



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

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Submission for the Inquiry into Building Quality in the ACT



Background

My wife and I purchased an off the plan, split contract house from an advertisement on Allhomes. We bought the land separately although it was tied to using [REDACTED] as the contractor.

The land purchase went smoothly as it was bought from the Land Development Agency.

The contract for the build of the house was signed at the same time as the land contract and also went smoothly.

We had met the builder earlier to discuss options on the house. Being in the construction industry, I made it clear and simple that I did not want any changes to the plan and would make all choices in line with the builders allowances. I intentionally said this to make the build easy for the builder.

Up until the signing of the contracts, everything went quite smoothly. We were contacted regularly. Once signed communication cracks began to appear and remained that way up until the submission of this letter. I am now going through the 90 day warranty period and am having further issues with getting defects fixed. I will provide more information on this stage later in the letter.

Administration was conducted by [REDACTED] who seems to have inserted himself as the admin person for the builder. I had no problems with this, other than communication problems by having a middle person involved and [REDACTED]' inability to keep track of multiple builds. We frequently received communications not relevant to our build, and getting requests for information we had already provided.

Deposit

The first issue was to get an accurate receipt for our deposit. Several attempts were made to get a correct receipt. Initially, a receipt for \$19,000.00 was issued instead of the correct amount of \$10,000.00. Eventually after three months, I received an unsigned receipt for the correct amount.

The Build

Building eventually began around May 2016 after the normal development application process. The following paragraphs provide a highly generalised description.

Builder has not built according to the plan. He has changed the floor plan of our house from split level to single level without consultation, permission or any form of variation notice.

The changes have caused flow on effects to the rest of the house eg reduced space in family room, loss of pantry, requirement to extend staircase to suit new levels, increased height of the main floor so that the laundry now requires steps and landing, increase in roof height that protrudes further than the approved departure of the solar envelope.

There are also some building practices that are not acceptable eg failure to waterproof a retaining wall at the rear of the garage and poorly placed agricultural pipe, questionable formwork to support the main floor slab, unsatisfactory framing on the garage level to support the floor above, wall cavities in some areas are solid with mortar, use of second hand building materials when not specified in contract ie bracing sheets, questionable foundations - rear of house footing does not extend to the garage slab ie there is no concrete footing link to the slab, I did not see whether piers were included to support the main floor slab as the span is greater than four metres, insufficient brickwork to prevent water entry underneath house (holes in brick footing), side retaining footing is double skin rather than a pyramiding base to support the backfill, poor quality brickwork that is out of level, out of plumb and just looks bad. Use of 240mm flooring joists that are not normally used except in bearer and joist floors. The use of these small joists has created further problems with plumbing stack work. Non adherence to manufacturer recommendations eg floor joists and roof trusses are not fixed correctly according to requirements.

Note: A detailed list of issues can be provided if required.

I also raised an issue with electrical work. The electrician had placed an earth rod in a usual position at the side of the house. However, he placed it horizontally and then embedded it vertically about 80mm into the soil. He covered the horizontal section with soil to form a mound, which in itself was higher than the weep holes on that side of the house. I raised this as an issue as the earth rod was actually higher than the garage slab and was not the lowest electrical point in the house.

Our Responses

At each stage of building, I brought my concerns to the attention of the builder. I even made references to the required elements of the Building Code of Australia. In nearly every conversation we had, I was met with silence. In others, I was questioned as to where I was getting my references. To which I responded each time, 'The BCA!'

He has attempted other changes by claiming the plan does not show detail, but we forced him to follow the approved plans.

I also contacted the certifier. Initially he agreed with my concerns. I first spoke to him about the waterproofing of the garage retaining wall, and he said that he would speak to [REDACTED] about this and other issues. After the first contact, he basically removed himself from the issue by stating that his role was only to check the stages of the build had been conducted. All other building issues concerning adherence to the building code were the responsibility of the builder and not his. I spoke to a person at ACTPLA about the role of a certifier. Initially, they said that the certifier worked for me. But when I told them what the certifier said about responsibilities for the build, they further stated that the role of certifier was a grey area. The only course of action I had with ACTPLA was to put in a complaint about the builder.

