

BUILDING A HOUSE

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[SECTION 3]

BUILDING A HOUSE



OPTIONS FOR BUILDING

THERE ARE MANY DIFFERENT OPTIONS AVAILABLE TO THE PERSON WHO IS THINKING ABOUT BUILDING A HOUSE. YOU CAN CHOOSE HOW MUCH INVOLVEMENT YOU HAVE IN THE PROJECT, BASED ON YOUR EXPERIENCE AND EXPERTISE. IN THIS CHAPTER, WE LOOK BRIEFLY AT THE GENERAL STEPS AND OPTIONS INVOLVED IN BUILDING A HOUSE.

BEFORE YOU START

YOUR BUILDING PROJECT:

- contact **Consumer Protection** on **1300 30 40 54** and ask for your free copy of our booklet *Building Your New Home: A Checklist!*

WHAT'S INVOLVED IN BUILDING A HOUSE?

DESIGNING A HOUSE

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Building a house can be broken down into the following stages, namely:

- choosing a house design;
- choosing land; and
- choosing a builder.

Beware! The type of land you buy can sometimes limit your options for the design of your house. Also, the type of house design you choose may impact on your choice of builder. You will need to think about all three stages at the same time.

To keep things simple, we'll consider each stage separately.

You can start considering house designs by:

- browsing the newspaper for house designs and contacting the relevant builder;
- consulting with a building designer; or
- consulting with an architect (who can also check that the technical aspects of the contract are being followed by the builder).

EXISTING HOUSE DESIGNS

House designs in newspapers are generally protected by copyright. Project builders who employ designers generally produce copyrighted house designs. A builder cannot build houses using these designs without the permission of the copyright owner.

If you have seen a design in the newspaper that you like, you can approach the builder who placed the advertisement in the newspaper. The builder's designer can modify the design to accommodate any specific requirements that you may have. These modified designs are also likely to be protected by copyright.

You should keep in mind that there is very little detail provided in the advertisements, so if you like a particular design, you should ask lots of questions and note what is included in the package. Check that these items are in the purchase contract.

Similarly, if you come across a house design you like by visiting a display home, contact the builder who built the display home. Make sure you check that all the features of the display home are included in the building contract.

You should also make sure that you choose a block of land that is compatible with the house design you have selected. Many project builders offer house and land packages (within specified locations), where the house designs available will fit on the blocks you can buy. More information about house and land packages is on page 49.

A HOUSE DESIGN THAT IS SUBJECT TO COPYRIGHT cannot be built without the permission of the copyright owner



CREATING HOUSE DESIGNS

If you have an idea for a house design, you can employ a building designer, architect or builder (who offers a design service) to draw the design for you. Before employing an expert, you should discuss both the cost of the design service and who keeps the design copyright. If you want to build again using the created design, you may want to retain copyright. Make sure this is specified in writing.

Again, it is important that you choose a block of land that is compatible with your house design. Read on for more information about choosing a block of land.

OTHER INFORMATION

When considering house designs, you may be interested in considering the benefits of energy efficient housing and energy efficient appliances.

FOR MORE INFORMATION

ABOUT ENERGY EFFICIENT HOUSING:

- contact the **Sustainable Energy Development Office** at: www.sedo.energy.wa.gov.au

BUYING “OFF-THE-PLAN”

One option for building, which involves some risk and the possibility of delays, is to buy “off-the-plan”, which includes buying:

- a project home; or
- an apartment

before the plan (or development) has been approved by the local authority and registered at the Land Titles Office of the Department of Land Information. In other words, the piece of land does not yet have its own certificate of title.

The term “buying off-the-plan” as described here does not include buying a block of land without having viewed the property before sale.

When buying “off-the-plan”, you generally view an architect’s impression and a floor plan. You will be asked to sign a contract with a developer, such as an *Offer and Acceptance* contract (see page 39 - 41 for more information) for the property you are buying. You generally pay a deposit, which is held in a trust account and it is necessary to pay the balance of the purchase price once the property is completed and the certificate of title for the property has been issued.

PROS AND CONS OF BUYING “OFF-THE-PLAN”

The **advantages** of buying “off-the-plan” may involve:

- getting a place in a popular development; and
- securing a good price if market prices are rising.

The **disadvantages** of buying “off-the-plan” may include:

- not knowing what the finished product looks like in reality;
- the possibility of delays in completing the project (and moving in);
- not knowing (and not being able to choose) the builder as the developer chooses the builder (and generally after you have signed the relevant contracts); and
- the possibility that you’ll be locked into a price if market prices are falling.

Note that home indemnity insurance (discussed on page 51), is not available for multi-unit developments that exceed three storeys in height above ground and/or that have two or more basement levels - usually for car parking.

CHECKLIST FOR BUYING "OFF-THE-PLAN"

When considering buying "off-the-plan", you are advised to do the following.



[TICK]

- Take a copy of the sale contract to a lawyer to minimise your risks.

Check for provisions in the contract such as the completion date; whether you are entitled to resell the property before you complete the purchase and whether you have the right to a pre-settlement inspection.

- Visit any other projects that the developer is involved in, to find out if the projects are on schedule and if the quality of the work is good.
- Find out how much of the development has already been sold.
- Get a copy of the plan and get the plans and specifications checked by an independent architect or building consultant.
- Check the plan for car parking, any amenities in the complex like swimming pools, spas and saunas and whether strata levies apply.
- Choose your own licensed valuer to value the property.



BUYING LAND

Another option for building is to buy a block of land and build on the land at a later date. You should be aware that choosing a block of land can affect the cost of building and the design of house that will be possible to build. Making a good choice of block will depend on a number of factors, some of which are discussed below.

THE SITE

- When choosing a block, consider:
- the location (including your budget, closeness to schools, shops, transport, and other facilities);
 - access to services, such as electricity, water, gas, sewer and telephone (and the cost and time it would take to connect to these utilities);
 - where the sun rises and sets and climatic conditions; and
 - the plans for the area, especially if the block is part of a development.

