

# Constructive contracts – the paperwork and planning behind your build

<http://loanselect.smaronline.com.au/constructive-contracts-the-paperwork-and-planning-behind-your-build/>

*You've dog-eared magazines, spent countless weekends at display villages and finally made the bold decision to build rather than buy a home. While choosing where and what to build are exciting and giant steps, you might not feel as enthusiastic about the necessary building contracts and approvals. But knowing your legal rights and responsibilities will help protect your investment and remove potential pain points in the construction process.*

## Finance

Unlike traditional home loans, building loans generally allow progressive draw-downs so you can make payments at various construction stages – slab, frame, lock-up, fit-out and completion.

The amount you can borrow will be partly based on the value of the property once built but repayments will only apply to what you draw down. So, if you have approval for a \$400,000 loan but have used just \$200,000 for progressive payments, your repayments will only apply to the \$200,000, not the total approved amount. Just keep in mind, however, lenders usually require you to use all your available equity before releasing the next payment.

It's also worth noting most construction loans are interest only for the first 12 months, which can help with your budget, before reverting to a standard principal and interest loan.

David Phillips

Trustee House, 25 Sheridan Street, Cairns 4870

Phone: 07 4041 0855

Mobile: 0419 787 766

loanselect@ozemail.com.au



Loan Select Cairns

Your broker can help find the right construction loan for your building plans and circumstances.

## **Council approval**

As soon as you have landed on a house design, contact your council to make sure it can be built on your block. Councils implement state development regulations and have their own local zoning and building policies. Height restrictions, flood mitigation and house-to-land ratios are some of the factors that could impact council approval.

It's worth visiting the council to discuss your plans rather than trying to explain them over the phone. A helpful council officer who explains what you can do rather than just what you can't is an administration asset. The council will need to review and approve your plans before issuing a construction certificate, the green light to start work.

You should also check your land title for any covenants or restrictions that apply to your property. If you don't have your certificate of title on file, apply for one with your state land titles office. Restrictive covenants are usually put in place to protect the value or amenity of one or more properties. For example, a sub-division overlooking a bay might apply covenants to each block to ensure future owners maintain water views.

Unless otherwise stated, covenants do not expire, so if your title has restrictions you will have to plan around them.

## **Owner builder**

Being your own builder essentially means you are the construction project manager and site boss. It not only requires significant time – you're in charge of getting quotes and coordinating all of the contractors to build your home – but comes with serious responsibilities, including safety. The upside of being an owner builder is you can save money by doing work yourself, hire your preferred contractors and maintain greater control over timeframes.

The first step is to consider your obligations as an owner builder and apply for a permit. Each state and territory has its own building authority ([www.abcb.gov.au/ABCB/State-and-Territory-Building- Administrations](http://www.abcb.gov.au/ABCB/State-and-Territory-Building-Administrations)), and legislation varies so check the rules in your market before taking on the responsibility.

Standard rules include:

- Having an owner builder licence and displaying the permit number on your site.
- Ensuring all contractors working on site are licensed.
- Not undertaking occupational projects such as plumbing, drainage, electrical, gas-fitting and pest control, unless you are licensed to do so.

While your local building authority and council enforce the rules, they are also there to help if you strike any issues or have any questions, so make the most of available resources.

## **Building contracts**

If not going it alone, you have the choice of either a project or custom builder. Project homes tend to be cheaper but can be limited in design and may not suit your block, especially if it's steep. Either option will require you to sign a contract, much of which will be designed to protect the builder.

Ask your legal representative to read the contract and don't be afraid to question clauses you think are unfair. For example, the contract might cover an amount the builder must pay you if your home isn't constructed to practical completion within the contractual timeframe. Known as liquidated damages, the amount can be as little as \$100 or \$200 a week, which may not be nearly enough to cover your costs if you have to extend a rental agreement or find other temporary accommodation. It's also worth checking what practical completion actually means as your understanding may be different to that in the contract.

Conversely, check any penalties you have to pay if you delay payments to the builder. The aim is to work towards a contract that's fair for both parties.

The contract should spell out what's included and what's not. If unclear, be sure to ask. Knowing all your costs upfront will help you manage your budget better throughout the build.

## **Insurances**

All states, except Tasmania and the Northern Territory, require licensed builders to take out insurance to protect you, the customer, when building your home. Known as builder's warranty insurance, home warranty or home indemnity insurance, it covers you if your builder doesn't finish the job, does defective work, dies,

disappears or becomes bankrupt. Ask to see proof of this cover before you sign the building contract.

If owner-building in Western Australia or Victoria, you will need to take out owner builder warranty insurance, which covers the next owner of your home if defects are discovered.

As your home takes shape, you should take out building insurance cover in case it's damaged or destroyed by fire or a natural disaster. Just remember to top up the sum insured and add contents cover when your home is finished to protect your new home and everything within.

Insurance: any information contained in this article is of a general nature only. Therefore, before making any decisions, you should consider the appropriateness of the information and look to consult with an expert in the insurance field.

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