obtain a written contract (refer to Contracts section page 27)
- arrange public liability insurance
- ensure occupational health and safety awareness for all workers
- pay any taxes that may be due to the Australian Taxation Office
- order, deliver and manage materials
- oversee and schedule all aspects of the building process, such as the arrival and departure of tradespeople
- hire a supervisor or building surveyor as you will need a qualified person to sign the Statement of Compliance for the building work
- ensure that building indemnity insurance has been taken out if building work is contracted for $12,000 or more and where council approval is required
- coordinate tradespeople
- arrange for power and water to the site
- arrange for toilets, sheds and other facilities to be delivered to the site
- set out the site
- arrange for scaffolding where necessary
- purchase all materials and take delivery of them
- clean up after tradespeople (to save you money)
- answer all enquiries about the project
- keep records of the project
- pay tradespeople
- control costs
- deal with all problems and disputes
- sight and inspect all tradespersons' insurance policies
- ensure you, as the owner-builder, have appropriate insurance cover as you build.

Before commencing building work, owner-builders should check that the proposed development is an approved development and that they have received a copy of the relevant Development Approval. Any queries regarding the Development Approval or its conditions should be clarified with the relevant authority prior to commencement of the building work.

QUICK TIP: When hiring building work contractors, sub-contractors or tradespeople, an owner-builder needs to be aware of statutory requirements for licences, contracts and insurance.

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Home design and layout

Drawings

Drawings are the visual instructions or plans given to the builder (and the local authority) about the measurements and features of the property being constructed. Many builders provide an architectural service.

Copyright on existing house plans

House designs advertised in newspapers are generally protected by copyright. Project builders who employ designers generally produce copyrighted house designs. Any person using these designs without the permission of the copyright owner may face legal action.

If you have seen a design in the newspaper that you like, you can approach the builder who placed the advertisement in the newspaper. Keep in mind that advertisements provide little detail, so ask lots of questions and note what is, and is not, included in the package.

The builder's designer can modify their design to accommodate any specific requirements that you may have. These modified designs are also likely to be protected by copyright.

No matter how much you like the design, ensure first that it is compatible with the block of land you have selected. Many project builders offer home and land packages where the home designs have been specially selected to fit on the blocks available.

Remember that once you have selected a home, any changes required by you after construction has begun will be subject to the variation process of the contract and may be expensive and cause delays.

Efficiency issues

Energy efficiency should be given high priority when preparing a home design.

Designing an energy efficient home could be as simple as taking into consideration the natural features of your land, the design of your home and the aspect of your building site. The bonus for you is that an energy efficient home is more comfortable and cost efficient to run. The bonus for the environment is that less energy is wasted.

There are nationally accredited professionals who are trained in environmental building techniques. Many of the principles and practices they follow are now mandated as standard requirements when seeking development approval. Many builders employ accredited professionals who can perform this task as part of the building process.

A home designed around energy efficient principles offers a number of benefits:

- minimal heating and cooling required
- natural ventilation
- lower running costs
- cool in summer and warm in winter
- reduced greenhouse gas emissions into the environment.

QUICK TIP: A list of energy efficiency professionals can be found at www.greensmart.com.au
Planning SA also has a website that includes a list of house energy rating assessors who can complete an assessment and issue a certificate stating the energy rating for a particular design. www.planning.sa.gov.au – go to 'building policy' then 'energy efficiency' then 'house energy rating assessors'.

Sustainable housing package

Three new requirements have been introduced to make houses more sustainable.

- The enhanced Five Star Energy Efficiency provisions.
- New minimum requirements for rainwater tanks. The requirements need to be met for all new homes and significant home extensions.
- New requirements for hot water systems in all new dwellings. The requirements only apply to new houses in areas where reticulated gas supply is available and set greenhouse gas emission performance standards.

The technical requirements are contained in the South Australian variations to the Building Code of Australia (BCA2006) and Amendment 13 to the South Australian Housing Code.

For further information contact the Building Policy Branch, Planning SA on (08) 8303 0602.

Selecting a builder

You will need to work closely with the builder you select, so choose one you feel you can have a professional and transparent relationship with. Price alone should not be the deciding factor when making your choice.

Develop good and open communication with your builder from the start. You will have many questions while the home is being constructed. Likewise, your builder will need to remain in close contact with you to confirm and discuss personal choice items and finishes you select for the home.

Unless you communicate freely and openly with your builder, you may find yourself experiencing misunderstandings and disputes.

Reputation

It is important to choose a builder with a good reputation. There are a number of ways you can do this. Seek recommendations from friends, neighbours or relatives and be on the lookout for building work you like.

Keep an eye out for advertisements on television, radio, in homebuyer magazines and the local newspapers, or look in the Yellow Pages under 'Building Contractors' and under the various types of trade.

The Master Builders Association (MBA) or the Housing Industry Association (HIA) may also be able to provide you with a list of their builders who operate in your area, and who specialise in the type of work you require.

Once you have narrowed your selection down, ask the builder to provide you with contact referees and a list of addresses for building work they have carried out in the past 12 months. This will allow you to sight the quality of their recent building work. Contact recent building owners who have engaged the builder. Seek their opinion on the builder's reliability, standard of work and business ethics.

Qualifications

You should ensure that the builder you choose holds a current and appropriately endorsed Building Work Contractor's Licence and Supervisor's Registration to perform the building work you require.

QUICK TIP: You can check on licence details by visiting the Office of Consumer and Business Affairs website www.ocba.sa.gov.au and accessing the Licensing Public Register.

It is your builder's duty and responsibility to take reasonable care in the construction of your home. In some cases this may require the builder to engage outside licensed and qualified tradespersons.

Quotes

It is advisable to get written quotations from three licensed builders.

Before you approach a builder for a quote, ensure your plans and specifications are complete and clear. This way each builder is quoting on exactly the same job. However if the plans and technical details have not yet received all of the necessary approvals from the local authorities, alterations to the plans may be required.

Always ask the builder to provide you with an itemised quote. This will allow you to compare prices and also to detail any prime cost items such as sanitary ware, tiles, white goods or carpets.

Ascertain with the builder whether the cost of fixtures and fittings shown on the plans and specifications are included in the price.