SITE CONDITIONS

Land features (or site conditions) can affect the price of building and the layout or design of the house that will be possible to build. Site conditions will have an impact on the cost of building as it affects the amount of preparation (or site works) required to lay the foundations for the house. Site conditions include:

- the type of soil;
- how the soil is distributed across the block;
- how high is the water table; and
- any trees or rock contained in the soil.

Some of these factors can be assessed before you build. It may be a good idea to employ an expert who can assist you (as accurately as possible) to determine whether the block you are thinking of buying will involve a lot of site works.

THE TITLE

As previously mentioned, each parcel of land available for purchase in Western Australia is recorded on a register held at the Land Titles Office of Landgate.

It is important to obtain a copy of the title (available for a fee from Landgate) to determine whether:

- the block you are looking at is the same as the block described in the contract to buy;
- there are any restrictions on the title that are likely to affect where you can build your house or other amenities (like a garage or swimming pool);
- there are any restrictions on the title that have the effect of dictating the materials you use, the style and colour of the exterior of your house and/or the timeframe for building; and
- the person who is selling the land is actually the registered owner (or the agent of the registered owner) of the land on the certificate of title.

You should ask the seller of the land or the real estate agent to show you the boundaries of the block and if there is any doubt, a licensed surveyor may be required to clarify the boundaries.

FOR MORE INFORMATION

ABOUT CERTIFICATES OF TITLE:

- contact **Landgate's Tenure Information Services** by:
 - phone on **9429 8433**
 - fax on **9429 8460**; or
 - email at **tismail@landgate.wa.gov.au**
- visit the website: **www.landgate.wa.gov.au**

SITE CONDITIONS will have an impact on the cost of building



REQUIREMENTS OF THE LOCAL AUTHORITY

It is crucial that you talk with the local authority about:

- any special by-laws, policies or planning aspects in the area or restrictions relating to the land;
- previous recorded use of the land by industry;
- whether there are any restrictions on the title that have the effect of dictating the materials you use, the style of your house and/or the timeframe for building; or
- any plans for the area that might affect your enjoyment of the property, such as any commercial or industrial activity or road construction, which may involve noise or produce unpleasant smells.



WAYS TO SELECT A BLOCK OF LAND

When selecting a block of land that will meet your requirements, you might:

- choose a block of land on your own;
- employ a builder to help you select a block of land after discussing your design requirements (see pages 44 -45); or
- select a house and land package through a builder (see page 49).

THINK CAREFULLY BEFORE SIGNING A CONTRACT FOR LAND, as there is no requirement for a cooling off period in WA

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DIVIDING FENCES

As a rule of thumb, the *Dividing Fences Act 1961* requires that owners of adjoining land pay half the cost of erecting a “sufficient fence” between their properties, regardless whether the land is vacant or has been built on.

You should discuss details about any boundary fences to be erected with the owners of adjoining land. The agreed details should be confirmed in writing and signed by all parties.

It should be noted that retaining walls forming part of a dividing fence are regulated by the relevant local authority and are not covered by the *Dividing Fences Act 1961*.

FOR MORE INFORMATION

ABOUT DIVIDING FENCES:

- contact your local government authority for relevant local requirements; or
- visit the **Department of Housing and Works** website at www.dhw.wa.gov.au for a copy of *Dividing Fences - Rights and Responsibilities*.

THE CONTRACT FOR BUYING LAND

The standard contract for buying real estate and land in Western Australia is often called an *Offer and Acceptance* contract.

The *Offer and Acceptance* contract is in two physically separate, but equally important parts. The titles of each part of the contract are listed below.

1. *Contract for Sale of Land or Strata Title By Offer and Acceptance* - we'll call this part the *O & A Contract*.
2. *Joint Form of General Conditions for the Sale of Land* - we'll call this part the *General Conditions*.

The *O & A Contract* is produced by the Real Estate Institute of Western Australia (REIWA) and the *General Conditions* booklet is produced by REIWA and the Law Society.

Many of the details about the *O & A Contract* in relation to land and a dwelling apply equally to the purchase of land only. You may wish to refer to pages 39 - 41 before reading further.

It is important to note that THE LAW IN WESTERN AUSTRALIA DOES NOT REQUIRE THAT CONTRACTS FOR THE PURCHASE OF LAND CONTAIN A COOLING OFF PERIOD. If the contract does not include a cooling off period, you cannot get out of a contract to buy land because you have changed your mind.

THE TERMS OF THE CONTRACT

When making an offer to buy land, you will need to consider:

- whether you will be making any deposit toward the land, the total amount you are offering to pay for the land, nominating a settlement date and stating how you will pay for the land;
- inserting any special conditions, or your terms, on the *O & A Contract*; and
- the terms, or general conditions, contained in the *General Conditions* booklet.

These general conditions include the amount of any rates and taxes required to be paid by you or the seller in the first year, what happens if either party does not go through with the contract and what happens if settlement is delayed.

A GENERAL REMINDER ABOUT THE TERMS OF THE CONTRACT

Remember that you can protect your interests by:

- getting legal advice about the contract terms;
- crossing out any terms that do not suit you;
- adding any suitable terms (legal advice is recommended!!); and
- having all parties to the contract initial any changes, where agreement is reached.

You will also need to consider the tasks associated with settlement or you may consider employing a conveyancer to do this for you. Read pages 37 - 38 for further information.



CHOOSING A BUILDER

THERE ARE BROADLY TWO DIFFERENT TYPES OF BUILDERS TO CHOOSE FROM, NAMELY: PROJECT BUILDERS; AND CONTRACT BUILDERS.



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PROJECT BUILDERS

Project builders generally:

- have a number of different houses being constructed at one time;
- have a team of salespeople to negotiate the building deal;
- offer the home buyer access to a design service; and
- offer house and land packages and possibly finance.

