



"Home wasn't built in a day": termination for delay under a residential building contract

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In Queensland, residential building contracts warrant that a builder will carry out work with "reasonable diligence".¹ This warranty is included in residential building contracts from the Master Builders, HIA and the QBCC.

Where delay arises, a builder's diligence may be scrutinised.

The "diligence" of a builder in performing works has been said to include not only "personal industriousness" but also efficiency by the builder and the builder's employees.²

An owner might successfully terminate a residential building contract by demonstrating:³

1. at the time the notice to remedy breach is served, the building works are seriously incomplete; and
2. there are no circumstances preventing the builder from having performed the works at a more rapid rate.

Where an owner cannot demonstrate these two factors, termination of a building contract for a builder's lack of diligence may be improper.



Case Study: progression of works outside of the builder's protocol

In *Hometeam Constructions* the owner alleged that the builder had breached the building contract because the builder was seriously behind in the works as compared with the progress milestones in the building contract.

While a number of factual issues were considered, ultimately the Court found that in this case the delay did not amount to a lack of diligence by the builder. It was found that the works had been interrupted due to the engineer's condemnation of the foundations, which in this circumstance was a matter outside of the builder's control.⁴

Case Study: seriously behind in works

In *Richards and Anor v Queensland Building and Construction Commission and Anor* the owners signed a building contract on 18 April 2016. Under the contract, works were required to be completed by 29 December 2016.⁵

Despite this, no building works commenced at the site until around September 2016, more than four months after the contract was signed.

In April 2017, the builder was yet to finish the fixing stage under the building contract and no extension of time was sought from the builder. The owners issued the builder a notice to

remedy breach on the grounds the date for practical completion had long passed and no extension of time for completion had been sought by the builder.

In May 2017, the owners terminated the building contract for a failure of the builder to proceed with due diligence. The Tribunal held that the owners were entitled to terminate the contract for the builder's failure to progress the works with diligence under the building contract.

Tips for Parties to a Building Contract

Parties to a building contract should:

- keep a diary in relation to the progress of works, detailing circumstances such as who was on site, when they were on site and for how long they were on site; and
- regularly take photographs in relation to the progress of building works.

Whether a residential building contract can be terminated for delay is a matter of fact and degree. Any party concerned about delay in building works should seek legal advice immediately.

Our next and final article in this series considers the issue of damages and what can be claimed against a party who has breached a residential building contract.

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¹ Queensland Building and Construction Act 1991 (Qld), Schedule 1B, s 25.

² *Hooker Constructions Pty Ltd v Chris's Engineering Co* [1970] ALR 821, 822; quoted in *Hometeam Constructions Pty Ltd v McCauley* [2005] NSWCA 303, [173].

³ *Dura (Australia) Constructions Pty Ltd v Hue Boutique Living Pty Ltd (No 3)* [2012] VSC 99, [439]; *Hometeam Constructions Pty Ltd v McCauley* [2005] NSWCA 303, [199].

⁴ *Hometeam Constructions Pty Ltd v McCauley* [2005] NSWCA 303.

⁵ [2019] QCAT 189, [26].