The builder should visit your building site to clarify what extras may be required to address the particular site conditions.

Such extras may include:

- a surcharge for building outside of the builder's normal geographical area
- site access problems for delivery of materials
- unusual footings

- extra long connections to drainage, water service or electricity
- engineering fees
- rock excavation
- drilling under roads for service connections
- clearances for overhead services
- special requirements to cover Occupational Heath Safety and Welfare and/or Environmental legislation.

A builder may be unable to provide an exact quote for these extra items. At the very least, a realistic provisional allowance should be included in the final quote.

You should be satisfied that you know exactly what is included in the quote.

Be wary of extremely low quotes as well as very high quotes. A very cheap quote could indicate that the builder is inexperienced, desperate for work or has left out certain items. Make sure you study all quotes carefully to check that all items you have requested are included.

QUICK TIP: Make sure quotes you receive itemise the GST payable. Remember that a quote is an estimate of the cost of a building project – NOT a binding contract.

Dealing with your builder

Put simply, your builder's responsibility is to build your home in accordance with the agreed and approved plans and contract documents. Your responsibility is to pay for the work in accordance with the contract, and to communicate your choices, decisions, changes and any concerns you may have.

Remember, communication is the key to a good and productive relationship with your builder. Most difficulties arise from a breakdown in communication. Speak up promptly if you have any concerns or questions.

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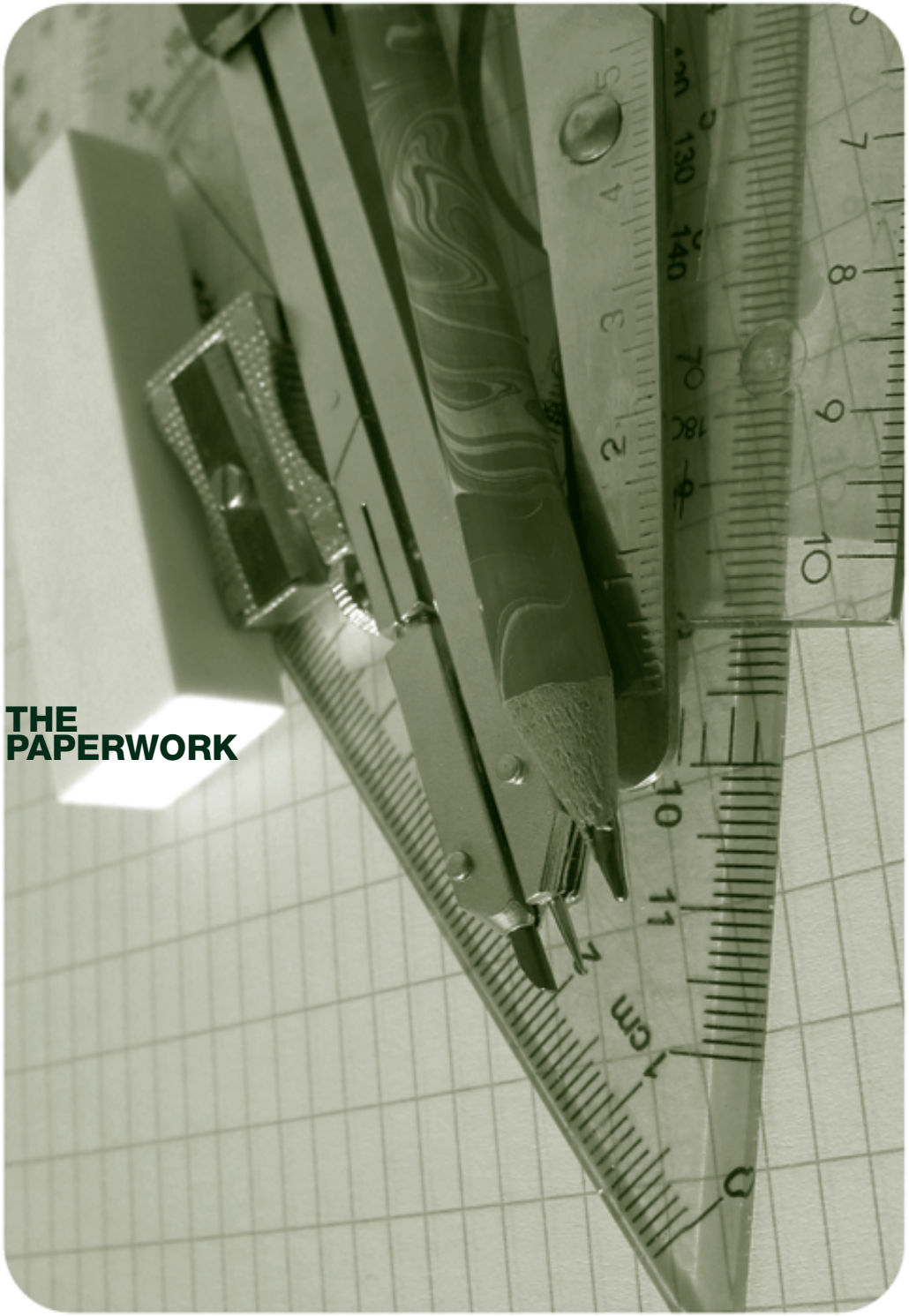

THE PAPERWORK

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Insurance

Your builder is usually responsible for insuring your home during the construction stage until it is officially handed over to you. This will depend upon the terms of the contract and, especially with addition and renovation contracts, you should read the contract carefully to determine if it is your or the builder's responsibility. However, it is your responsibility to protect and insure any items owned by you at the building site during the construction stage and beyond.

QUICK TIP: It is wise to have Public Liability Insurance in place during the building process. This may help protect you if an adverse event occurs on your building site where there may be perceived negligence on your part.

Building Indemnity Insurance
In South Australia any building work carried out in connection with a building work contract costing $12,000 or more and requiring Council consent, must be covered by a Building Indemnity Insurance policy. Your builder must ensure an indemnity policy is in force before starting work and your local council will also require that a policy be in place before granting development consent.

Under the *Building Work Contractors Act 1995*, there are statutory warranty benefits to guarantee that the building work will be done in a proper manner and in accordance with the agreed plan and specifications. The statutory warranty also covers the quality of the materials supplied in connection with the building work.