HOUSE AND LAND PACKAGES

Many project builders can offer house and land packages, where you can choose from blocks in specified locations and choose between designs that will fit the available blocks.

When buying a house and land package, you are entering into a contract to buy the land and you are also entering a contract to have your selected house built. You may also be entering into a contract for finance arranged by the builder with a lending institution. It is important that you don't sign anything unless you are happy with the total deal. Get legal and/or other relevant advice from independent experts before you sign anything.

CONTRACT BUILDERS

Contract builders generally:

- offer a more personalised service and custom built houses;
- remain personally involved with a project from start to finish; and
- offer a design service.

FINDING A BUILDER

Builders must be registered by the Builders' Registration Board to undertake building work worth \$20,000 or more in:

- Perth;
- most of the South West Land Division, except for the shires of Mukinbudin, Mt Marshall and Narambeen; and
- many town sites in the Eastern Goldfields, Esperance, Gascoyne, Pilbara and Kimberley regions.

There are many ways that you can find a builder, including:

- asking family and friends for names of builders they have used and could recommend;
- looking through the yellow pages and newspapers;
- surfing the internet; and
- contacting building associations, such as the Master Builders' Association for the names of its members.

CHOOSE A BUILDER
carefully

CHECKING OUT THE BUILDER

THE FOLLOWING ARE THE TYPES OF QUESTIONS TO ASK WHEN CONSIDERING A PARTICULAR BUILDER.

1. Is the builder registered with the Builders' Registration Board?

- You can find out if a builder is registered by contacting the Builders' Registration Board (BRB):
ph: **9476 1200** or
visit: **www.builders.wa.gov.au**

2. How long has the builder been in business?

Find out how long the builder has been in business and whether he/she has always traded under the same name.

- You can obtain (for a fee) an extract in relation to a trading name, which outlines who owns the trading name, for how long the trading name has been owned and any previous owners by contacting Consumer Protection's Business Names Branch:
ph: **1300 30 40 14** or visit: **www.docep.wa.gov.au**
- You can obtain (for a fee) an extract about companies from the Australian Securities and Investments Commission (ASIC):
ph: **1300 300 630** or visit: **www.asic.gov.au**

3. Can the builder obtain home indemnity insurance?

Find out if home indemnity insurance is required to build your house and check that the builder can obtain home indemnity insurance (read page 51 for more information).

4. Has the builder been recently "named" due to the number and/or nature of complaints received by Consumer Protection?

To find out if a builder has been recently named by the Commissioner for Fair Trading, you can ring **1300 30 40 54**.

5. Can you communicate with the builder?

Make sure you can feel comfortable discussing your requirements and any concerns you may have with your builder or builder's representative. Your ongoing relationship with your builder can affect the success or otherwise of the project.

6. What are the terms of the builder's guarantee?

Find out about the terms and conditions of any builder's guarantee that is over and above what is required by law, including the types of defects that the builder will rectify and the length of time of any guarantee.

7. Is the builder affordable?

You can ask builders to provide you with an estimate of how much it will cost to build your house.

PREPARATION OF PLANS AGREEMENTS

Once the plans for your house have been drawn up for the block you have bought, you can enter into a contract with your preferred builder to undertake preparatory work only. This agreement is generally not a contract to build - but you should check that this is the case!

The purpose of undertaking preparatory work is to give you a good idea about the basic costs of building your house. **However, it is not a final cost**, as some actual costs may only become apparent once the surveys are completed and engineering details are known. You should discuss this matter with your builder.

The written agreement should also set out the type of preparatory work that will be done for you, for example:

- general inspection of the block to note any special requirements that need to be taken into consideration;
- consideration of the site conditions and the likely costs of preparing the foundation;
- preparation of any special structural engineering details; and
- preparation of detailed drawings and specifications.

The fee for undertaking the preparatory work should be included in the agreement, but there may be provision for this fee to be varied for difficult or unusual sites. The fee for undertaking the preparatory work for a Preparation of Plans Agreement is normally not refundable. However, **some builders** may agree to deduct the fee you have paid them for the deposit payable, if you later agree to sign a building contract with that builder.

Make sure you read the Preparation of Plans Agreement carefully and get independent legal advice before you sign.

CHECK THAT THE PREPARATION OF PLANS AGREEMENT
is not a building contract

It should be noted that the Preparation of Plans Agreement does not generally give you copyright over the plans.

Beware of any forms that commit you to signing a building contract with the builder at a later stage.

It should also be noted that some Preparation of Plans Agreements allow the builder to make applications for a local authority building licence and for Water Corporation approval. Consider before signing whether you want to incur the expense of such approvals at this stage, or delete this clause and check that these tasks form part of the building contract.

FOR MORE INFORMATION

ABOUT PREPARATION OF PLANS AGREEMENTS:

- contact **Consumer Protection** on **1300 30 40 54** and ask for a free copy of our brochure entitled *Preparation of Plans Agreements*.

HOME INDEMNITY INSURANCE

Unless your house is part of a multi-unit development exceeding three storeys above ground **and/or** has two or more basement levels - usually for car parking, your builder is required by law to take out home indemnity insurance on your behalf.

The insurance policy should assist to ensure that your house can be finished in the event that your builder:

- dies;
- disappears; or
- has gone out of business because he/she can't pay his/her debts (ie insolvent).

The insurance policy is required to be in place during construction and until six years from the date of "practical completion," that is, when the house can be reasonably used for its intended purpose.



Here are some important points to note about home indemnity insurance.

- The cost of taking out home indemnity insurance should be included in the building contract.
- The builder chooses the insurer from a list of approved insurers and takes out the policy on behalf of the homeowner. A list of approved insurers is available from Consumer Protection.
- Under the minimum level of insurance cover required by law:
 - the maximum payout for loss of building deposit is currently \$20,000; and
 - the maximum payout that can be made to rectify or complete a house under the insurance cover is currently \$100,000 or the value of the contract work (whichever is less).
- Your builder should provide you with a certificate of home indemnity insurance **before** starting any building work or taking any money from you under the building contract (including the deposit).
- It is a good idea to keep the certificate of home indemnity insurance, so that you can give this to the new owner, should you sell the house before the six-year expiry date.
- If you need to make a claim under the home indemnity insurance policy, you may be required to pay an excess.

