



Building contracts and progress payments

When building or renovating your home, it is essential that you understand the terms and conditions of your home building contract and what may be agreed as a progress payment schedule for the various stages of building work. This fact sheet seeks to guide owners by establishing a common understanding of what the progress payment claim stages may involve.

The Home Building Contracts Act 1991 regulates the payment of deposits and progress payments for home building contracts valued between \$7,500 and \$500,000. In short, deposits are limited to 6.5 per cent of the total amount payable and progress payments must represent a 'genuine' payment for work already performed or materials or services already supplied. In other words, you pay for what you have received, not what might be supplied in the future.

The progress payment system is designed to protect all parties to the contract which should set out when payment is required for the work undertaken. It is important that you understand the significance of the progress payment system and that you verify for yourself or engage someone who can confirm that the claim being made by the builder for the next instalment represents a genuine claim for the actual work completed at that point.

The Home Building Contracts Act entitles the owner or an authorised person acting on their behalf to inspect the construction of the home or extensions, provided that this inspection is during the builder's ordinary working hours and does not unreasonably impede or interfere with the building work. The inspection can verify that the work has been completed in a proper manner and has reached the particular stage (for a progress payment claim) or that materials have been supplied, e.g. the concrete slab has been laid and the bricks have been delivered to site.

Common sense should be applied in verifying completion of work, particularly at an early stage, and minor omissions or defects need not compromise the payment or be the cause of holding up the overall building process.

Typically, contracts have a schedule of progress payments that use expressions common to the building industry. It is important that the description of the progress payment is meaningful to and thoroughly understood by both parties at the time of entering into the home building contract. Ideally the description in the schedule would sufficiently identify what will have been constructed or supplied at that point.

There are no standardised progress claim stages or percentages across the industry. The builder can suggest progress claim schedules that suit the particular type and nature of the home building work to be carried out, provided the payment at each stage is a genuine reflection of the value of completed work for that stage.

On the following page is a set of common progress claim stages and descriptors which may be used when building a new home. These are simply intended to serve as a general guide, as each home building project needs to be considered on a job-by-job basis in constructing an appropriate progress claim schedule.

Preliminary Agreements

Commonly the Preliminary Agreement (also known as the Preparation of Plans Agreement) represents the amount that the customer has been asked to pay the builder to prepare the unique set of plans and technical papers necessary to build a particular structure on a particular site. It also might cover a range of other services such as site inspection, preparation of an estimate or budget, arranging a site survey and arranging engineering drawings.

A Preliminary Agreement is not covered by the Home Building Contracts Act.

A Preliminary Agreement is a quite separate contract where the builder agrees to provide certain services and the client agrees to pay for those services.

Costs associated with a Preliminary Agreement are unlikely to be refundable in the event that a building contract is not entered into between the client and owner. Consumers should clarify with their builder whether they will own any plans or products of any services if the cost of the Preliminary Agreement is not refunded because a building contract is not entered in to.

Deposits

The Home Building Contracts Act limits home building work contract deposits to 6.5 per cent of the total contract price where the contract value is between \$7,500 and \$500,000. Builders may include the monies paid for preparation of the plans as part of the deposit for a contract for the home building work.

Common progress payment claim stages

Progress payment	Description
Slab¹	<p>The concrete slab and footings for construction needs are completed. This stage might also include footings necessary for brick pillars for other structures on the site.</p> <p>The site is likely to have underground drainage pipes completed. Ancillary power to the site may also have been established with the electrical run in.</p>
Plate height	<p>This commonly refers to the completion of the rudimentary structure. Typically it refers to the walls having been erected and provides a platform for the next storey or the ceiling or the roof assembly to rest on a 'plate' of timber or steel on the top of the walls.</p> <p>All window and door frames will usually have been built into the brickwork and internal walls should have been constructed.</p>
Roof cover	<p>The roof of the building has been installed, along with all valley flashings or gutters, fascia and down pipes. Depending on the type of roof material being used, flashings, linings installed and ridge capping placed but not necessarily grouted so that the roof is basically water tight. In some cases down pipes may be incomplete to facilitate painting or rendering at a later time.</p>

¹ Two or more storey buildings may have additional progress payments

Progress payment	Description
<p>Lock up</p>	<p>Externally:</p> <ul style="list-style-type: none"> The structure is now able to be secured, hence the term lock up. All external doors and windows have been installed. In some cases external door openings are secured temporarily to prevent damage to specialist timber frames and doors, but generally all glazing and glass sliding doors have been fitted. Rendering of the external walls (if part of the proposed structure) may be complete at this stage but painting or texturing comes later. <p>Internally:</p> <ul style="list-style-type: none"> First fit plumbing and electrical (pipes and wires have been run but are not functional). Wall plastering and ceilings have been installed. <p>Generally the structure is ready internally for the finishing trades such as carpenters, electricians, cabinet makers, tilers, plumbers and painters.</p>
<p>Secondary finishing</p>	<p>Some contracts will provide for a progress payment after the finishing trades have completed their work to a final finish stage. If so, this would cover tiling, plumbing fit-off, cabinet work, and carpentry and electrical fit-off.</p>
<p>Practical completion</p>	<p>The home building works are completed, except for any omissions or defects which do not prevent the works from being reasonably capable of being used for its intended purpose. For example, the house can be occupied comfortably with all utilities connected, but not every last detail will necessarily be complete.</p> <p>Handover will generally occur thereafter within the timeframe specified under the residential building contract. Within the ensuing defects liability period, the builder is to remedy any defects or omissions that may have been identified at the time of practical completion or which come to light and are notified during that period.</p>

Disclaimer – The information contained in this fact sheet is provided as general information and a guide only. It should not be relied upon as legal advice or as an accurate statement of the relevant legislation provisions. If you are uncertain as to your legal obligations, you should obtain independent legal advice.

Building and Energy | Department of Mines, Industry Regulation and Safety

1300 489 099

8.30am – 4.30pm

Level 1 Mason Bird Building
303 Sevenoaks Street (entrance Grose Avenue)
Cannington Western Australia 6107

M: Locked Bag 100, East Perth WA 6892

W: www.dmirs.wa.gov.au/building-and-energy

E: be.info@dmirs.wa.gov.au

Regional Offices

Goldfields/Esperance	(08) 9021 9494
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888

National Relay Service: 13 36 77

Translating and Interpreting Service (TIS): 13 14 50

This publication is available in other formats on request to assist people with special needs.