

Builders and Certifiers

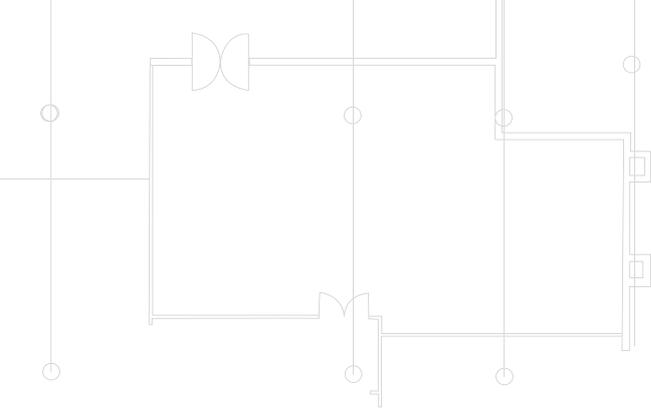
March 2008



ACT Planning &
Land Authority

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This guide provides you with information about development and building approval, plans, appointing a certifier, finding and engaging a builder, contracts, insurance and resolving disputes. Checklists are provided.

This brochure is a general guide; if you require more detailed information, please seek professional advice.

If you have any questions concerning the content of this publication or any other questions concerning building, please contact us.