You should consider taking out home and contents insurance when you take possession of your house in case of damage (unrelated to construction), fire, or theft.

FOR MORE INFORMATION

ABOUT HOME INDEMNITY INSURANCE:

- call **Consumer Protection** on: **1300 30 40 54** and ask for a copy of our free brochure, entitled *Home Indemnity Insurance*; or
- visit our website: **www.docep.wa.gov.au**

A COSTLY CHANGE OF MIND

After getting a number of quotes to build a home in Yanchep, Kathy and Chen signed a Preparation of Plans agreement with one of the builders who had supplied a quote. The agreement required the builder to carry out a site inspection and survey, soil test, drawings and details of building methods to be used to construct the home.

Kathy and Chen paid \$2,500 for the Preparation of Plans agreement. After they paid the money, the couple began to have second thoughts about whether they could afford to build a home. They finally decided to sell their block in Yanchep and buy an established home instead. They told the builder they wanted to cancel the Preparation of Plans agreement and asked for their money back.

By the time Kathy and Chen had told the builder they had changed their mind, the builder had completed most of the work. The builder refused to give Kathy and Chen their money back.

The Preparation of Plans agreement, that Kathy and Chen signed, authorised the builder to carry out the inspections and to investigate the scope of work to be carried out if they built a home. There was no cooling off period in the contract.

The couple received the information they paid for under the Preparation of Plans agreement and the builder retained the full payment.

Kathy and Chen realised that they should only have signed the Preparation of Plans agreement when they were certain that they would build.

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THINK CAREFULLY BEFORE SIGNING A BUILDING CONTRACT, as there is no requirement for a cooling off period in WA

THE BUILDING CONTRACT

It is very important to read the building contract thoroughly and get legal advice from your lawyer if you are unsure.

The building contract is a complex document and is generally made up of:

- the building contract, including a Schedule of Particulars, Addenda or Appendix;
- drawings; and
- specifications.

Before you sign a building contract for work valued at between \$7,500 and \$500,000, your builder **must give you a copy of a document called *Notice to the Home Owner***. The notice summarises your rights and responsibilities under the *Home Building Contracts Act 1991* when employing a builder. Where applicable, make sure you receive and read this document, as well as the building contract.

THE LAW IN WESTERN AUSTRALIA DOES NOT REQUIRE THAT BUILDING CONTRACTS CONTAIN A COOLING OFF PERIOD. If the contract does not include a cooling off period, you cannot get out of a building contract because you have changed your mind.

TERMS OF A BUILDING CONTRACT

Generally, the building contract outlines the general rights and responsibilities of the builder and the homeowner. If you have any queries with any of the terms of the building contract, it is very important to consult a lawyer before you sign it.

It is also important to remember that the salesperson you speak with before signing the contract is generally not the builder, so make sure any promises made by the salesperson are in the contract.

Contracts that allow the costs of the project to be calculated as a “running tab” are called “cost - plus” contracts. Such contracts must be titled “cost-plus contract”. As it is difficult to monitor and control the ongoing costs of a building contract, it is recommended that you think very carefully before entering a cost-plus contract and seek expert advice.

For most building contracts, a figure can be calculated (including certain estimates explained under “Payment details”) for the total cost of the building project. Such contracts are called “lump sum” contracts.

Regarding the rest of the information in this section, we will assume that you have been given a lump sum contract for the building of your house.

Payment details

The building contract usually includes a payment schedule. The schedule sets out how much building work must be completed before the next instalment or “progress payment” is due.

The first payment under the contract is usually a deposit and should be limited to the builder’s initial costs. Under the *Home Building Contracts Act 1991*, for building contracts valued between \$7,500 and \$500,000, the builder cannot ask for more than 6.5% of the contract price as a deposit.

Before signing the building contract, you should check that arrangements for the release of progress payments are acceptable to you and your lender. The builder usually submits an invoice before a progress payment is due. Your lender may make the progress payments directly to the builder on your behalf.

Most contracts specify a total amount for the building work. Two areas where the costs are estimated in the contract are:

- the cost of goods that you will select during construction (known as prime costs); and
- the cost of work that cannot be known with certainty (known as provisional sums).

If the actual costs (including the builder’s margin) are less than the estimated costs, the builder will pay you the difference. However, if the actual costs (including the builder’s margin) are underestimated, you are required to pay the difference to the builder. Your builder must use reasonable care and skill when estimating costs in the contract.

FOR INFORMATION

ABOUT “COST-PLUS” CONTRACTS:

- ring **Consumer Protection** on **1300 30 40 54** and ask for our free brochure entitled *Home Building: Home Building Contracts Act 1991*.



case study

Payment details and delays

In relation to building contracts, the builder can include a term in the contract that allows for prices to be changed if the builder faces or incurs an increase in costs if:

- government taxes or charges increase after the contract is signed; or
- a State or Federal government law changes and affects the builder's costs; or
- work does not start on the project within 45 days from the signing of the contract (and the delay is not caused by the builder).

Inspections

Your builder cannot prevent you or your representative from inspecting the building work. However, you should ensure that you do not unreasonably interfere with the building work. In the building contract, the builder may seek your agreement to limit your inspections to normal working hours.

A date for completion

The building contract should also include the time limit to complete the house and the handover date. You may consider inserting a clause that allows for a penalty to be inserted if the date is not met (or a financial incentive for the early completion of the project). Any such term would need to be accepted by the builder.

NOT THE RIGHT TIME

Jonas wanted a new home to be built on a block of land he bought and signed a contract to the value of \$160,000 with a local registered builder, Dave. Jonas chose Dave because he had a good reputation for building quality homes in the area and Jonas could talk easily with him about the project. The local authority (council) approvals were given and work was due to commence on schedule.

