



Better to be safe than sorry

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When it comes to renovating their castles, homeowners should cover all bases, especially the legal ones. Caroline Gonzalez reports.

When imagining a home renovation, write down every single detail of how you expect the finished product to look, from the location of doorknobs to the number of coats of paint on the walls. It may seem pedantic, but building and construction solicitor Neil McPhee says this sort of detail almost guarantees a renovation free of any legal squabbles.

"Lack of detail in the plans and specification (of building contracts) is the basis of most building disputes," says Mr McPhee. "If it isn't written in the contract, it is not a part of the works.

"To an owner, it (the house) is a castle but to a builder it's a product, and renovation contracts are fertile ground for a dispute for that very reason."

About 2800 Victorian homeowners transformed either part or all of their castles in the three months to March this year, according to figures from the HIA Renovations Monitor.

Victorians spent \$261 million on renovations in the same period, further proving our cultural obsession with beautifying our abodes.

As any homeowner would know, things can and do go wrong, but there are ways of avoiding painful building disputes.

Victorian Building Commissioner Tony Arnel says selecting a builder is one of the most important decisions people make.

The Building Commission, which regulates and registers the 10,000 domestic builders in Victoria, has an online "find a builder" service.

"Often people are spending large amounts of money, so to that end they need to be very sure they are selecting a builder with an assured reputation and quality," Mr Arnel says.

"They need to be comfortable dealing with the builder. Get at least three quotes, check examples of the builder's work and ask for references. Do your homework and you will be rewarded."

Renovators undertaking major work should engage a registered architect or draftsman to draw up plans of proposed renovations.

But before signing any renovation contract, there are three key questions homeowners need to ask themselves, says Rigby Cooke solicitor Andrew Whitelaw: "Is the builder registered? Are the plans and specifications complete? Has the contract price been agreed?"

Mr Whitelaw and his colleague, Neil McPhee, have worked for more than 10 years in building and construction at law firm Rigby Cooke.

Among their top recommendations to homeowners who want to steer clear of problems when renovating is seeing a construction law specialist before signing a contract with a builder.

"I'd be lucky to see many people before they sign the contract. I usually see them when the project is a train wreck," Mr McPhee says.

Mr Whitelaw adds: "With the homeowners who do come to us for legal advice, we help them out by explaining their rights and obligations and then we may never see them again afterwards."

Using a pro-forma or standard building contract is the first step down the right path. A contract and building permit are generally required if the work costs more than \$5000 or affects the structure of the building.

HIA and Master Builders Association of Victoria contracts are the most common standard contracts.

Such contracts can be purchased online and contain checklists of things to consider and include in the document.

There are also Australian building industry contracts provided by architects. "These are standard forms of contracts under which architects certify aspects of the construction process," Mr Whitelaw says.

The next step is to open the lines of communication with the builder. Mr Whitelaw says it is absolutely crucial that homeowners ensure they have the same vision of the finished product as the builder, and that this vision is clearly described and set out within the contract.

"Lack of communication and understanding between the owner and builder causes many problems. Do whatever you can to get it clear before the contract is signed," he says.

Homeowners must also get a certificate of insurance from the builder before paying any money under the contract, including the deposit.

Mr Whitelaw says there is a common misconception among homeowners that they have to take out building warranty insurance themselves.

A warranty insurance policy issued after June 30, 2002, has \$200,000 worth of cover, which can be accessed if the builder dies, disappears or becomes insolvent.

"If an owner engages a builder and the building works are worth over \$12,000, building insurance is compulsory," he says.

If the work is under \$12,000, no insurance is necessary but the builder must be a registered practitioner.

"It is a legal requirement for the builder to take out a warranty insurance policy for the benefit of the owner, which is valid for six years from the date of the certificate of final inspection."

Mr Whitelaw cautions owner-builders to take extra care when navigating a major renovation project. "If a homeowner wishes to undertake the project as an owner-builder, they need to be aware of complicated contractual and insurance obligations if they choose to sell the property within six years of the date of the certificate of final inspection," he says.

During construction, Mr McPhee and Mr Whitelaw urge homeowners to constantly refer back to the

contract, as it is the legal framework within which the work is to be done and the payments made.

"The owner doesn't have to pay for a stage (for example, lock-up) if the builder has not completed lock-up as per the contract," Mr Whitelaw says. "The owner should check to see if the payment is due and payable as set out in the contract.

"A homeowner who doesn't check the contract is at the builder's discretion and may be taken advantage of."

Boroondara Council planning director Phillip Storer says when planning home renovations, homeowners should assume that a building permit may be required.

A building permit is required for construction work although some minor, non-structural work, such as replacing a window frame with a new window of the same size, does not need a building permit.

"Your local council's building surveying department should be your first port of call when seeking advice about regulations that will apply for your home renovations and permit requirements," Mr Storer says.

"However, you can also seek advice from registered private building surveyors."

For further guidance:

- Consumer Affairs Victoria, call 1300 558 181 or visit: consumer.vic.gov.au/buildingrenovating
- Building Commission: buildingcommission.com.au
- Building Advice and Conciliation Victoria 1300 557 559
- Archicentre: archicentre.com.au

Insure against construction catastrophes

Solicitor Andrew Whitelaw says the photo above is from a failed Melbourne home renovation that ultimately required the property to be demolished.

They are part of a confidential legal settlement.

"The clients in these circumstances were fortunate in that the builder and its insurer made good on the policies and builders' warranties," Mr Whitelaw says.

"An owner-builder has to be extremely careful and cautious in engaging contractors to perform works and must ensure that the contractors comply with the Domestic Building Contracts Act and have the compulsory insurance policies in place."

Pictures supplied by Rigby Cooke Lawyers.

Before you start...

HIA award-winning builder Lindsay Williams, of Life-style Interiors, designs and renovates kitchens and bathrooms all around Victoria.

His tips for good relations are:

- Use emails, which can be printed or saved, to confirm verbal agreements and discussions;
- Don't start work until every detail is clarified (i.e. where the power points are going to be located and the make and model of each fixture, fitting or part);
- Set clear building timeframes;
- Homeowners should move out of the property during renovations;
- Avoid changing the plan once work has commenced; and
- Use computer-modelling to plan renovations.

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