Phone

(02) 6207 1923

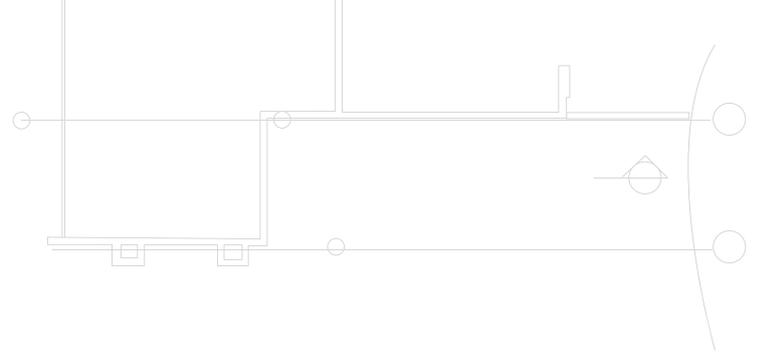
Visit us

Dame Pattie Menzies House

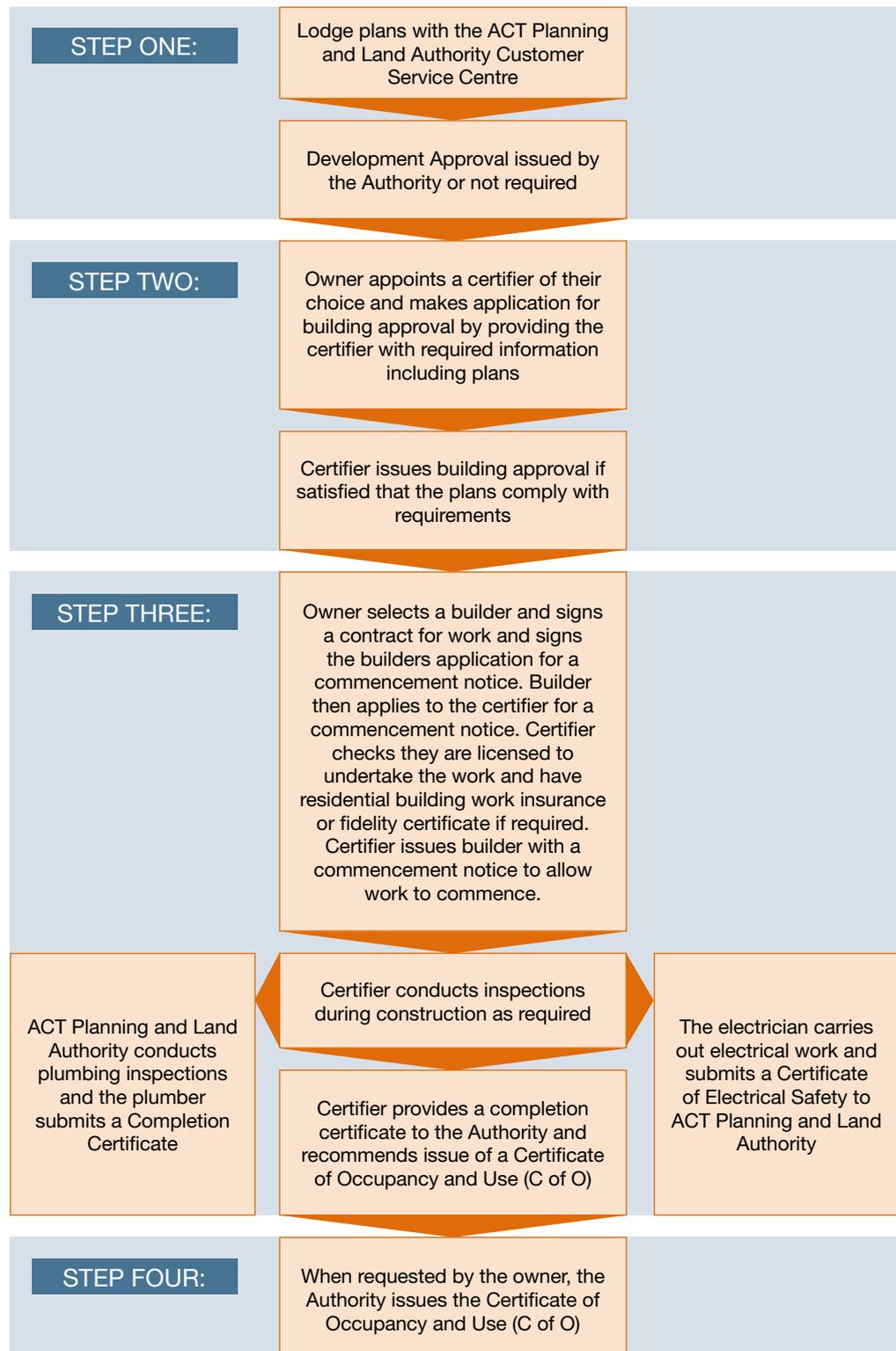
16 Challis St

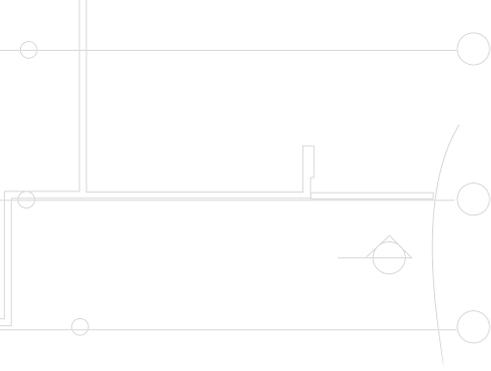
DICKSON ACT 2602

www.actpla.act.gov.au



FLOW CHART FOR TYPICAL RESIDENTIAL BUILDING





PREPARING PLANS

One of the most important aspects of building, extending or renovating your home is the design.

A builder may be able to provide plans or they could be drawn up by an independent architect, engineer, or building designer. Correctly drawn plans may save time in getting them approved and may minimise any grounds for dispute between a home owner and their builder. So it is recommended that whoever does the job has the appropriate qualifications and experience to do it properly. The plans form the basis of the agreement between the home owner and the builder, so check them carefully to be sure that they are exactly what is wanted.

DOES MY WORK REQUIRE DEVELOPMENT OR BUILDING APPROVAL?

Most building work requires some sort of approval – development approval, building approval or more commonly, a combination of both.

Not all work requiring development approval requires building approval and likewise, not all work requiring building approval needs development approval. For example, new homes in new estates do not require development approval, so long as certain criteria are met.

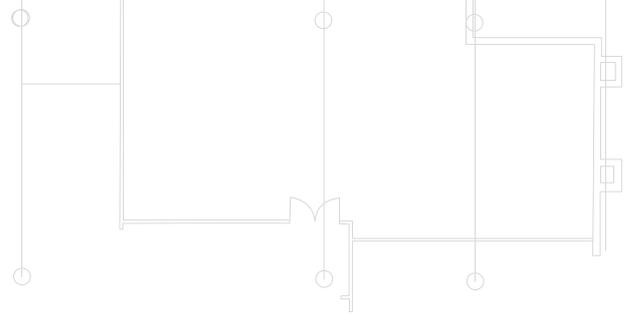
Development approval ensures that any development that is undertaken is appropriate to an area and conforms with any lease requirements, planning codes, regulations or special development conditions that may apply to a particular piece of land. It is obtained from the ACT Planning and Land Authority.