Jonas had already chosen the bricks he wanted for the home. There had been a lot of building work going on in Western Australia and Dave thought it was a good idea to order the bricks without delay. Unfortunately, Dave was unable to buy bricks because there was a massive shortage. It was likely that Dave would have to wait two months before he could be assured of supply.

Dave found out that he would have to pay more for the bricks once they were available and would also face increased costs of bricklaying. Dave met with Jonas as soon as possible to explain the situation.

Jonas understood that the delays and price rises were not Dave's fault and he had to think carefully about what to do. Dave explained to Jonas that under WA law, Jonas could terminate the contract, as it was likely that the increase in the contract price would be more than 5% of the original contract.

Jonas and Dave agreed to terminate their existing contract. Jonas decided he would consider the state of the building industry in six months' time and hoped to enter into a new building contract with Dave at this time.

Drawings & Specifications

The drawings are the visual instructions or plans to the builder (and the local authority) about the measurements and features of the property being constructed.

The specifications are the agreed written instructions about the materials and building methods to be used to build the house.

If you have any queries or concerns about this part of the contract, you may consider employing an architect or draftsman to give you some advice.



BUILDING CONTRACT ISSUES

It is recommended that the building contract includes all your final requirements about the building and features of your house. You should check that your building contract covers matters such as:

- the type and size of the hot water system, which satisfies your requirements;
- the type and location of light, gas and TV fittings;
- a provision for site works;
- the method for termite prevention treatment;
- the number and location of power points and taps;
- the extent of tiling;
- the crossover (where the driveway on your land meets the verge); and
- whether any surfaces are to be painted and the quality of paint to be used.

FOR MORE INFORMATION

ABOUT BUILDING A HOUSE:

- call **Consumer Protection** on **1300 30 40 54** and ask for a copy of our free brochures entitled *Building Your New Home: A Checklist!* and *Termites and Your Home*.

CONTRACT VARIATIONS

It is sometimes necessary to make changes after the building contract has been signed. In this situation, you can approach the builder to make changes to the contract, but be aware that generally it is costly to do so.

Consider the following when you request changes be made to the building contract².

- Any requests for changes (known as a variation) to the contract must be made in writing to the builder as early as possible to minimise cost and time delays.

If you discuss any changes with the builder over the telephone, confirm what was verbally agreed with the builder in writing and keep a copy of your letter for your records.

Variations should not be made orally as they are difficult to prove if there are disputes (and disputes can and do arise).

- As with any contract, changes to any terms, including the cost, must be dated and signed by all the parties to the contract.

All variations to contracts between \$7,500 and \$500,000 must be in writing, the terms set out and agreed to by all the parties and you must receive a copy of the signed variation before the work covered by the variation begins.

- If you cannot agree with the builder about the cost of any variation, see the section headed Disputes on page 57.

FOR MORE INFORMATION

ABOUT VARYING A BUILDING CONTRACT:

- call **Consumer Protection** on **1300 30 40 54** and ask for a copy of the brochure *Home Building: Home Building Contracts Act 1991* or
- visit: www.docep.wa.gov.au



² For contracts between \$7,500 and \$500,000, the builder can issue a statement of a price rise to the owner where a variation to the contract is required in circumstances that could not be reasonably foreseen by the builder or where a lawful direction is issued.

BEWARE! Making changes after the building contract has been signed is generally costly

DEVIL IN THE DETAILS

Bob and Judy were building their first home with a highly recommended project builder. The couple decided that the design of their house would be similar to the design of a display home they had recently inspected.

Before signing a contract with the builder, the couple did a lot of research on the features that they wanted to include in their home. Their research included trips to a number of hardware stores and display centres and discussions with friends and family who had recently built their own homes. Bob's friends were so impressed with his newly acquired knowledge about the building project that they nicknamed him "Bob the Builder."

Bob and Judy were familiar with the types and prices of floor, wall and decorative border tiles that they were interested in buying. The couple also did a thorough audit of the number and position of power points they required in their new house. Bob and Judy even discussed their future plans for children and knew exactly what sort of hot water system they needed. Friends rolled their eyes at dinner parties as the big topic of conversation became debating the pros and cons of a concrete or a brick paved driveway.

Once the building contract was presented to the couple, Bob and Judy were able to include all their requirements into the contract. During construction, the builder asked Bob and Judy to choose the spa for their ensuite bathroom. The couple took the plans to a spa specialist and soon realised that the spa they wanted would not fit into the space allowed on the plan.

Judy rang their builder's representative, Anna, to discuss the problem. Anna carefully explained to Judy that varying the contract at this stage would involve significant costs. Anna explained their options and the worst-case scenario was changing the size of other rooms, some of which had already been built and changing the plumbing.

Judy discussed the situation with Bob. The couple decided that they would get the spa they wanted, but the shower recess in the ensuite bathroom would have to be removed. The couple also decided to place a shower rose above the spa to compensate for the shower being removed.

They immediately faxed their request to Anna, who provided them with the builder's cost variation for the couple to sign. Bob and Judy were disappointed that they had overlooked this aspect of the design in their research phase and were also disappointed that the changes were costly, but the couple recognised that the changes were necessary.

case study

GETTING FINANCE

You should check that the building contract has a condition that allows you to make every reasonable effort to get finance by a specific date, so that if you are unable to get finance the contract will not proceed. However, it is important that you take the time to 'shop around' for a lender **before** you enter a building contract.

There are a number of ways you can organise your finance for building, including:

- arranging finance through the project builder or as part of a house and land package;
- extending an existing loan for land to finance the construction of your house; or
- paying off the block and then applying for a loan for the construction of the house.

There is an important difference between getting a loan to build as opposed to a loan for an established property. When you employ a builder, you agree to pay the builder by instalments (called progress payments) depending on specified building milestones being achieved. Usually, you will only pay interest (the price of borrowing money) on the amount of the progress payments that have been paid to the builder, not the total amount of the loan.

