



Department of  
Building and Housing

*Te Tari Kaupapa Whare*



**Building Act 2004**

Information  
for designers,  
builders  
and specialist  
trades



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# Introduction

If you work in the industry you will know the law around building has changed.

The Building Act 2004 is introduced in stages. Changes to building consents and inspection processes mainly took effect on 31 March 2005.

Licensing for designers, building site supervisors and some specialist trades comes fully into effect from November 2009.

Though a lot is changing, the basic processes you need to go through on a building project are staying the same. You still need to get a building consent and have the work signed off, and the Building Code is still performance-based.

This leaflet sets out the main changes, particularly for residential or straightforward building projects.

For more information, visit the Building Act 2004 website: [www.building.govt.nz](http://www.building.govt.nz)

You, or your customers, can also find useful information on [www.consumerbuild.org.nz](http://www.consumerbuild.org.nz)

# Contracts for building work

## ALL RESIDENTIAL CONTRACTS ENTERED INTO FROM 30 NOVEMBER 2004

### Implied warranties

- Automatic guarantees of workmanship in every residential contract
- Applies to builders, specialist trades and developers

New consumer protection measures ensure building work on household units is now automatically covered by warranties to guarantee good workmanship. These warranties apply whether you write them in the contract or not and you can't change your contract so these warranties don't apply.

If you are the main contractor on the job, and have employed the subcontractors, warranties for their workmanship are covered in your contract.

### What are the warranties?

- The building work will be done properly, competently, and in accordance with the plans and specifications.
- All the materials used will be suitable and, unless otherwise stated in the contract, new.
- The building work will be consistent with the Building Act and the Building Code.
- The building work will be carried out with reasonable care and skill and completed within the time specified, or a reasonable time if no time is stated.
- The household unit will be suitable for occupation at the end of the work.
- If the contract states any particular outcome and the owner relies on the skill and judgement of the contractor to achieve it, the building work and the materials will be fit for purpose and be of a nature and quality suitable to achieve that result.

## **What if something goes wrong?**

It is likely that you will first try to resolve any issues through negotiation.

However, negotiation is not compulsory and a breach of contract can be alleged directly through the court system. To be successful in court, your customer will have to show he/she has suffered loss as a result of your actions.

## **How can I avoid problems?**

Be certain to specify the use of any materials that are not new, or are recycled, in your contract.

If you are going to use materials different from those specified in the plans you should advise your building consent authority as they may require amendments to the building consent. You will also need to agree the changes in your contract.

You will need to ensure you only carry out work you have the skills for. If you are the main contractor you need to be sure all your subcontractors can do their job.

# Consents and inspections

## CHANGES AND 'TRANSITIONAL PROVISIONS' IN FORCE FROM 31 MARCH 2005

### Building consent authorities

- Most local councils

Building consents and inspections are carried out by building consent authorities (BCAs). Local councils offer BCA services.

### Building consents

- More detail needed in consent applications
- Code compliance certificate issued against consent

There is a new application form for building consents. On this, you explain how your building project complies with the Building Code clauses, and supply more detailed plans than previously.

Building consents are still compulsory and it is illegal to do work requiring a consent without one. Some work is exempt, such as decks lower than one metre in height and sheds 10 sq metres or less in floor area and 1 storey or less in height.

### Inspections

- Build to plan
- If there is a variation, get an amendment to the building consent

Inspections and code compliance certificates (CCCs) will now be assessed against the approved building consent and plans.

It is important that you build to the plans for which you have been issued a building consent, otherwise you may have difficulties getting the work signed off.

If there is a variation from the plans, the consent needs to be amended before the work is done. The process for amending a consent is similar to applying for a building consent.

## Timeframes

– 20 working days

Building consent authorities have up to 20 working days to process a building consent application or amendment.

You will need to bear this in mind when you plan the job and arrange subcontractors. Keeping variations to a minimum will minimise delays caused by amendment.

## Interim CCCs

– No interim CCCs

Interim code compliance certificates (CCCs) can no longer be issued.

If you anticipate that you might need sign-off on part of a job, you should consider applying for separate building consents for different parts or stages of the project. That way a CCC can be issued when the work specified in a particular building consent is finished.

## New public safety measures

- Affect premises intended for public use
- Likely to include shops, restaurants, libraries and foyers in some apartment projects

Premises intended for public use that are affected by building work, which was consented after 31 March 2005, must be issued with a CCC or a certificate for public use before the premises can be used or occupied.

If you think your project might be affected, pick up a leaflet '*New safety measures for premises intended for public use*'.

## Urgent work

- Certificate of acceptance in some circumstances

In rare circumstances where health and safety are at risk, such as after a flood or fire, you may need to start building work immediately without waiting for a building consent.