Building approval ensures that any planned building work will be structurally sound and safe, and will conform with the requirements of the Building Code of Australia. This is obtained from a private sector building surveyor, called a certifier.

To find out whether proposed work needs either development approval or building approval, or if you require more information, contact a certifier, architect or the ACT Planning and Land Authority.

HOW DO I GET DEVELOPMENT APPROVAL?

If your proposed work requires development approval your plans must be lodged at the ACT Planning and Land Authority. This is often done on the homeowners' behalf by their builder or the person who prepared the plans for them. Work that requires development approval may require public notification.



HOW DO I GET BUILDING APPROVAL?

Getting plans approved

Any person seeking building approval will need to appoint an ACT licensed building surveyor as certifier for the building work.

In general terms, a certifier is appointed to act in the homeowner's best interest to ensure that the building plans and work is completed in accordance with the building legislation and the Building Code of Australia (BCA). The BCA covers issues such as structural safety, and health and fire protection, but does not address quality of the work or finish.

Certifiers are responsible for plan approval and ensuring the plans are considered by other government agencies where required. Certifiers are also responsible for giving copies of the plans to the ACT Construction Occupations Registrar for record keeping purposes. The responsibilities of a certifier after issuing the building approval include issuing the builder with a commencement notice and if required for residential building work, ensure that housing indemnity insurance or a fidelity certificate is in place before work begins, conducting a set number of inspections during construction and issuing a certificate of completion once the building work has been satisfactorily completed.

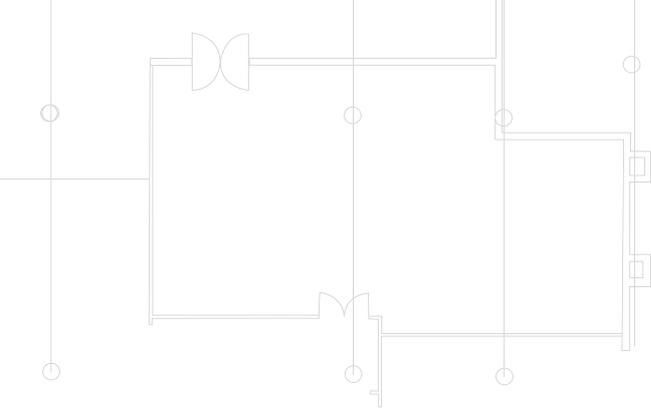
Appointing a certifier

The responsibility of appointing a certifier is the homeowners. Homeowners can give this responsibility to another person such as their builder. However, to ensure that their interests are protected, it is best to engage a certifier themselves. Before appointing a certifier it is advisable to obtain more than one quote for the certification work to determine the fees for the certifier's services. It is also recommended to agree to the method and timing of payment.

It is important to ensure that the certifier is licensed and has the required qualifications to approve and certify the work being carried out. There are different classes of licence for building surveyors and you must ensure that a certifier demonstrates they are correctly licensed. A certifier must also be independent. They must not have any direct or indirect financial, legal or equitable interest in the work or have any relationship whether personal, professional, commercial or financial, with you or the builder. A certifier must also not be involved in the design or construction of the work being done. A list of licensed building surveyors can be found on ACT Planning and Land Authority website or is available from ACT Planning and Land Authority Customer Service Centres.

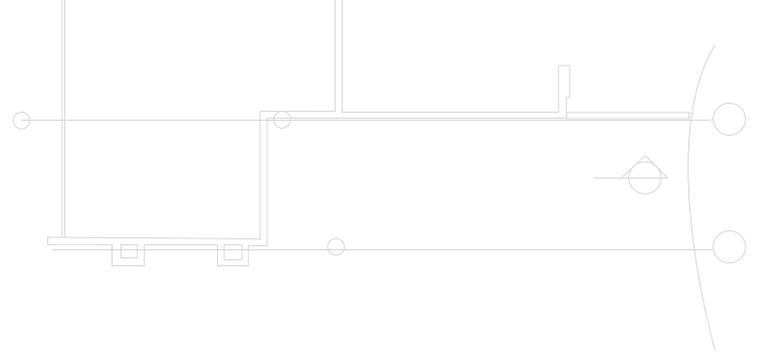
Quality of work

A certifier is not necessarily responsible for checking all aspects of the quality of the work undertaken by the builder. Some certifiers may provide additional services such as quality control for an additional fee. However, homeowners can engage the assistance of their own representative, such as an architect or building consultant, to inspect and monitor the quality of the work, to ensure that it is being done in accordance with the contract.