So, until the final progress payment is made, you will generally only pay interest on the amount of money actually paid to the builder.

FINANCIAL ASSISTANCE

When building a house that is to be your first home, you may be eligible for the First Home Owner Grant.

FOR MORE INFORMATION

ABOUT THE FIRST HOME OWNER GRANT:

- contact the **Office of State Revenue** by:
 - calling **9262 1299** or **1300 363 211** (WA country callers, for the cost of a local call);
 - fax: **9262 1597**;
 - email: **firsthomegrant@dtf.wa.gov.au**;
 - attending Plaza Level, 200 St Georges Terrace, Perth; or
 - visiting the websites: **www.firsthome.gov.au** and **www.dtf.wa.gov.au**

STAGES OF CONSTRUCTION

Below is a simplified overview of the stages of construction to give you a general idea about what to expect when you are building a house through a builder.

GETTING APPROVAL

Before starting work, the builder must apply to the relevant local authority for a building licence and Water Corporation approval. The local authority considers whether the plans comply with the relevant legislation governing building control, namely:

- the Building Code of Australia, which sets out the rules for building to protect building users and provide for their health, safety and comfort;
- the *Local Government (Miscellaneous Provisions) Act 1960*; and
- the *Building Regulations 1989*.

FOR MORE INFORMATION

ABOUT BUILDING CONTROL IN WESTERN AUSTRALIA:

- visit the Department of Housing and Works website: www.dhw.wa.gov.au under the Office of Policy and Planning.

Where the *Home Building Contracts Act 1991* applies (for example, where the home building work is between \$7,500 and \$500,000), the builder has 45 working days from the date of the contract within which to obtain approval to build. Both the builder and the homeowner are required to do whatever is reasonable to ensure that this timeframe is met.

PRE-START MEETING

The “pre-start” meeting involves meeting with the builder so that you can make a number of important decisions about the types and colours of fittings and materials for your house. Your builder may have asked you to select items, such as tiles, from certain suppliers, prior to the pre-start meeting.

SHOP AROUND FOR A LENDER **before you enter into a building contract**

If you are thinking about any changes to the contract, make them now. If you make changes during construction, it will be expensive and will delay the completion of your house.

At this meeting, the builder may introduce you to the builder's representative, who you will be able to contact during construction.

CONSTRUCTION

During construction, it is recommended that you observe the following.

- Do not inconvenience or issue instructions to the tradespeople on site.
- Check that the building is proceeding according to plan.
- Communicate only with the builder or builder's representative and make sure you record the details of any discussions you may have about the construction of your house.
- Keep a diary to record all day-to-day happenings, including any discussions with the builder, weather and the progress of construction.
- Keep copies of any letters and notices that relate to the construction of your house.
- Take photographs of the construction at regular intervals.

If you are unsure about checking that the construction is proceeding to plan, you can employ an independent building consultant or architect to monitor the construction on your behalf.



PRACTICAL COMPLETION

Practical completion means that the building work is at a stage where the house can be reasonably capable of being used for its intended purpose. When the builder is satisfied that the house is ready for inspection, you will receive a notice of “practical completion”.

It is recommended that you take care when inspecting the house with the builder to satisfy yourself that the builder has reached the practical completion stage. You should be reasonable, but not rushed into signing your acceptance that the house has been practically completed.

It is important that you do not overlook any major defects. It may be a good idea to employ an independent and reputable building consultant to assist you with this inspection.

Once you have moved in to your house, it may be difficult to prove that a defect was caused by the builder. In addition, once you’ve moved in, it may be difficult and disruptive for workmen to rectify any problems.

By law for contracts between \$7,500 and \$500,000, the builder is liable to make good, without additional cost, defects in the building work notified in writing within a minimum of four months from practical completion. Check your contract for the exact period of notification of defects.

However, regardless of the value of the building work and where the building work is performed in Western Australia, there is another safeguard in terms of the builder’s legal responsibility for faulty and unsatisfactory work. Where any structural problems³ occur due to faulty workmanship or materials during six years from practical completion, you should contact the builder to rectify them.

If a dispute occurs about who is responsible to rectify a fault, you can take the matter to the Building Disputes Tribunal for determination (for more information, see opposite).

HANDOVER

Usually about five days after the date of practical completion, you should be ready to collect the keys to your house and make final payment. At handover, you should receive a copy of all relevant warranties and certificates arising from the contract. Make sure you have obtained the builder’s written authority to take possession of the property.

DISPUTES

Sometimes, things can go wrong during building. If you are concerned about any delays, workmanship or other issues:

- raise your concerns with the builder or builder’s representative as soon as possible and make a note of the details of any discussions;
- outline your concerns to the builder in writing (so you have proof) and outline what you would like the builder to do to remedy the situation;
- consider arranging for a lawyer to communicate with the builder on your behalf; and
- take photographs of the work that causes you some concern.

If you are unable to resolve the problem with the builder, you can lodge a complaint to the Building Disputes Tribunal (called the BDT). Complaint forms are available from the Builders’ Registration Board. There is a nominal fee involved in lodging a complaint.

When lodging a complaint with the BDT, you should:

- provide the address of the building work that is the subject of the complaint;
- indicate the problem, any relevant background and what you would like the builder to do to remedy the situation;
- provide your contact details;
- provide a copy of any letters you sent to the builder (or builder’s representative); and
- sign and date the letter of complaint.

Staff from the Builders’ Registration Board can give you general advice about the procedure involved for lodging a complaint with the BDT. However, staff cannot give you advice about the merits of your claim.

FOR MORE INFORMATION

ABOUT LODGING A COMPLAINT WITH THE BDT:

- call the **Builders’ Registration Board** on **9476 1200** and ask for a copy of their free brochure, *Resolving Building Disputes* or
- visit the **BDT** website: www.buildingdisputes.wa.gov.au

TAKE CARE when inspecting the house with the builder

³ The term “structural defect” is used to provide some practical assistance regarding the types of matters that can be referred to the Building Disputes Tribunal. Please refer to section 17 of the *Home Building Contracts Act 1991* and section 12A of the *Builders Registration Act 1939* for further detail.

