

Terminating a contract due to non-completion

The QBCC provides assistance to consumers through its Queensland Home Warranty Scheme where the contractor fails to complete the contract for Residential Construction Work. The QBCC can only assist with non-completion claims where contract was for a fixed price and the contractor has defaulted or breached the terms of the contract, which extends to but is not limited to:

- i. the cancellation or suspension of the contractor's license; or
- ii. the death or legal incapacity of the contractor; or
- iii. the insolvency of the contractor

Before assessing any claim for assistance through the Queensland Home Warranty Scheme, QBCC will require that you properly terminate your contract with the contractor.

Note: Proper termination of a contract after a contractor's non-performance is the most important element for entitlement to an insurance claim.

1. QBCC recommends that you use a solicitor. DON'T try to terminate a contract yourself. If you don't have your own solicitor, the Queensland Law Society may be able to assist (Phone 07 3842 5842).
2. Make sure the licensed contractor named on your contract is the party on whom notices are served.
3. Ensure termination is in accordance with the procedure outlined in your contract. **Warning:** Termination pursuant to Section 90 of the *Domestic Building Contracts Act 2000* may void an owner's entitlement to claim Home Warranty insurance.
4. As a general guide only, termination notices may contain:
 - Notice of the Breach of Contract ("Notice")
 - method of Service of Notice
 - reference to the specific clause in the contract
 - details of the breach
 - the required remedy
 - remedy required by a particular time, as per contract
 - your intention, should the Notice not be complied with.
5. After expiry of the time given in the first Notice, a further Notice of Termination is generally issued.
6. Ensure contract conditions from your contract are adhered to for method of service of Notice.
7. Ensure counting of days is in accordance with your contract.
8. In cases of bankruptcy or Liquidation, a contract may be terminated forthwith, but this is dependent on the words of your contract. **Caution:** If considering this circumstance ensure your contractor, and not an associate or associated company, is bankrupt or in liquidation.

Important: It is recommended that this fact sheet and your contract be given to your solicitor.

Non-Completion Claims

We recommend you read the policy document supplied to you at the time you entered into your contract, or request a copy of the policy booklet from the QBCC.

The Queensland Home Warranty scheme provides cover against your loss as a result of the non-completion of your contract. The policy cover is restricted to QBCC's assessment of the costs to complete the construction or if your construction has not commenced, a refund of deposit paid.

Importantly, with respect to any defects included in the non-completed works QBCC advises the following:

- The QBCC holds the contractor that performed the defective construction accountable for that work. This means that despite you having terminated your contract the contractor is still legally responsible for making good any building works deemed to be defective by QBCC.

- The QBCC would normally issue a Direction to Rectify against your contractor and insist that the contractor return to site and rectify the defective work.
- Should the contractor fail to attend to the defective work at the expiration of the direction period QBCC can then assess the outstanding defects as an annexure to your non-completion claim.

However, the QBCC would not contemplate directing a contractor to rectify defective works under the following conditions:

For contractors who are individuals:

- the contractor is deceased
- the contractor is an undischarged bankrupt or:
- In the case of a contractor that is a company:
- the company is in full liquidation
- the company has been de-registered with the Australian Securities and Investments Commission.

The policy does not cover liquidated damages or other ancillary losses such as legal fees.

If you hold sufficient funds to complete your project you may not need to seek the assistance of the QBCC. If you are uncertain whether you hold sufficient funds you may wish to contact a licensed home building contractor and request a quotation to finish the construction.

If the quote is in excess of the funds you hold, we recommend you lodge a Complaint Form with the QBCC to seek assistance under the Queensland Home Warranty Scheme.

Seeking QBCC Assistance

Should you choose to seek our assistance you must:

1. Complete a Complaint Form. These are available on our website (www.qbcc.qld.gov.au) or from any of our offices.
2. Return the Complaint Form with the following documents:
 - copy of contract termination documents (Breach Notice and Termination Notice)
 - full contract document including general conditions
 - full set of approved plans
 - full set of specifications
 - all contract variations, signed by both parties
 - copy of builder's initial quote
 - copy of any and all other quotes obtained prior to contracting with your builder.

You should also provide:

- Evidence of all payments made. These must be in the form of: receipts, presented cheques, Lending Authority written confirmation of payment. Cheque butts, bankbook withdrawals etc. will **not** suffice.
- If you have sought a quote to complete, a copy of this quote
- Copies of building inspection reports and certificates (e.g. termite treatments, engineering inspections) in your possession.
- Copies of any other documents you may feel are relevant to substantiate your claim.
- If your construction has not commenced, a letter stating what you have paid and what work has been done.

Warning: You may not feel all of these documents are necessary or relevant. Regrettably, they are all required during the claim assessment process. If you do not supply them with your initial Complaint Form, this will delay the assessment of your claim.

Assessing your Claim

Assessing your claim is a technical and involved process which takes time. The basic timeframes you should expect are:

Initial telephone contact by QBCC to you.	Allow 2 to 3 weeks
Inspection of property by QBCC technical inspector.	Additional 2 to 4 weeks
Preparation of building report and scope of works.	Additional 1 to 2 weeks
Initial assessment of your claim.	Additional 2 weeks
Calling quotes - additional	Additional 4 weeks
Final assessment and approval	Additional 2 weeks

Note: If a QBCC Request to Rectify or Direction to Rectify is issued, allow 4 to 7 weeks

QBCC staff endeavour to treat all claims with urgency and many approvals are done well inside these timeframes; however due to excessive demand for services following the demise of a licensee, the above timeframes can be taken as a guide for processing times.

Processing times may exceed the guideline depending upon the complexity of construction, the nature of any defects and the possible need for QBCC to seek further expert advice such as engineer's reports.

To access QBCC Home Warranty Insurance you must have a valid termination of the contract between you and your contractor. We strongly recommend you seek legal advice on the termination.

In addition to this, we recommend you:

- secure your property and materials on site
- establish insurance for the property and materials as the contractor's insurance may no longer apply
- do not respond to demands for payments from other parties
- notify your lending authority to make no further payments. Confirm this in writing
- do not engage another contractor without QBCC approval as this may prejudice your claim.

For more information

For further information, call us on 1300 272 272, visit our website at www.qbcc.qld.gov.au, or go to your local QBCC office.