CHECKLIST

1	Are the designs and plans exactly what I want built?	✓X
2	Is the work to be carried out clearly defined?	✓X
3	Does my work require development approval? [Check with ACT Planning and Land Authority]	✓X
4	Is my certifier correctly licensed? [Check with ACT Planning and Land Authority]	✓X
5	Is my certifier independent?	✓X
6	Does my certifier offer services in addition to the minimum legal requirements?	✓X
7	Do I have the means of ensuring I get the quality of work I want?	✓X



FINDING A BUILDER

When you need a licensed builder

A licensed builder is required for any building work that requires building approval. In general, the role of a builder is to manage and coordinate the building of a home. It is important to engage a builder that has the appropriate qualifications and experience to safely and competently carry out the work. If you are not sure whether the person has the right licence, check with the ACT Planning and Land Authority.

It is compulsory for all builders to have a residential building insurance policy or a fidelity certificate, which protects homeowners against defective and incomplete work. (See Statutory protection and Statutory warranties section).

The builder is required to make application to the certifier for a commencement notice and the homeowner is required to sign this application. Once the certifier has issued the commencement notice to the builder, the work can start.

How to find a licensed builder

Compile a list of local builders who are able to do the job from the ACT Planning and Land Authority website, local press, trade directories, the Yellow Pages or industry associations such as the Housing Industry Association (HIA) or the Master Builders Association (MBA).

In general, if you chose the design of a house already built or an exhibition home you have selected your builder. The plans and specifications of these designs are subject to copyright. Homeowners will have to negotiate with the project builder if they want any changes to the design. Changes and alterations will add to the overall cost.

It is a good idea to ask the builder for details of similar past work and recent clients to check out the quality of the work.

SUBCONTRACTORS

Most builders will subcontract electricians, plumbers, carpenters, bricklayers and other tradespeople during the course of construction. The builder is required to ensure that any persons engaged are appropriately qualified.

The electrician and plumber have to be licensed. For complex buildings, a plumbing plan certifier must be engaged to approve the plumbing and drainage plans. The builder can engage a plumbing plan certifier for homeowners or they can do this themselves. The plumber will then engage someone to draw up the appropriate plumbing and drainage plans for the work and inform the ACT Planning and Land Authority of their employment.



QUOTES AND ESTIMATES

Obtaining quotes

Before engaging a licensed builder, it is preferable to obtain at least three written quotes for the same type of work based on the completed plans and specifications if possible. If you change your mind on what you want, write up a list of the changes or have the plans re-drawn and ask the builders to re-quote.

Be aware of cost plus quotes that are based on the builder's hourly rate plus costs. These types of quotes do not guarantee a set price. Before requesting a quote, check to see whether they charge for quotes to be given.

The difference between a quote and estimate

Be aware that quotes and estimates are different. An estimate is a reasonable guess of the costs involved without knowledge of the exact extent of the work to be done or the exact costs of materials. An estimate, even if written, will not bind the builder, and you can end up paying more or paying for work you didn't specifically authorise.

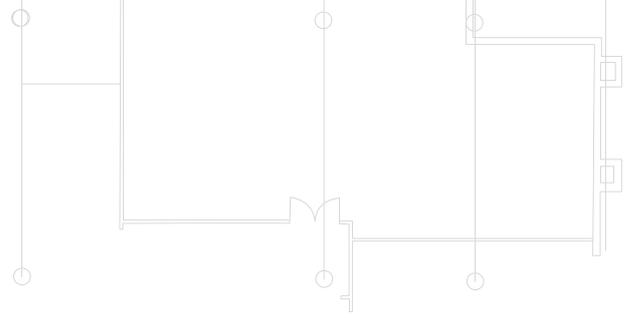
A quote is a legally enforceable document detailing all the work to be done parts or materials to be used, and should have a time limit for which the quote is valid. The quote should always be fixed and state how long it is fixed for.