OWNER-BUILDING

WHAT IS AN OWNER-BUILDER?

If you are not a registered builder and decide to construct or oversee the building of your own house, you can apply for an owner-builder licence.

There are many rules, risks and responsibilities when you decide to construct your own house as an owner-builder, rather than employing a registered builder. One of the major risks as an owner-builder is the possibility that, without the relevant industry contacts and project management skills, your project could run over time and over budget. You should weigh up these risks carefully against any potential savings expected.

The following information is provided as general information only.

Before starting any building work, you may want to discuss your particular circumstances and requirements with a lawyer who is experienced in building matters.

FOR MORE INFORMATION

ABOUT THE TAX IMPLICATIONS OF YOUR PARTICULAR BUILDING PROJECT:

- contact a suitably qualified accountant; or
- ring the **Australian Taxation Office** on **13 28 61** (within Australia).



GETTING FINANCE

As an owner-builder, you may find it difficult to obtain a home loan. If you require finance for the project, it is important that you arrange for a loan before the building process has commenced.

You should organise your loan in such a way that cash is available to pay the tradespeople you employ as payments fall due.

CONSTRUCTION

Owner-builders are required to ensure that the construction meets the necessary building and associated laws, including:

- the standards and conditions imposed by Local Governments;
- compliance with the legislation governing building control; and
- compliance with laws involving provision of a safe working environment for tradespeople.

Once you have a sketch design of your house (and you should ensure that you have not breached any copyright), it will be necessary to:

- research the building and construction materials you require;
- assess the approximate cost and timing of construction;
- ensure your final plans are drawn up by an architect or drafting service;
- purchase a block of land that is compatible with your plans;
- consider the employment of suitable tradespeople and timing of trades and materials to ensure that your project progresses according to your projected schedule.

You will also need to obtain the necessary approvals from the local authority and the Water Corporation. You cannot apply for an owner-builder's licence if you have received an owner-builder's licence within the last six years of your current application.

Before applying for a building licence, you are required to complete and lodge a statutory declaration with the Builders' Registration Board and pay a fee. To obtain a copy of the statutory declaration form, contact the *Builders' Registration Board* on **9476 1200** or visit their website at:

www.builders.wa.gov.au

As an owner-builder, you are not required to take out home indemnity insurance before applying for a building licence. However, you must take out home indemnity insurance if you sell the house within seven years of obtaining the building licence. The home indemnity insurance will protect the new home owner should you (as the owner-builder) die, disappear or become insolvent.

If you sell the house within seven years of obtaining the building licence, as an owner-builder you are responsible for claims regarding structural defects⁴ from faulty workmanship or materials for the remainder of that period.

FOR MORE INFORMATION

ABOUT HOME INDEMNITY INSURANCE FOR OWNER-BUILDERS:

- turn to page 61 of this Guide.

OTHER INFORMATION

Owner-builders may be interested in considering the benefits of energy efficient housing and energy efficient appliances.

FOR MORE INFORMATION

ABOUT ENERGY EFFICIENT HOUSING:

- contact the **Sustainable Energy Development Office** at: www.sedo.energy.wa.gov.au

⁴ The term "structural defect" is used to provide some practical assistance regarding the types of matters that can be referred to the Building Disputes Tribunal. Please refer to section 17 of the *Home Building Contracts Act 1991* and section 12A of the *Builders Registration Act 1939* for further detail.

CHOOSING TRADESPEOPLE

When constructing a house for yourself, you will need to select and manage suitable tradespeople.

Some of the ways you may consider choosing tradespeople include:

- getting recommendations from family and friends;
- driving around and chatting to builders working in the area; and
- finding out whether there are any associations of tradespeople and asking the association for recommendations.

You will need to ensure that some tradespeople, such as electricians, painters and plumbers, are appropriately licensed or registered to undertake work in these areas.

Always specify and ensure that the tradespeople understand the scope of the work you want done and obtain accurate written quotes from a range of tradespeople before employing someone.

Make sure you have all necessary insurances when employing tradespeople, and consider obtaining additional insurance to cover acts such as vandalism, public accidents, theft and damage caused by fire or storms.

ELECTRICIANS AND GAS FITTERS

In Western Australia, electrical work can only be done by an electrician who has been licensed by the Electrical Licensing Board. Electrical work must be performed in accordance with the appropriate Australian standards.

Similarly, gasfitting work must be carried out in accordance with the Australian standards, by a person with an appropriate gas fitter's permit (or

Certificate of Competency). The Director of Energy Safety, or delegate, grants permits to gas fitters with the necessary skills and technical knowledge. Gasfitting work includes connecting a domestic oven to the gas supply and installing gas bayonets in houses.

FOR MORE INFORMATION

ABOUT THE LICENSING OF ELECTRICIANS AND GAS FITTERS:

- contact **EnergySafety**:
 - Address: 303 Sevenoaks Street, Cannington
 - General enquiries: call **9422 5200** or email: energysafety@docep.wa.gov.au
 - Licensing enquiries: call **9422 5282** or email: energylicensing@docep.wa.gov.au
 - Website: www.energysafety.wa.gov.au

THERE ARE MANY rules, risks and responsibilities WHEN YOU OWNER-BUILD



[SECTION 3]

BUILDING A HOUSE

PAINTERS

Anyone carrying out painting or wallpaper hanging work valued in excess of \$200 must be registered by the Painters' Registration Board. Ask to see the painter's identity card, which is issued by the Painters' Registration Board.

FOR MORE INFORMATION

ABOUT THE REGISTRATION OF PAINTERS:

- contact the **Painters' Registration Board** by:
 - calling the Board on **9476 1212**;
 - visiting 18 Harvest Terrace West Perth; or
 - visiting the website: www.painters.wa.gov.au

PLUMBERS

Under the plumber licensing regulations, an appropriate plumber's licence is required to carry out water supply, sanitary and/or drainage plumbing work anywhere in Western Australia. Roof plumbing and storm water drainage can be performed without the need for a licence.