In the event that your builder dies, disappears or becomes bankrupt within 5 years from the date of completing the building work, you may be able to claim on the indemnity policy for any breach of the statutory warranty provisions. When the builder presents you with the policy certificate, familiarise yourself with the document as there are conditions that apply when making a claim.

If you are an owner-builder then when you sell the property you must disclose whether or not indemnity insurance is in place.

QUICK TIP: Your builder must provide you with a copy of the certificate of insurance. Keep it for your protection.

Important Note: Building work contractors are no longer required to take out building indemnity insurance in relation to constructing multi-storey residential buildings. A multi-storey residential building is a building that has a rise in storeys of more than three and contains two or more separate dwellings. A storey does not include a mezzanine or a space within a building if it is intended that the space contain only a lift shaft, stairway, meter room, laundry, bathroom, shower room, water closet, car park or combination of any of the above.

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Council approval

Before you start any work on your home, you will need to obtain development approval through your local council.

A development approval may be made up of one or more of six consents. The required number of consents depends on the nature and kind of development proposal. When all necessary consents have been issued, the relevant authority can issue a development approval to the applicant.

As the building owner, you must not allow domestic building work to commence prior to this approval being given.

Building Schedule

A building schedule documents the specific selections for your home, item by item. A provisional sum schedule states monetary allowances for the fittings or fixtures you have selected for your home.

Once you have chosen a home design with detailed building specifications you must complete a Domestic Building Work Contract with the builder of your choice.

Form 1

A Form 1 – Your Building Contract: Your Rights and Obligations, provides you with information about your building work contract, your cooling-off rights, your warranty rights, building indemnity insurance, deposits and payments. (See also the section on Cooling-off Rights page 29)

Your builder must give you a legible copy of a Form 1. You should read the notice carefully and keep it for future reference.

QUICK TIP: The Form 1 is often printed on the back of a standard building contract.

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Contracts

Contract documents

A written contract is mandatory for any building work costing $12,000 or more. If the work is under $12,000 a contract in writing is still desirable, and can be in the form of a Minor Works Contract.

A contract formally sets out an agreement between you and the builder. The contract must be in writing, and must be signed by both parties before any work begins.

The contract document may vary depending on the type and value of the building work. It will usually comprise a number of documents, including the drawings and specifications.

The contract must:

- be in writing
- be legible
- set out, in full, all of the contractual terms
- include the name of the building work contractor and the contractor's licence number
- include the names and licence numbers of the contractor's business partners
- be signed by the building work contractor and the building owner (or authorised agent).

Domestic building work contract

These types of contracts are available in several forms for different types of work. Typically they are:

- House contracts (new houses)
- Addition and Alteration contracts
- Minor Works contracts (usually for smaller building work)
- Cost Plus contracts (work charged at cost plus an agreed margin or percentage).

Contract terms

There are a number of terms in your building contract that you should be familiar with.

These include:

Fixed price lump sum

A domestic building work contract can state a price that is fixed, but can also list items as being prime-costed or estimated and which may go up or down in price according to the actual acquisition price. There is normally a provision in the contract to vary the price according to agreed variations. These are generally variations that have been requested by the owner. A Fixed Price Lump Sum contract is the most widely used form of house building contract.

Rise and fall
A contract may contain a rise and fall clause and will also contain an agreed method of adjusting the costs to allow for fluctuations in labour and material costs during the construction period. Alongside the prices stated there must be words to the effect of 'estimate only' or 'this price may change'.

Rise and Fall contracts are very rarely used in the housing sector.

Cost-plus clause
Contracts that are cost-plus allow for the builder to charge for the actual cost of the work plus an agreed margin or percentage. In South Australia that percentage is limited to 15%.

Prime-cost items
The building contract may include the supply of particular items such as kitchen stoves or bathroom tiling up to a selected dollar value. The goods you select may exceed the nominated value and you may then be required to pay the additional cost plus a surcharge applied by the builder.

Provisional sums
Provisional sums are 'best estimates' of building works that are to be contracted out during the building process. The provisional sums must be fair and reasonable estimates.

Signing a contract
Before you sign any contract make sure all of the documents are gathered together and are fully completed.

There should be no blank spaces and the contract should include everything you have discussed with the builder. Do not rely on verbal promises or agreements.

Read all of the documents carefully and if you have any questions discuss them with your building work contractor. If you are not satisfied with the explanation he or she gives you, then seek advice from a solicitor or from Consumer and Business Services.

Once you have signed your domestic building work contract it becomes a legally binding agreement. Both parties should initial each page and initial every alteration or addition to the contract.

QUICK TIP The builder must give you a copy of the contract as soon as practicable after it has been signed, and before the building work begins.

Deposit
As a general rule, your building work contractor is entitled only to genuine progress payments for work done. However, your contractor may ask you to pay in advance for expenses that he or she has to pay to a third party. For example, to the council for planning approval, to pay building indemnity insurance or to pay an engineer or surveyor for a report. Apart from money paid in advance for such fees, the law prohibits the builder from taking a deposit of more than $1,000 on a domestic building work contract between $12,000 and $20,000 or 5% of the contract price for contracts $20,000 or more. If in doubt, seek advice before making any payments.

Cooling-off rights (Building Contract)
If you sign a contract with a licensed building work contractor to build your new home in South Australia, you are entitled to a cooling-off period. You can opt out of the Domestic Building Work Contract during this period.

The Building Work Contractors Act Regulations 1995, Form 1 – Your Building Contract: Your Rights and Obligations, details your rights and obligations in regards to the contract and how to go about serving a cooling-off notice.

You may cancel your building contract if you act before the prescribed time. If you wish to cancel, you must give your building work contractor written notice of your intention. You must serve that notice on the building work contractor either personally or by certified mail in an envelope addressed to the contractor.

You must do this:
- before 5 clear business days have expired after the making of the contract; or
- if your building work contractor has not complied with relevant provisions of the Act, before the contractor completes the building work under the contract.

Progress payments
Your domestic building work contract will outline the terms of your progress payments. Generally, however, contracts imply that progress payments must be made as various stages of construction work are completed. These payments are generally expressed as a percentage of the total contract price.

