



# INFORMATION SHEET

Workplace Services

Current at: 1 September 2016  
HIA ref no: VFSCON1195

## VIC – Changes to HIA Domestic Building Contracts

*\* Please note, the below information is applicable to all contracts signed from 1 September 2016.*

On 1 September 2016, a number of changes to the legislation regulating domestic building contracts commenced. HIA has made a number of amendments to our standard form domestic building contracts (including the new home, alterations and additions and minor works contracts) to ensure they comply with the new laws.

Some other minor improvements and updates have also been made to the contracts in response to feedback from members.

### Checklist

The checklist required at the front of the contract has changed.

Consumer Affairs Victoria (CAV) has published a new version of the checklist that must be included in all major domestic building contracts from 1 September 2016. The main changes to the checklist are:

- a new question to ensure that the owner, and not the builder, has appointed the building surveyor;
- a statement that domestic building insurance is only required if the cost of the building work is more than \$16,000 (including labour and material);
- a reference to the Building Practitioners Board is replaced with a reference to the Victorian Building Authority which is now responsible for registering building practitioners;
- a new question to confirm that the owner received the Domestic Building Guide (see below); and
- a new question about whether the owner read the Domestic Building Guide and related information at the CAV website.

### Domestic Building Guide

Additionally, from 1 September 2016 all builders proposing to enter into a major domestic building contract with an owner must give a Domestic Building Guide (“Guide”) to the owner before the contract is signed.

This Guide is included at the back of HIA standard contracts for Victoria. The builder must still make sure that the owner is aware of the Guide and has an opportunity to read it. This is best achieved by allowing the owner an opportunity to read the contract and Guide before the date the contract is signed.

### Appointment of Building Surveyor

From 1 September 2016, if a private building surveyor is to be used then the choice and appointment of building surveyor must directly be made by the owner. A builder can no longer do so, whether as agent, or otherwise. HIA suggests that the choice of building surveyor be made before the contract is prepared

---

DISCLAIMER - The above is intended to provide general information in summary form. The contents do not constitute specific advice and should not be relied upon as such. Formal specific advice should be sought by members with respect to particular matters before taking action.

phone 1300 650 620 | fax 1300 655 953 | enquiries@hia.com.au | hia.com.au

and signed.

To implement this reform HIA have amended the contracts as follows:

1. The Particulars of Contract have been amended to include details of the building surveyor appointed by the owner.
2. Under the details of the building surveyor, there is a spot for the owner to sign to acknowledge that they appointed the building surveyor.
3. In the clause about planning approvals and building permits there are two changes:
  - If the builder is responsible for obtaining the building permit then the builder is responsible for paying the building surveyor's fees and this cost is part of the contract price; and
  - The owner authorises the builder to apply for the building permit and related documents.

These changes provide for the owner to appoint the building surveyor and for the builder to be responsible for paying and managing the building surveyor on behalf of the owner. This is to reflect industry custom, although it is important that member build these contingencies into the contract price, whether outright or as a provisional sum item.

If the builder wants the owner to be responsible for paying the building surveyor they need to nominate the owner as being responsible for obtaining the building permit. The owner will then be responsible for engaging and paying the building surveyor.

If a municipal (council) building surveyor is to be appointed then the owner does not need to appoint the building surveyor.

### **Building period**

The description of the building period in the contract has caused confusion for some members who believe that the allowances for estimated delays are added to the building period. To manage this problem, the contracts now provide for an allowance for actual days of work and allowances for estimated delays. The sum of these allowances then is the building period.

### **Joint accounts**

The finance clause includes a new provision allowing for a joint bank account to be established as security for the contract price. This clause is only available if all or part of the contract sum is being not being financed by a lender. If a joint bank account is set up the interest belongs to the owner and withdrawals can only be made if both the owner and builder agree. The joint bank account will provide comfort to the builder that the owner has money to pay the contract price.

It is not compulsory for builders to use this clause and members may find that some owners want to have it deleted before signing the contract. Some owners may also propose other security arrangements, such as guarantees or trust accounts.

It is recommended that if the builder wants to use this clause they discuss using a joint bank account with the owner before signing the contract.

### **Timing of variation deductions**

The existing HIA standard contracts require that if a variation decreases the contract price that amount must be subtracted from the next progress payment. This can cause hardship if the builder at an early stage agrees to a variation to remove work but the relevant work does not need to be completed until a later stage.

To manage this risk, the amended HIA standard contracts allow for variations that decrease the contract price to be subtracted from the relevant progress payment. For example, if a variation to remove work from the fitting stage is agreed while work is being completed on the base stage then the subtraction

does not need to be made from the base stage but can instead be deducted from the fitting stage.

It will not be permissible to subtract variations from later progress payments if the work should have been completed during an earlier progress payment. This would effectively result in the builder being paid in advance of work being completed and committing an offence by breaching section 40 of the Domestic Building Contracts Act 1995.

### **Notices**

The clause about how to provide notice to the other party has been updated to reflect the fact that many members and their clients communicate via electronic means and to reflect changes in Australia past delivery times. A notice under the contract (such as a breach or termination notice) may now be made via prepaid post, facsimile transmission or email. The contact details for the owner and builder have been updated to include space for an email address.

Before members send a notice of suspensions or notice of termination they should check the contract they are using to determine if the relevant clause requires registered post. If registered post is required then email alone may not be used. For example, the Victorian New Homes contract requires registered post for notices of suspension and for termination of contract due to insolvency.

### **Other amendments**

Other amendments to the standard contracts are as follows:

- The heading of the insurance details in the Particulars of Contract has been changed to update the terminology for what was once called home owners warranty insurance to Domestic Building Insurance.
- The warning about how to use Method 2 for progress payments has been expanded to remind owners and builders that the owner must sign Form 1 before signing the rest of the contract.
- The Excluded Items schedule includes more information for owners about their legal obligations if they engage another person to complete excluded items for them. A new clause at the end of the contract enforces these obligations to manage the risk of owners trying to engage unregistered and un-insured builders to work on the site.
- A definition of Statutory or Other Authority has been included to refer to building surveyors and not private certifiers.
- The variations clause to allow for variations resulting from building notices or building orders includes a specific reminder that builders may not charge the owner for complying with directions issued under Division 2 of Part 4 of the Building Act.

***Should you require further information, please contact a Workplace Advisor on 1300 650 620***