Prime cost items

Prime cost items are those items that a consumer hasn't specifically selected at the time of the contract but the builder or trades person has made an allowance for in the total price. This allowance will be for a standard or average item and if you choose a more expensive item you will have to pay the difference in price. Prime cost items can include stoves, heating, tiles, carpets, taps, bathroom fittings and light fittings. Before you request quotes, check all items such as the fittings, appliances and floor coverings so that the builder knows the exact items you want. The builder or subcontractor will then be able to give a more accurate quote. Prime cost items should either be specified in the contract or listed in an attachment to the contract.

CHECKLIST

1	Does my builder have a current licence for the type of work required? [Check with your certifier or with ACT Planning and Land Authority]	✓ X
2	Have licensed subcontractors been employed?	✓ X
3	Have I obtained more than one written quote for the same work?	✓ X
4	Am I satisfied with the quality of work previously undertaken by the builder and subcontractors?	✓ X



OWNER BUILDERS

If you are thinking of becoming an owner builder and coordinating the construction of your home yourself, you will need to obtain an owner builder licence from the ACT Planning and Land Authority. To ensure that you have a reasonable knowledge of the work that is to be carried out and the process of construction, you will be required to satisfy the qualification requirements set by the Construction Occupations Registrar. Before you obtain an owner builder licence, you will need to get development approval, if required, and appoint a certifier to issue building approval. Once the owner builder licence is issued, you will need to make application to your certifier for a commencement notice. Once the commencement notice is issued, the work can start. There are limitations on how often you can obtain an owner builder's licence.

Remember that you take on all the responsibilities of a builder when you become an owner builder, including the possibility of having a rectification order issued by the Construction Occupation Registrar to rectify non-compliant work. You also do not have indemnity insurance.

ONCE DECIDED ON A BUILDER

Engage the builder using a written contract.

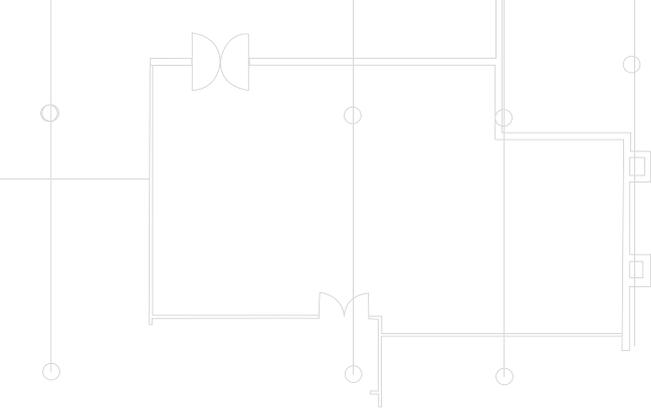
Contract details

The contract must:

- be signed and dated by the homeowner and the builder;
- contain the homeowners name and the builder's name;
- have the address where the work is to be carried out;
- contain the builder's licence details;
- state the start and completion dates;
- state the payment arrangements;
- have the plans and specifications attached;
- contain the statutory warranties; and
- display the total contract price.

Make sure that the work that has been agreed to is stated fully in the contract. This will help prevent any misunderstandings and minimise the risk of potential disputes. Industry associations such as the MBA and the HIA have developed contracts that can be used in the ACT, as has the NSW Department of Fair Trading.

It is important to sign the contract with the licensed builder contracted to do the work and not the company or any other person who contracted the builder. Be sure that the name of the builder appears on the contract, the statutory warranty and insurance certificate or fidelity certificate. If homeowners make an insurance claim and the name of an unlicensed company is on the insurance, they have no redress with the builder.



Variations to the contract

Any variations to the contract should be in writing, signed by the homeowner and the builder, and attached to the contract. Variations can occur for a number of reasons. For example, there may be variations to the completion date due to unforeseen circumstances such as bad weather, unforeseen excavation or delay in the supply of materials.

Variations to prime cost items or to the work being done will cause a change to the final price. Any factors that could affect the total contract price should be detailed in the contract. If you change your mind about any aspect of the building, you are strongly advised to detail the changes in writing. It can be very costly to make small changes during construction.

