

PROGRESS PAYMENTS AND DEPOSITS FOR HOME BUILDING WORK

There are certain legal requirements in relation to the amount that can be charged for deposits and progress payments which apply to anyone undertaking to do home building work or associated work valued between \$7,5000 and \$500,000.

Home building work includes among other things, constructing, altering, improving or repairing a home. Associated work includes site works, the installation and construction of swimming pools, spas, pergolas, carports, garages, sheds, fencing, retaining walls paving, driveways, performing landscaping and other like works.

How much can be charged for a deposit?

If undertaking home building work or associated work, a deposit cannot exceed 6.5% of the total amount payable under the contract.

It is important to note that a deposit is not payable until the builder has provided the owner with a home indemnity insurance certificate.

The only exception to this is where cabinetry work is being undertaken in which case, the maximum allowance deposit is 20% where the value of off-site cabinetry work is more than 50% of the total contract price.

It is important to keep in mind that cabinetry work includes:

- The manufacture and installation of kitchen, bathroom, laundry and other custom-made cabinets and fitments; and
- The refurbishment or repair of kitchen, bathroom, laundry and other fitted cabinets and fitments.

Cabinetry work does not include the purchase and installation of off-the-shelf or pre-fabricated cabinets.

How should progress payments be staged?

It is a legal requirement that progress payments, once the works have commenced, must represent a 'genuine payment' for work already performed or materials or services already supplied. This means that payment cannot be claimed for work that has not been completed to the requires stage or for materials which have not been supplied.

Keeping this legal requirement in mind, the parties may determine the appropriate amounts for specific completed stages of the works.

For example, some rocky and sloped sites may require extensive preliminary site works meaning that initial site costs may be relatively high. In another situation, finishing costs may be higher than for a typical build because a client is seeking high end finishes to their property. Alternatively, a client may only need the property taken to lock up stage as there is an intention to undertake finishing works

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independently. Each build will vary depending on the scope of works and the specific nature of each project.

Over time and through industry practice, certain progress payment stages have become accepted through common use but these descriptors are not mandatory and alternatives can be used to suit the specifics of each build as long as they are clear and unambiguous in what they are for.

What are typical progress payment stages?

The scope and type of work or build being undertaken will determine the progress payment stages that may be used in a schedule to a contract.

Some examples of some specific stages once a deposit has been paid depending on the scope of works and level of detail for each stage required might be:

- Preliminaries
- Site Works
- Slab down ground floor
- Brickwork plate high ground floor
- Slab down first floor
- Brickwork plate high first floor
- Roof cover first floor
- Roof cover ground floor
- Roof plumbing
- Lock up
- Finishing or if more specific detail is required, carpentry and joinery, plastering, ceilings, sanitary plumbing, electrical work, tiling (wall and floor), painting/glazing
- Practical Completion

Are there prescribed amounts that can be charged for stages?

There are no prescribed amounts that must be charged for specific stages of a build subject to the specific deposit requirements and legal rules concerning genuine progress payment stages in WA. There is often confusion, particularly by lenders operating in other jurisdictions such as Victoria or the Northern Territory where there are set progress payment percentages for specific stages.

It is important to note however that not only does the legislation in WA not mandate or prescribe what those set percentages should be, construction methods in WA are very different to Victoria and Northern Territory where it is predominantly framed and not brick as it is in WA. As such, it is not reasonable to try and transfer one sets of legal requirements in one state to another when it comes to the percentages that can be charged.

For any further assistance, please contact the Master Builders' Association Western Australia on 9476 9800.

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