



INFORMATION SHEET

Workplace Services

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The use of email to serve notices under contract (NSW contracts)

What is the notice clause?

The notice clause in your building contract provides an agreed way for you and your client to communicate contractual issues with each other in written form. This includes notices relating to prime cost items, extensions of time, variations, disputes, practical completion or suspension of works.

Under HIA's contract, a notice must be in writing and served in any of the following ways:

- (a) personally- with receipt upon handing it to the other party;
- (b) by prepaid post (ordinary mail) to the party's address- with receipt of the notice being 5 working days after posted;
- (c) by sending it by facsimile to the party's facsimile number – with receipt of the notice being the date and time on fax transmission;
- (d) by sending it by email to the party's email address – with receipt of the notice being at the time the email is sent (unless an error/ malfunction e.g. email bounces or message failed to be delivered)

Serving notices by email

Reflecting the building industry's increased reliance on the efficiencies of electronic technology, HIA's contracts (revised May and June 2017) now include the use of emails as a means of notice and communication.

NOTE You should check that the version of your contract includes email in the Notice clause before you do send a contractual notice by this means (unless you have amended your contract to include email as a way to serve a written notice).

It is important to note however that certain notices under the contract, such as notice of breach or termination, are required to be sent in more formal traditional means, such as personally or by registered post.

TIP If you intend serving a written notice via email, ensure that each party's correct email address is provided in the Particulars of your contract. A blank, incomplete or incorrect email address is likely to give you more problems if any dispute arises.

Disputes over service by email

Email is a valid and legal form of notice, but the courts are generally still cautious about relying exclusively on emails to show that a notice has been served on the other party.

To avoid a dispute over whether or not the email was sent or received, you need to ensure that your server is programmed to record and print delivery and read receipts if you are going to use email for serving notices under the contract.

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

Take care

Most businesses send emails to their customers and clients every day. Although some emails may be quite informal or conversational in style or tone, they could still constitute a formal notice under the contract.

If you are sending a notice that requires either party to sign the notice (for example, a variation that needs to be “signed” by both parties to be legally valid), you need to be careful if the body of the email contains the notice.

Although a “wet” or “ink” signature not be necessary, where a party needs to physically sign a notice contained within the body of an email, the parties should first agree on a method that will identify a person and indicate that person’s intention/ authority in respect of the information communicated, in lieu of a ‘physical’ signature- for example, an email or digital signature may be agreed to as a method to ‘sign’ the written communication.

For more information contact your Workplace Adviser on 1300 650 620.