There are two classes of licence that allow a person to carry out plumbing work, as defined by the licensing regulations in Western Australia outlined below.

1. Plumbers' licence - authorises the holder to:
 - carry out plumbing work;
 - exercise general direction and control over holders of a tradesperson's licence who are carrying out plumbing work; and
 - supervise an apprentice when carrying out plumbing work.
2. Tradesperson's licence - authorises the holder, under the general direction and control of the holder of a plumber's licence, to:
 - carry out plumbing work; and
 - supervise the carrying out of plumbing work by an apprentice.

DISPUTES

Managing tradespeople is a significant role for many owner-builders. Before deciding to become an owner-builder, you should consider this aspect very carefully. Consider taking a course or employing a consultancy firm that can take you through all aspects of the owner-building process, including the management of disputes⁵.

⁵ Owner-builders should also familiarise themselves with the provisions of the *Home Building Contracts Act 1991* and the *Builders' Registration Act 1939* and/or seek legal advice.

THE BENEFITS OF USING A LICENSED PLUMBER

Juanita and Gary decided to personally supervise the building of their two-storey home. They confirmed that the plumber they were thinking of using was properly licensed by ringing the Plumbers Licensing Board on 9282 0478.

When their home was finished, they had hardly unpacked when they noticed that the second floor had an unpleasant smell. It turned out that the smell was due to a vent on the drain for the second storey bathroom being too close to a window.

Juanita and Gary tried to get the plumber to come back and move the vent, but he refused. Juanita and Gary wrote a letter of complaint to The Plumbers Licensing Board. After investigation of the matter by an inspector, the plumber was directed to move the vent.



case study

FOR MORE INFORMATION

ABOUT THE LICENSING OF PLUMBERS:

- contact the **Plumbers Licensing Board**:
 - Address: Unit 4 (rear) 321 Selby Street, Osborne Park
Postal address: Locked Bag 14, Cloisters Square, WA, 6850
 - Telephone: **9282 4387**
 - Website: **www.plumbers.wa.gov.au**

FINANCIAL ASSISTANCE

First home owner-builders may be eligible for the \$7,000 First Home Owner Grant.

FOR MORE INFORMATION

ABOUT THE FIRST HOME OWNER GRANT:

- contact the **Office of State Revenue** by:
 - calling **9262 1299** or **1300 363 211** (WA country callers, for the cost of a local call);
 - fax: **9262 1597**;
 - email: **firsthomegrant@dtf.wa.gov.au**;
 - attending Plaza Level, 200 St Georges Terrace, Perth; or
 - visiting the websites: **www.firsthome.gov.au** and **www.dtf.wa.gov.au**

RESTRICTIONS ON SELLING THE HOUSE

There are certain restrictions on selling a house if you apply for an owner-builder licence in an area where the *Builders' Registration Act 1939* applies, which includes:

- Perth;
- most of the South West Land Division, except for the shires of Mukinbudin, Mt Marshall and Narambeen; and
- many town sites in the Eastern Goldfields, Esperance, Gascoyne, Pilbara and Kimberley regions.

Owner-builders are not permitted to sell their owner-built house within three years of obtaining their owner-builder licence, without first writing to the Builders' Registration Board to obtain permission from the relevant Minister or delegate. Permission is granted in special circumstances only.

FOR MORE INFORMATION

ABOUT PERMISSION TO SELL AN OWNER-BUILT HOUSE:

- call **Consumer Protection** on **1300 30 40 54**.

HOME INDEMNITY INSURANCE

If the house is sold within seven years of obtaining a building licence, owner-builders must take out indemnity insurance from an approved insurer for the remainder of the seven-year period. Owner-builders must also provide the purchaser with a valid certificate of insurance BEFORE entering into a contract to sell.

If an owner-builder is unable to get the required home indemnity insurance, the property cannot be sold within seven years of obtaining the owner-builder's licence.

Owner-builders who fail to take out indemnity insurance and/or fail to provide the insurance certificate to the purchaser before selling the property within seven years of obtaining a building licence are liable to be prosecuted and may face a fine of up to \$10,000.

FOR MORE INFORMATION

ABOUT APPROVED INSURERS:

- call **Consumer Protection** on **1300 30 40 54**.

ALTERNATIVE HOUSES TO CONSIDER WHEN BUILDING

KIT HOMES

You may consider building a "kit home" on your block of land. Kit homes involve delivery of the frame and other components to your building site for construction. The kits are designed to be built by a registered builder or an owner-builder.

Before placing an order for a kit home, owner-builders should ensure that:

- they are able to obtain finance to build a kit home;
- all relevant land enquiries (as described on pages 46 - 47) are made; and
- the relevant local authority will permit the construction of a kit home.

Kit homes may drastically reduce the amount of construction time. However, you may be limited in the design of the kit home. Kit homes usually include a set of working drawings for lodgement with the relevant local authority.

These types of houses are popular in the northwest of Western Australia and also in the hills area.

SPECULATIVE BUILT HOMES

One form of "established" house, which is usually free standing, is the builder's "spec" (short for speculative built) or "display" home. Buying a spec home means that the house and fittings are all brand new and likely to be in good condition, although the design is already determined.

If there are any structural defects⁶ with a spec home that have resulted from faulty workmanship or materials during six years from practical completion, you should contact the builder to rectify the problem. The builder must also have taken out a certificate of home indemnity insurance for the six years from practical completion, should the builder die, disappear or become insolvent.

⁶ The term "structural defect" is used to provide some practical assistance regarding the types of matters that can be referred to the Building Disputes Tribunal. Please refer to section 17 of the *Home Building Contracts Act 1991* and section 12A of the *Builders Registration Act 1939* for further detail.