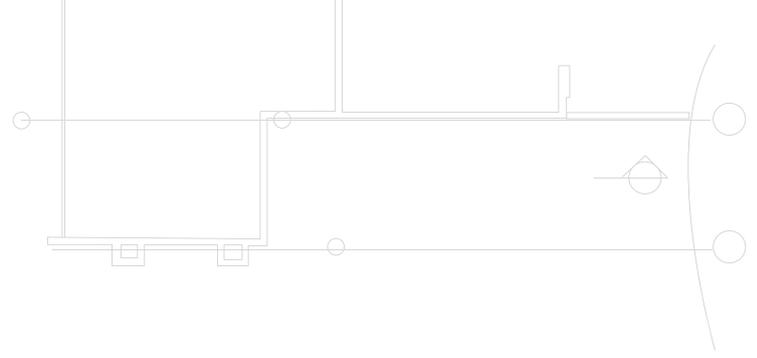
If you don't understand or are unhappy with any detail of the contract or its practical consequences, don't sign it - seek legal advice.

Payment arrangements

The contract should detail when payment is required and at what stage of the work. Payment arrangements vary, but a normal payment structure could be as follows:

Stage of work	Max % of total contract price
1 On signing of contract	5%
2 Completion of base stage	10%
3 Completion to frame stage	15%
4 Completion to lock-up stage	35%
5 Completion to pre-paint stage	20%
6 Completion of all building work	15%

Indemnity insurance only covers deposits up to \$10,000. It is up to homeowners to negotiate and reach agreement with the builder regarding the amount and timing of any subsequent progress payments. The initial deposit or 'prepayment' is a token of good faith and homeowners may lose it if they don't proceed with the work, but it need not be excessive. It is important to never pay for a stage of work before it is completed as this may expose homeowners to financial risk if the builder goes broke, fails to complete the job, or doesn't complete it to the specifications agreed to.



STATUTORY PROTECTION

Statutory protection is of vital importance for protection as a consumer to ensure that they are covered for financial loss arising from defective or incomplete building work. A licensed builder must obtain either residential building work insurance (otherwise known as housing indemnity insurance) or a fidelity certificate from an approved fidelity fund scheme before commencing any building work, unless it is exempt from requiring protection. Residential building work insurance or a fidelity certificate from an approved fidelity fund scheme is required for:

- construction of a new residence; and
- an alteration or addition to an existing residence where the work is valued at \$12,000 or more.

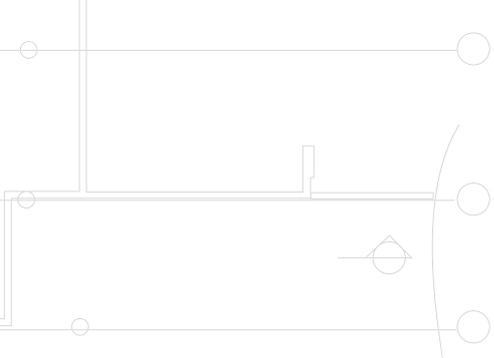
The insurance or fidelity certificate will cover minor building work such as built-in garages that form an integral part of the building but not separate garages or carports. Builders can offer owners optional insurance for such building work if they wish. The insurance or fidelity certificate covers:

- incomplete building work due to the insolvency, disappearance or death of the builder
- defects that come to light after completion if the builder has died, disappeared or become insolvent.

Be aware that insurance or a fidelity certificate will require homeowners to inform the insurer within 90 days of becoming aware of the defect.

In the ACT, insurance or a fidelity certificate provides for a maximum cover of \$85,000. The insurance or fidelity certificate does not apply to a building still owned by the builder or by a developer. Otherwise insurance or a fidelity certificate begins when the title in the land is transferred to the purchaser and expires five years after the day the relevant certificate of occupancy is issued. Certain aspects of the coverage may expire two years after that day, see expiration times for statutory warranties further below. That is because the coverage relates to breach of statutory warranty.

There are several insurance providers approved in the ACT including Australian International Insurance Limited, CGU, QBE, Lumley General Insurance Limited, VERO Insurance Limited and the Master Builders Fidelity Fund. Further information can be obtained through the HIA's Canberra offices and fidelity certificates through the MBA's Canberra office. The builder may take out other insurance such as public liability insurance and, although not compulsory, it is strongly recommended.