The law requires that your building work contractor make a written demand for a progress payment. Pay only when you receive that written demand. The builder should only ask for a progress payment when the work is substantially complete and

QUICK TIP If you've borrowed money to build your home, your lending institution will generally arrange for progress payments to be made on your behalf.

Notes:

Contract variations

The terms of your contract will set out whether you and/or the builder are entitled to vary the contract. In many contracts the builder can insist on a variation depending on what work is required. In other contracts the owner may not be entitled to a variation.

Variations are changes initiated by you or the builder and agreed to by both parties throughout the project. The changes can affect the price and extend the time of the contract, but they may be inevitable, for example, in circumstances where you find unexpected requirements of the site.

Even fixed price contracts can result in price increases if you or your builder suggest changes once building work has begun.

All variations should be signed by both you and the builder (unless your contract with the builder allows some variations without your consent) and should be attached to your original contract before you instruct the builder to make them. This makes the changes legal and enables you to refer to the contract if a dispute arises about costs, details of building and finishes or time delays.

QUICK TIP: It can be very difficult to resolve a problem if you have no written agreement about variations and a dispute arises. Avoid verbal agreements and always put variations in writing before they are implemented.

Owner's variation

It is common for the owner to want to make variations during the building process. Be mindful of your variations and how they will affect your final payment. Have you allowed sufficient funds in your budget for the variations that either you or your builder have suggested? Ensure that your loan can be increased to cover any changes. Keep in mind that variations made by you will extend the time of the project.

Builder's variation

Whether a builder is entitled to request or make a variation will depend upon the terms of the contract. Make sure you understand your contract and whether you or the builder can ask for a variation.

Start and finish dates

It is preferable to have an actual start and finish date included in your domestic building work contract. If the builder is unable to nominate an exact starting date because, say, a building permit has been delayed, the contract should state how that date is to be determined. The builder must also do everything reasonable to ensure that the work will start as soon as possible and should be carried out with due diligence.

If the starting date is not known, the number of days required to finish the work must be stated in the contract. To ensure accuracy, a builder should allow for bad weather, weekends, public holidays and any other reasonable hold-ups within the time estimated.

Completion

Be aware that your builder is not entitled to a rise and fall clause in regard to any part of the building work performed after the end of the period stipulated for completion of the building work unless:

- the contract provides for extension of the stipulated period
- the delay in completing the building work was the fault of the building owner or due to some cause beyond the control of the contractor that the contractor could not reasonably be expected to have foreseen at the time the contract was made
- the contractor, as soon as reasonably practicable after becoming aware of the likelihood of delay in the completion of the building work, gave notice in writing to the building owner or an agent authorised to act on behalf of the building owner extending the period for completion and specifying the cause of the delay, and
- the building work was completed as soon as reasonably practicable in the circumstances.

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THE BUILDING PROCESS

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The building process

Inspections

A number of inspections will be carried out on your home during the building process to ensure quality workmanship.

Your licensed building work contractor will hold a Supervisor's Registration qualification, which means that he or she is responsible for the quality of building work performed for you. Council building authorities may also carry out inspections and discuss building practices with your builder at various stages of the building work.

Many larger project builders will engage sub-contract builders to perform many or all of the trades associated with building your new home.

Remember, your domestic building work contract is between you and your principle builder, and not with any sub-contractor. Therefore you should always establish an understanding with your builder that, should you have a contractual concern relating to work performed by a sub-contractor, you will deal with him or her on the matter, and not with the sub-contractor.

It is the responsibility of your builder to oversee the building process. Final acceptance of work carried out by subcontractors is also his or her responsibility. On completion of the contract, the builder will certify that the work has been carried out to required standards.

In some cases building owners may elect to engage an independent building consultant to carry out inspections on their behalf. One option is to arrange for inspections as progress payments are due. Another option is to arrange an inspection at the time of hand-over. Discuss this with your builder as a matter of courtesy and make sure to arrange access for your building consultant. Most builders are happy to cooperate.

Terminating a contract

An owner or a builder can terminate a contract, but only in the most extreme circumstances. Terminating a contract is a very serious step and you should obtain legal advice before taking such action. It should only happen in a case where your building work contractor has not complied with relevant provisions of the Act, and before the contractor has completed the building work under the contract.

You must give your building work contractor written notice of your intention to terminate. You must serve that notice on the building work contractor either personally or by certified mail in an envelope addressed to the contractor.

If a contract has been terminated, the Magistrates Court may, on application by the building owner or the building work contractor, make certain orders.
For example:

- Provide for the return or repayment of the whole or part of any consideration, or the value of any consideration, given by the building owner under or in relation to the contract; or
- Provide for payment to the contractor in respect of any materials supplied, or any building work or other services performed, by the contractor under or in relation to the contract.

QUICK TIP: Terminating a contract is a very serious step and legal advice is strongly recommended.

Practical completion, final payment and hand-over

Your home will be handed over to you by the builder when the terms of the building work contract, the building schedule, the building specifications and other documents are fulfilled to a point of practical completion. The builder must issue a Statement of Compliance, for work completed, to the relevant planning authority.

As with progress payments, the final payment should only be made when practical completion occurs and hand-over is ready. *Note:* It is preferable that building work reach practical completion by the finish date fixed in the contract, but would be subject to any extensions of time allowed for in the contract.

QUICK TIP: Your contract should outline the final payment sum. Alternatively, it may be expressed as a percentage of the contract sum, including any variations as agreed.

After completion of construction

After your house has been officially handed over you may notice a few minor defects you are concerned about. Don't panic. The builder will already have made you aware about a maintenance period during which you should make notes or advise him or her of any issues.

All registered workers who performed plumbing, gas fitting or electrical work on your new home are required to have Certificates of Completion, certifying that all works have been performed to relevant standards.

Under the Development Act, a two-part Statement of Compliance must be completed and signed by both the builder and the owner. The builder certifies that the work has been carried out to relevant standards and the owner certifies that the work performed is in accordance with the plans and specifications that the original Development Approval was issued for. The Statement of Compliance is then submitted to the local authority.

