



## Home and Hosed? Tips for terminating residential building contracts

By Lachlan Amerena, Lawyer  
and Michael Byrom, Consultant

JULY 2019

This article is the first in a series of four articles addressing the practical considerations of terminating a residential building contract.

These articles are aimed at guiding home owners, but are equally relevant to builders. They generally relate to standard residential building contracts (e.g. residential building contracts produced by the Master Builders, HIA and the QBCC).

We will not discuss implied or statutory obligations and will concentrate our comments on written terms agreed by the parties. Anyone building or renovating should seek legal advice early, before signing any building contract.

### How can a building contract be terminated?

Terminating any contract needs to be handled carefully, as a party who attempts to, but improperly terminates a contract for another's breach, will then be in breach of that contract.

#### Method of Termination

Commonly, the party alleging a breach in a building contract will be required

to serve a notice upon the other party, formally bringing the breach to the other party's attention.

A party terminating a building contract by an express method provided in the contract generally should ensure that:

- The notice which is required to be served on the other party is given by the stipulated method of service (for example, by personal service, email or fax) and to the address required in the contract.



- The notice specifies the clause in the contract that gives that party the right to issue the notice.
- The notice particularises the breach, so that the party receiving the notice knows what breach or breaches of the contract are alleged.

Where a notice has been served and the breach is not remedied in the specified time, a right of termination will arise.

#### Grounds for termination

##### *Termination by the express terms of the building contract*

A building contract usually includes express terms identifying the grounds for termination.

Even though a building contract provides an express method and grounds for termination, a party may still rely on its ability to terminate the building contract at common law for a 'substantial breach'.

Clear words are needed in any contract to rebut the presumption that a party has abandoned its right to terminate a contract at common law

##### *Termination at common law*

Whether a breach of a term is 'substantial' depends on the nature and degree of the breach. Generally, a breach is 'substantial' where it goes to the root or commerciality of the contract. This might be so where the party who alleges the breach would not have contracted, had it known the term in dispute would not be honoured by the other party.

##### *Termination for repudiation*

A right to terminate a contract will also arise where one party 'repudiates' the building contract.

Repudiation occurs in circumstances where one party is unwilling or unable to

perform its obligations in a contract. This might arise through an express statement from another party or by that party's conduct.

Common repudiatory conduct in a building contract includes:

- The builder "downing tools", walking offsite and refusing to return (without having issued a valid notice to stop work under the building contract).
- The owner refusing the builder access to the site.

#### Conclusion

Termination of a building contract has serious consequences for each party.

If you are concerned that the other party may be in breach of a building contract, or you have been served a notice of intention to terminate by the other party, you should seek legal advice immediately.

In our next three articles we will discuss:

- A party's right of termination for a building contract for major defects;
- A party's right of termination for a building contract for delay; and
- What damages a party may claim when a building contract is terminated.

Should you wish to discuss any matters arising out of this article, please contact:

[Michael Byrom | Consultant](#)

D (07) 3223 9109

E michael.byrom@brhlawyers.com.au

[Lachlan Amerena | Lawyer](#)

D (07) 3223 9126

E lachlan.amerena@brhlawyers.com.au