STATUTORY WARRANTIES

Statutory warranties are implied by law whether or not they are detailed in the contract. Statutory warranties require the construction to be carried out:

- in compliance with the Building Act 2004 (ACT);
- in a proper and skilful way and in accordance with the approved plans;
- using good and proper materials;
- with reasonable promptness where no completion date is specified; and
- to ensure it will reasonably meet the requirements expressly made known by the owner.

In the ACT statutory warranties expire:

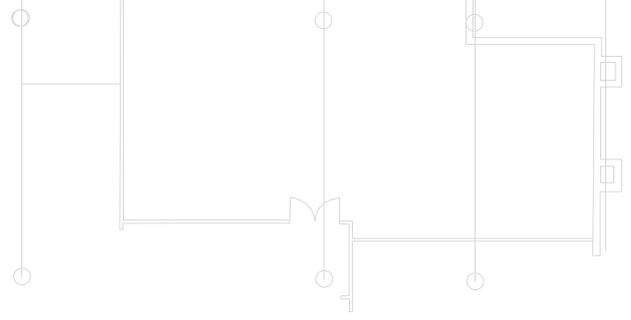
- for structural work, at the end of six years after the date on which the Certificate of Occupancy was issued; and
- for non-structural work, at the end of two years after the date on which the Certificate of Occupancy was issued.

IF THINGS GO WRONG

Things do not always go as planned when building. Disputes may arise for various reasons, such as faulty work or misunderstandings. It is important to be sure of the contents of the contract and the agreement to avoid potential conflicts.

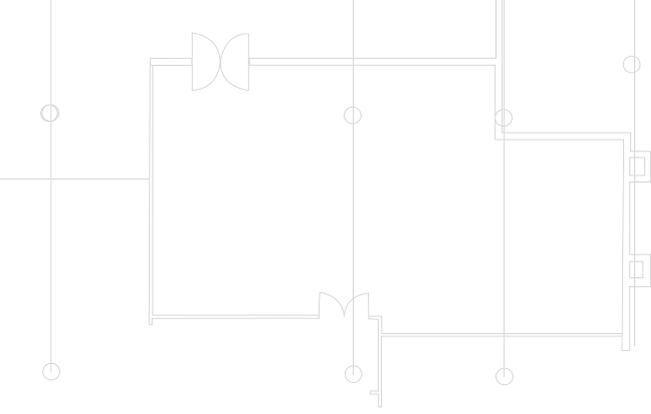
One common source of dispute arises when variation to the plans or contract are only verbal and not in writing, signed by homeowners and the builder. Raise any issues or problems as soon as possible. For example, if there is defective work done, notify the builder immediately so the problem can be rectified. Put concerns in writing and give the builder reasonable time to respond. If the problem cannot be resolved by negotiating with the builder, homeowners can call the ACT Planning and Land Authority. Alternatively, there are dispute resolution services, arbitration, expert determination and finally litigation.

Check to see what the contract says about dispute resolution and the processes.



CHECKLIST

1	Is the agreed work clearly defined in the plans and specifications of the contract?	✓X
2	Do the plans and specifications detail any specific requirements I have?	✓X
3	Are all additional promises/ discounts/ variations detailed in the contract?	✓X
4	Do I understand the potential variations to the contract?	✓X
5	Do I agree with the payment arrangements?	✓X
6	Do I understand and agree with everything written in the contract?	✓X
7	Does my builder have the appropriate insurance or a fidelity certificate to carry out the work?	✓X
8	Has the licensed builder contracted to do the work signed the contract?	✓X



SITE SURVEY AND LAYOUT

Before commencing any building work, it is important to make sure that the proposed work is:

- on your land and wholly contained within the boundaries of your block;
- correctly positioned on your block and in relation to your block boundaries; and
- set out in accordance with the design plans.

To be confident that the building accurately conforms to these three criteria, employ a registered surveyor. The surveyor will attend on site and take measurements to locate block boundaries and then place markers so the builder knows exactly where to commence work. You can find a surveyor in the Yellow Pages and you can check whether the surveyor is registered by calling the ACT Planning and Land Authority.