Minor defects

Most builders allow a maintenance period of 90 days, from the time of hand-over, for the owner to note any minor maintenance matters that may require attention. These maintenance items may not have been noticed at the practical completion stage or may have developed after the owner has occupied the home.

The owner should be advised of the process of dealing with these matters. It is normal for the builder not to address minor matters until after the end of the maintenance period.

Warranties

Regardless of what your contract states, the law implies certain warranties on the part of your building work contractor.
These include:

- Your building work must be performed in a proper manner to accepted trade standards and in accordance with the agreed plans and specifications.
- The materials supplied by the building work contractor will be good and proper materials.
- The building work will be performed in accordance with all statutory requirements.
- Unless the contract stipulates a period within which the work must be completed, the work will be performed with reasonable diligence.
- If your contract is for the construction of a house, the house will be reasonably fit for human habitation.
- If you have made known to your building work contractor the purpose for which the work is required, or the result you want to achieve, demonstrating that you are relying on your contractor's skill and judgement, then your contractor warrants that the work and the materials will be fit for your purposes, or of a nature and quality that can reasonably be expected to achieve that result.

If your building work contractor performs work or provides materials which do not comply with those warranties, then your rights have been infringed.

If you believe this to be the case, first talk to your building work contractor. Many potentially serious disputes can be avoided by good communication between building owner and contractor.

If that does not work, you may need to seek legal advice or independent advice from Consumer and Business Services.

If a term of a domestic building contract is harsh or unconscionable, a party to the contract may apply to the Magistrates Court for relief.

QUICK TIP: The benefits of the statutory warranty also pass onto the next owner of the house, however there are time limits. The owner of the building has up to five years from the date of completion to lodge an action for a breach of the statutory warranty conditions. So if you are in a protracted dispute with your builder, act promptly to protect your rights.

QUICK TIP: The contract should contain details on how to handle disputes and any fees applicable.

Disputes and complaints

Most domestic building contracts include 'dispute resolution clauses' in the event a dispute arises during construction. Both HIA and MBA contracts include such clauses. The aim of the clauses is to keep both parties out of the legal system, wherever possible.

Dispute resolution clauses are often written in simple, easy to understand language.

A dispute over the quality of the building work can often be resolved by comparing it with the quality of the display homes used to display the design, features and quality of the builder's homes.

Remember, good communication between parties is of utmost importance, even when a matter is under dispute.

Fences

Take into account the cost of fencing when you work out your budget for building a new home.

If your land is located in a housing estate, the contract of sale may state that an owner cannot collect a contribution towards the cost of the fence from the developer if the neighbour's block is unsold. A contract may also state that the buyer of the land has to pay the developer or the neighbour for existing fencing.

The cost of a new or replacement fence is generally shared equally between two neighbouring owners. A 'notice of intent' is served by the owner wanting to build or replace the fence to the other owner. The notice can be delivered in person, or sent by Registered Post. It must give the other party 30 days to respond.

If the owner who is served the notice is dissatisfied with the proposal, a Cross-Notice can be completed and given back to the serving owner. If a fencing dispute remains unresolved, either neighbour can apply to a Magistrates Court for a court order.

QUICK TIP: Council approval is normally needed to build a masonry fence higher than one metre, or any other type of fence higher than two metres, measured from the lower side.

Retaining walls

The party who creates the need for a retaining wall, either by cutting away or building up, is responsible for the retention of soil. For advice about retaining wall liability issues contact the Legal Services Commission or your local community legal service. For structural advice, contact an engineer.

Swimming pools

If you enter into a contract to have an on-site swimming pool or spa constructed, the builder must have a building work contractor's licence for that work. There are strict safety requirements imposed by Council in regard to the operation of skimmer boxes and installation of childproof fencing.

Smoke alarms

All new homes and any building renovations involving extensions must have 240 volt mains powered smoke alarm/s installed by a licensed electrician to protect the sleeping areas of the home.

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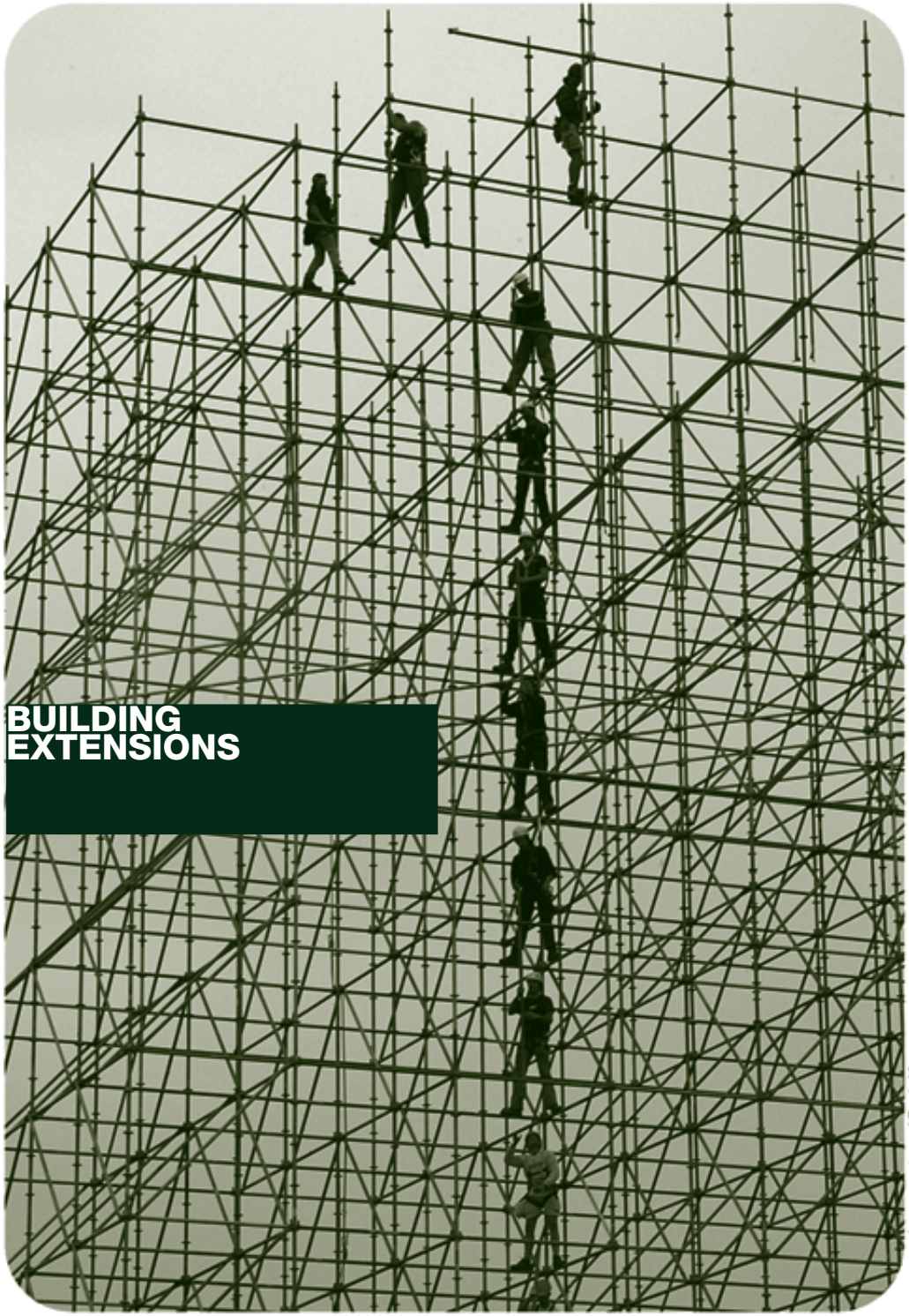