If this happens you should apply to the council for a certificate of acceptance as soon as possible.

Certificates of acceptance are new. They state that, to the extent the work was able to be inspected, it complies with the Building Code.

It is still an offence to do building work without a building consent and certificates of acceptance are only granted at council's discretion.

There are other, limited, circumstances in which certificates of acceptance can be granted.

## What if I started my job before 31 March?

- No major change required if your job was consented before 31 March 2005

If you're building after 31 March 2005 on a project that was consented before that date, you should not notice any significant changes because your situation is covered by the Act's **transition provisions**.

Your CCC application will be assessed against the Building Code in place at the time the consent was granted, not the Code in place at the time of the inspection as under the old law.

You will still need to ensure you build to a high standard.

# Spec building and housing developments

## NEW CONSUMER PROTECTION MEASURES

### Household units

– No CCC, no sale

The Building Act introduces important consumer protection measures covering the sale of household units by residential property developers, including 'spec' builders.

It is now an offence for a residential property developer to complete the sale, or allow a purchaser to take possession of, a household unit before a code compliance certificate (CCC) has been issued.

It does not apply to contracts for sale and purchase entered into before 30 November 2004.

Effectively this makes it the developer's responsibility to fix any faults before sale.

A person who commits an offence under section 364 is liable to a fine of up to \$200,000 for each property sold.

### What is a 'household unit'?

A household unit is a building or group of buildings intended for residential purposes to be occupied by one household. It does not include a hostel or boarding house.

### How is 'residential property developer' defined?

A residential property developer means any person who, in trade, builds or arranges to build a household unit for the purpose of selling it. This could include large developers, or builders or individuals building homes on 'spec'. It also includes a person who, in trade, buys a household unit from a builder or developer with the intention of selling it on.

## **What does 'complete the sale' mean?**

'Complete the sale' means accepting final payment and transferring the title. You can accept progress payments for the job.

## **Can I get an interim CCC instead?**

No, interim code compliance certificates were phased out on 31 March 2005. You need to get a CCC.

## **Can you contract out of this requirement?**

It is possible to contract out of this provision, but only on a form prescribed under the Building (Forms) Regulations 2004. The form (Form 1) is available on [www.building.govt.nz](http://www.building.govt.nz). The form makes it clear to the purchaser what having no CCC may mean for them, for example that finance and insurance may be affected. The form needs a separate signature and cannot be altered.

## **What else can I do?**

People who want to start selling household units before the entire project is finished should consider making separate consent applications for each unit or groups of units.

For example, if you are building four townhouses you could get a separate building consent for each townhouse. This means you will be able to get a CCC and sell each one as it is finished.

# Licensing

## COMPULSORY FROM 30 NOVEMBER 2009

### Designers, building site supervisors, specialist trades

- Licensing of building practitioners
- Public can access online register
- Complaints put to a Building Practitioners Board
- Still being developed

The Act provides for a national licensing system for building designers, building site supervisors and some specialist tradespeople.

From 2009 all restricted work must be carried out or supervised by a licensed building practitioner (LBP).

#### How do you get a licence?

You will have to meet certain standards to get a licence. These standards, which are yet to be set, will measure your ability to perform quality work based on your knowledge, skills, on-the-job competence and qualifications. A lack of formal qualification should not stop you becoming licensed if you meet the standards. You will pay a one-off assessment fee when you are assessed.

There will be training available to help you improve your skills to reach the licensing standard.

Each year you will pay an annual fee to update your licence. At regular intervals you will be required to demonstrate you continue to meet licence standards.

## **Building consents and restricted work**

Licensing will be closely linked to the building consent process. All plans submitted to building consent authorities for consent will have to list all licensed building practitioners (LBPs) who are carrying out or supervising restricted work on the project.

Restricted work is building work that is critical to the integrity and safety of the building. If you are one of the LBPs listed on the consent you will need to make sure the work you are responsible for meets the building consent requirements before you sign it off.

You can still do building work without a licence as long as any restricted work you do is supervised by a licensed person.

## **Why should I get a licence?**

The licensing system aims to set national standards for work carried out by anyone involved in the design and construction of buildings. If you get a licence you will have shown that you can carry out or supervise work to this standard.

When you become licensed, your name and licence details will be listed on an electronic register, which the public will be able to search to help them choose a designer, building site supervisor or specialist tradesperson.

Any complaints about you will be considered by a group of people from the industry who make up the Building Practitioners Board. If the complaint is upheld, and disciplinary action is taken by the Board, it will be recorded on the register and remain there for three years.

## **More information**

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Disclaimer:

While we have tried to make this educational information as accurate as possible, it does not cover every situation and should not be regarded as legal advice.

This document is also available on the Department's website: [www.dbh.govt.nz](http://www.dbh.govt.nz)

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