ONCE WORK COMMENCES

Once work begins, it may be a good idea to keep a record of the progress of the construction and note any defects requested to be fixed. Note any different prime cost items detailing the date requested, the quoted price, and the date it was agreed it would be done by. If homeowners get the builder to sign the page, this is sufficient to amend the contract, although it should later be attached to the contract.

This will help homeowners keep on top of the construction progress and minimise misunderstandings.

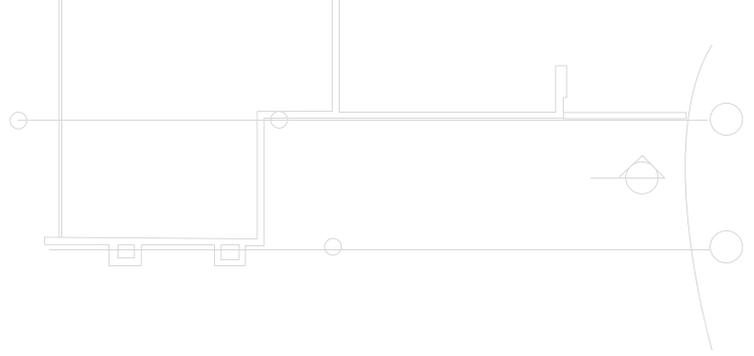
Inspections

During construction the certifier has a number of inspections to do at the completion of each of the following stages:

- excavation, placement of formwork, placement of steel reinforcement (base stage);
- before concrete is poured;
- completion of structural framework (frame stage); and
- completion of all building work (practical completion stage).

An additional inspection will be made during construction of two storey homes before the second storey slab is poured. The builder must inform the certifier when the work requires inspection.

Certifiers are responsible for making sure that the building work complies with the Building Code of Australia and the approved plan. This includes making sure that appropriate termite barriers and protection are installed.



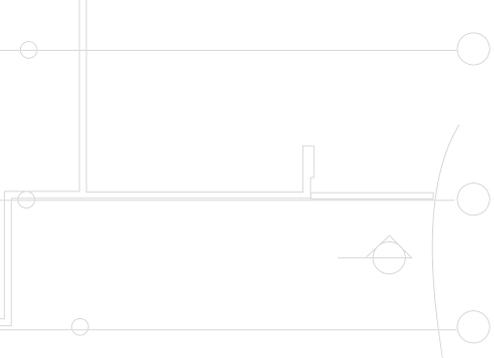
The ACT Planning and Land Authority will make inspections of the plumbing during construction and may inspect the completed electrical work. The plumber and electrician must inform the Authority when the work requires inspection.

COMPLETION

Upon satisfactory completion of the building work, the certifier will issue a Certificate of Completion. Homeowners will then need to apply to the Authority for a Certificate of Occupancy and Use. The Authority will issue a Certificate of Occupancy and Use if the building work and any associated electrical and plumbing work have been certified as complete. If building approval was required for the work, it is unlawful to occupy or use the building until the Certificate of Occupancy and Use is issued.

CHECKLIST

1	Has a survey been made?	✓X
2	Have inspections been made at the appropriate stages?	✓X
3	Has the certifier issued a Certificate of Completion?	✓X
4	Have I applied for and received a Certificate of Occupancy and Use so I can move in?	✓X



FOR MORE INFORMATION

ACT Planning and Land Authority

Ground Floor South Building
Dame Pattie Menzies House
16 Challis St, Dickson
Phone: (02) 6207 1923
www.actpla.act.gov.au

Territory and Municipal Services

Macarthur House
12 Wattle Street, Lyneham
Phone: 132 218
www.tams.act.gov.au

Home Energy Advice Team (HEAT)

First floor, Manuka Arcade
20 Franklin Street, Manuka
Phone: (02) 6260 6165
www.heat.net.au

Office of Fair Trading

Level 2 GIO Building
City Walk, Canberra City
Phone: (02) 6207 0400
www.fairtrading.act.gov.au

Housing Industry Association

(HIA)–ACT and Southern NSW
28 Collie Street, Fyshwick
Phone: (02) 6285 7300
www.hia.asn.au

Master Builders Association

(MBA)–ACT
241 Northbourne Ave, Lyneham
Phone: (02) 6247 2099
www.mba.org.au