BUILDING EXTENSIONS

Image courtesy of Bo de Visser

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Building extensions

After researching their options and doing their sums, many homeowners come to the conclusion that adding an extension is the answer to their need for extra space and value.

The process of building extensions is similar to building a new home. One key difference is the need to consider, and match up, existing materials and finishes.

Planning an extension

Effective planning is the key to a successful extension project. The planning process should include an assessment of the completed project and what effect it may have on the capital value of the property. This is an important exercise, and it should deal with the risk of over-capitalising. You should assess the point beyond which it becomes unwise to invest further in your home. Sometimes you may find that the sale price you can expect to receive if you decide to sell may be less than the money actually spent on the property.

To assist you with this exercise you need to establish the current value of your home. The Valuer General's assessment of your property is listed on your Rates Notice and also on some power bills. Local real estate agents are usually happy to give advice on values and prices in your area.

If you're not planning to move in the foreseeable future, however, don't worry too much about this aspect. The important issue is to make a considered decision with all the available information at the time.

Planning checklist

The following is a checklist of the early considerations:

- Study the sketch or concept plan of your extension.
- Get preliminary approval for finance.
- Get preliminary advice from a building designer, architect, builder or engineer about the feasibility of your extension (especially if you are planning 2-storey additions or a roof conversion). This means the practical/structural issues and the likely costs of the project.
- Get advice from your local council for any restrictions or limitations. Most councils welcome the opportunity to give advice about proposed extensions and have information sheets available.
- Consider how your family will operate during the building process, assuming that it will cause some temporary practical challenges. Consider issues such as the expected weather during the building period.
- Decide whether to deal directly with a building designer, architect or builder to develop and prepare drawings and plans.
- Identify the builders who may be suitable for the project.
- Check with your house insurance provider to confirm that your policy can be extended to cover the building additions.

Building options

There are alternative ways you can go about building extensions. If you have had your own plans and specifications prepared:

1. Contact a couple of builders and arrange for them to give you a quote based on your plans and specifications and preliminary cost estimates. Getting three quotes is probably ideal, but be aware that, increasingly, builders are charging for written-up estimates. Also, seeking a large number of quotes may discourage some builders from doing their best to quote.
2. Arrange for all quotes to be delivered on or before a given date and make the quote time reasonable. Two to three weeks is an ideal timeframe.
3. Open all quotations and consider the prices and any variations from your plan/specifications. These are known as non-complying tenders.
4. Contact the builder you would most like to deal with and check that he or she will be in a position to sign a contract within your timescale. As a courtesy, advise the other builders that they have not been successful and thank them for their time.

Alternatively, if you want the builder to arrange plans:

1. Seek ideas and quotes from a few builders based on a concept plan.
2. Consider the most appealing proposal and negotiate to a contract.
3. Be aware of the copyright issues when a builder prepares plans. But note that in the event that you do not proceed with that builder, you may not be able to use the plans without permission.

If you plan to be an owner-builder, refer to the Owner-Builder notes in the Research and Planning Section (page 13) of this booklet. Be aware however that anecdotal information strongly suggests that owner-builder projects often take longer and cost more than expected, unless the owner-builder has significant building expertise. An owner-builder is required to obtain Certificates of Completion from sub contractors (for contracts of $12,000 or more) and have the Statement of Compliance signed off by an appropriately qualified person.

BUILDING RENOVATIONS

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Building renovations

Renovating refers to upgrading or remodelling a home. It might include re-painting, roof restoration, installation of roller shutters, replacement of floor coverings, re-tiling, re-cladding or window replacement. In fact, any improvements that don't add additional floor area to the home.

Choosing to undertake renovations to your family home is a very big decision, so it is important that you understand your rights and how to exercise them.

You can choose to renovate your home by engaging a licensed building work contractor or by undertaking the renovation yourself as owner-builder.

Your financial and contractual obligations are similar to those with regard to building a home (page 23).

When you undertake renovations you may encounter some extra financial and legislative requirements in the following areas:

- Council consent is required if any demolition work is to be done.
- Asbestos may need to be removed, or worked with.
- Installation of 240 volt smoke alarms
- You may need to match existing colours and finishes, i.e. bricks, roof tiles, cladding etc.
- Some older, imperial-sized building products need conversion to metric sized products.
- You need to ensure that existing electrical wiring, plumbing and gas fitting are upgraded to satisfy current standards.

Engaging a licensed builder

If your renovation work is valued at less than $12,000 and you intend engaging a licensed building work contractor, there is no lawful requirement for your builder to enter into a building work contract with you, or for the builder to take out a policy of indemnity insurance. This is because the work is deemed to be minor domestic building work.

If your renovation is valued at more than $12,000, but does not require council consent under the Development Act, your builder must enter into a domestic building contract with you. However, he or she is not required to take out a policy of indemnity insurance.

If your renovation is valued at $12,000 or more and requires council consent under the Development Act, and you intend to act as an owner-builder, you are reminded that you are required to have a private building surveyor or registered building work supervisor oversee the construction. The building work contractor performing any work costing $12,000 or more must take out building indemnity insurance.

When contracting door-to-door

Some building work contracts, such as roof restoration or roller blind and shutter installations, may occur as a result of door-to-door selling. Door-to-door selling involves someone knocking at your door unannounced, but also includes telemarketing where printed or written material is personally addressed to a prospective consumer, and then face-to-face selling occurs.

Cooling off

The prescribed cooling off time in relation to a door-to-door contract is 10 days starting on, and including, the day on which the contract is made. However, should there be breaches by the seller you may be entitled to a cooling-off period of six months.

You must use a Form 2, Fair Trading Act Regulations 1987 when cancelling a door-to-door contract. The salesperson must supply to you at the time of the contract a Form 1 and a Form 2. Should you wish to cancel the contract you must do so by completing the Form 2 and delivering it personally or posting it to the supplier.

Owner-builder renovator

All aspects of an owner-builder renovation are the same as those referred to when building your own home. (see page 13)

Three new requirements have been introduced to improve sustainability. Two of these requirements apply to homes undergoing significant renovation or extension:

- The enhanced Five Star Energy Efficiency provisions
- New minimum requirements for rainwater tanks. The requirements need to be met for all new homes and significant home extensions.

The technical requirements are contained in the South Australian variations to the Building Code of Australia (BCA2006) and Amendment 13 to the South Australian Housing Code.

For further information please contact the Building Policy Branch, Planning SA on (08) 8303 0602.

Having difficulty with asbestos?
http://www.asbestosdiseases.org.au/asbestosinfo/asbestos_community.htm
http://www.aecaust.com.au

Good Luck!

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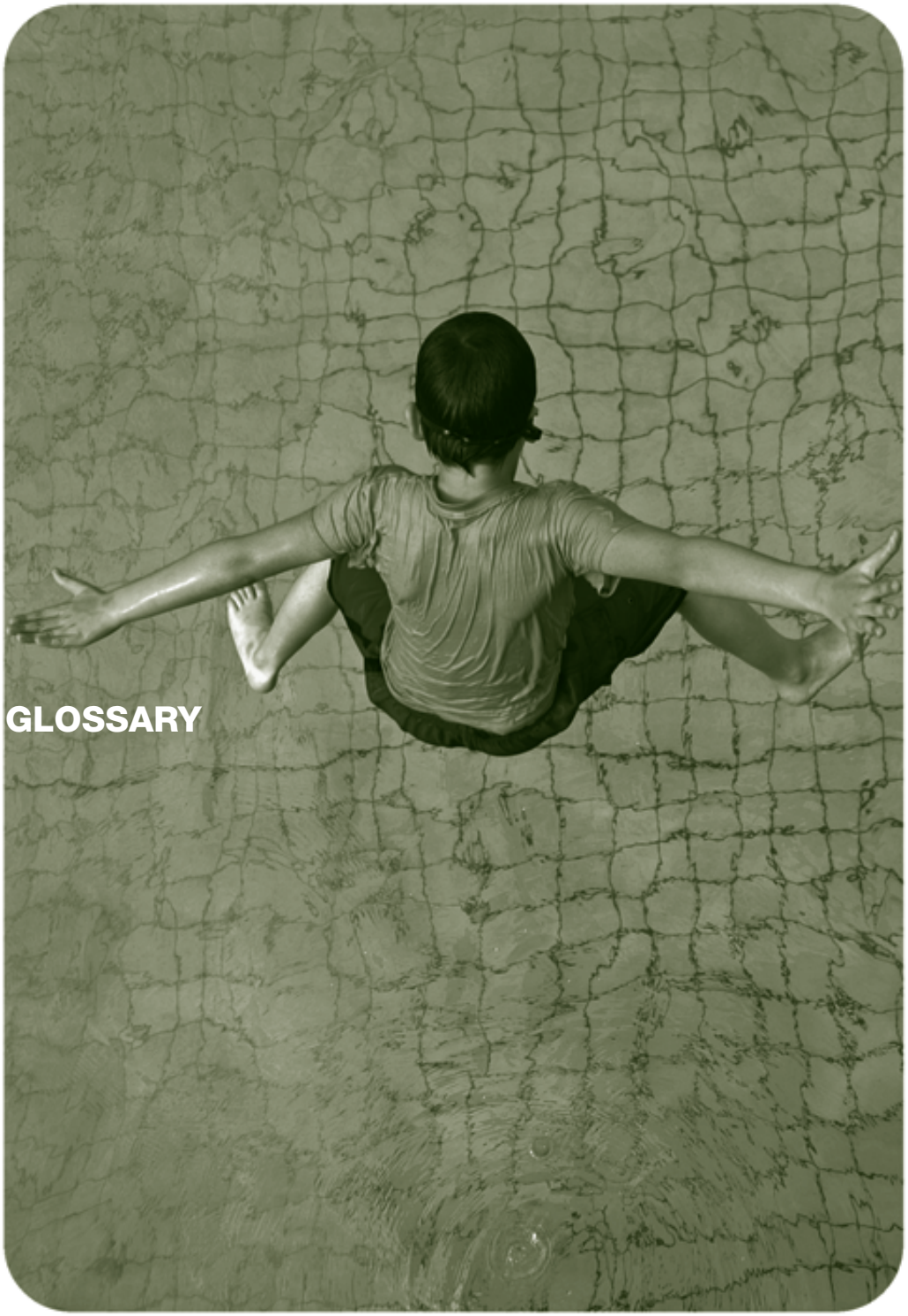

GLOSSARY

building work means the whole or part of the work of constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a building; or the excavating or filling of a site for the above listed work or on-site construction work associated with a pool or spa and paving and fencing (excluding post and wire).

building work contractor means a person who carries on the business of performing building work for others; or a person who carries on the business of performing building work with a view to the sale or letting (whether by lease, licence or other agreement) of land or buildings improved as a result of the building work. It includes specified trades such as painting and decorating, bricklaying, carpentry and joinery, electrical, plumbing and gas fitting, tiling, concreting, fencing, paving, etc.

business day means any day except a Saturday or a Sunday or other public holiday within the meaning of the *Holidays Act 1910*.

buying off the plan means that you will contract to buy a project home, apartment, or in some cases, sub-divided vacant land, before the plan has been certified by the local council and registered with the Land Titles Office. You will pay an initial deposit before any building work has commenced and then pay the balance when the home is completed.

certificates of compliance are issued by all registered workers on a project to certify that all works have been performed to relevant standards.

contract documents means all of the documents such as the contract, plans, specification, schedule, engineer's reports and any other documents signed at the stage of contract signing. Usually there will be a reference to the precedence (or order of importance) of the documents.

cost-plus clause means a provision for the builder to recover the actual cost for materials and cost for performing specified building work in the contract, together with an additional amount not to exceed 15% of that cost. Cost-plus clauses are not commonly used in South Australia.

display home is a home built by a volume-builder building company and on view in a display 'village' with other display homes.

domestic building work contract means a contract between a building work contractor and another person for the performance by the contractor of domestic building work (including any variation of such a contract), but does not include a subcontract for the performance of domestic building work.

door-to-door trading means the practice where a person goes from place to place, or makes telephone calls, seeking out consumers who may be prepared to enter into contracts for the supply of goods or services. That person or some other person then meets face-to-face with the consumer and enters into negotiations with a view to entering into a contract.

energy efficiency refers to a package of practical environmental measures that emphasises environmental and affordability considerations.

exclusion of rights, conditions or warranties Any purported exclusion, limitation, modification or waiver of a right conferred, or contractual condition or warranty implied, under the *Building Work Contractors Act 1995* is void.

fixed price contract means a domestic building work contract that contains neither a rise-and-fall clause nor a cost-plus clause. It is generally referred to as a Fixed Price Lump Sum Contract.

fixtures are items such as bathroom suites, built-in wardrobes and kitchen stoves that are attached to the property and cannot be removed without causing damage.
They should be specified in the building contract to be included as part of your completed building.

footing means the concrete base (usually a 'raft footing').

form 1 (building)
Form 1 Building Work Contractors Act Regulations 1995, Your Building Contract: Your Rights and Obligations, provides you with information about your building work contract, your cooling-off rights, your warranty rights, building indemnity insurance, deposits and payments.

form 1 (selling)
Form 1 Land and Business (Sale & Conveyancing) Act is used at the time of resale to reflect that the structure has been certified by a building supervisor. It also details your right to cool off and how you must go about serving a cooling-off notice.

foundation means the solid ground or base, natural or artificial, on which a building rests.

harsh and unconscionable term means a term or condition of a domestic building work contract that a party to the contract considers a Court would give relief to.

indemnity insurance is a policy of insurance carried by the building work contractor when performing domestic building work. It protects the home owner, under statutory warranty, against the risk of non-completion of the building work and/or failure to rectify faulty work if the contractor dies, disappears, or is declared bankrupt.

licensed tradesperson *The Building Work Contractors Act 1995* requires any person who carries on the business of performing work for others to have a building work contractors licence. The licence should show the licence number, qualifications, and any restrictions on the type of work the building work contractor is licensed to perform.

licence number, in relation to a licensed building work contractor, means the number assigned to the person's licence by the Commissioner for Consumer Affairs.

minor domestic building work means domestic building work performed, or to be performed, under a domestic building work contract at a cost to the building owner of less than $12,000, or domestic building work performed, or to be performed, by a building work contractor on the contractor's own behalf where the cost of the work would, if it were performed under contract, be less than $12,000.

owner-builder is anyone who takes on the job of managing their own residential building project and performs the coordinating and contracting roles usually undertaken by a builder.

practical completion means the stage at which the home is substantially fit for use by the owner. It is at this stage that the builder will hand over the home to the owner. A Statement of Compliance must have been provided to the relevant local government body.

prescribed time means the end of five clear business days after the making of the domestic building work contract or, if there has been a failure to comply with any of the requirements in relation to a domestic building work contract, the time of completion of the building work under the contract.

preliminary work contract means a contract that is collateral to or otherwise related to an existing or contemplated domestic building work contract. It provides for the performance of work that is preliminary or ancillary to the domestic building work that is or would be required to be performed under such a contract.

prime-cost-item means your building work contract may include the supply of certain goods and services, such as a kitchen stove or bathroom tiling. These items may be designated prime-cost-items, so that if the standard of goods you select is higher than that provided by your building work contractor, you may have to pay an additional cost over and above that provided for, plus a surcharge, which may be up to 15% of the cost of the item.

provisional sums mean the amounts your building work contractor has determined as 'best estimates' of the cost of doing certain building work under your contract.

rise-and-fall clause means a contractual provision under which a price stipulated for performance of domestic building work may change to reflect changes in the costs of labour (including related overhead expenses) and materials to be incurred by the building work contractor for all or part of a domestic building contract.

specifications refer to the detailed lists of specific building material, appliances and fittings to be used in a building or renovation.

statement of compliance must be completed and signed by both the builder and the owner. The builder certifies that the work has been carried out to relevant standards and the owner certifies that the work performed is in accordance with the plans and specifications for which the original Development Approval was issued.

statutory warranty means a warranty arising under the *Building Work Contractors Act 1995* or under part of the repealed Builders Licensing Act 1967.

subcontract for the performance of domestic building work means a contract for the performance of domestic building work for a building work contractor who is in turn obliged to perform the work under another contract. If a building work contractor and a person make an arrangement under which domestic building work at a site is to be performed in stages by the contractor under separate contracts, the contracts to which the arrangement relates will be taken to be a single domestic building work contract.

surplus materials: Most building contracts are for the completion of building work in accordance with the contract (which includes the plans, specification, schedule, engineer's report and other relevant documents). Any material left over goes to the builder.

variations are documented changes to a domestic building work contract, requested by either party to the contract at a sum of money determined by terms of the contract.