In about April 2017 I contacted the Master Builders Association for advice and direction. To cut a long story short, they conducted an inspection, agreed with my concerns and said that the only thing they could do would be to provide an arbitration service as they have no powers over the builder or enforcement of the building code.

We sought legal advice and were told that the builder was in breach of contract by not building according to the approved plan. That we had the right to sack him and appoint another builder. But we would need to follow a legal process and appoint a barrister. I assumed that he meant going to court to settle the matter.

In May 2017 I served the builder with a notice of dispute as per the first step in our contract dispute process. At this stage, building on the house stopped. I also filled in a complaint with ACTPLA regarding the departure from the building contract and failure to adhere to BCA standards.

In June 2017 I approached my boss, who has an ACT Builders License, to inspect the build. He agreed that my issues were valid. I spoke to him regarding appointing him as builder should termination of the original contract go ahead. He indicated that he would be willing to do so.

After several months of inaction, frustration and an inability to find a solution other than court, I contacted the builder and repealed the notice of dispute. We decided it would be in our better interests for us to continue with the build and get it done. The prospect of years of legal action and the expenses involved weighed heavily in our decision.

In a subsequent meeting I had with the builder regarding withdrawal of the dispute notice, we spoke civilly and he said that all my concerns would be addressed (he never did [REDACTED]).

Warranty Period

Response to our request for warranty issues to be fixed followed the usual path of not being able to get the builder to respond. Eventually, we received a list of tradespersons that we were to contact in order to fix defects. We are currently in the middle of this process, and are have extraordinary difficulties in getting in contact with the trades. When we eventually get a return call/email, trying to get the trades to turn up and actually fix their issues is a whole new ballgame. For example, I have tried to get the electrician to fix a power point he failed to connect and so far have made seven appointments with him, only for him to fail to turn up.

Conclusion

The house was completed and a Certificate of Occupancy was issued at the end of March 2018. We have moved in to the house and it is now our primary residence for the next 12 months.

My issues with the builder relate to his lack of experience and knowledge. This has directly led to the lack of adherence to the BCA.

The certifier, who is supposed to work for the appointer, served no useful purpose other than to be part of the development application process. To pay someone thousands of dollars to 'check stages are complete' seems to be a complete waste of time and money and can easily be achieved by training a monkey to perform the same duty. Admittedly, you would have to use a different monkey for each stage, but at least they work for peanuts.

The MBA is not an organisation that can act for the client. They are a politically orientated organisation that attempts and succeeds in representing their own interests in the building standards and industries. Predominantly, they support the builder.

ACTPLA has no power to do anything and cannot provided assistance in poor builds. They have a complaints process, but this will only censure the builder and not fix the issue.

The real estate agent who inserted himself as a go-between administration person proved more of a hindrance than a help. Real estate agents are not actually part of the process, but [REDACTED] needs to be mentioned so as to warn other people not to have a middle person between builder and client.

Finally after all this has occurred, I realise that the only course of action available to someone in this situation is the go through the courts. Time, expense and unlikely favorable outcomes precluded this path.

The build took almost the entire two years and required amendments to be submitted to ACTPLA for the changes to the building.

Recommendations

What I would like to see is:

- Get rid of certifiers and bring back government run inspections. Back in the old days, they did their job correctly.
- Builders seem to be free of any consequence unless legal action is taken. There is no enforcement or inspection of their work.
- MBA and HIA are responsible to their members, but have no power to force them to adhere to rules. Perhaps they could be the industry watchdogs.
- The building code needs to be enforced. It is not good enough for a licensed builder to not know the rules.
- Builders should be mandated to have current copies of the BCA and Australian Standards.
- Builder should be responsible for fixing defects and organising his own trades.
- The process of obtaining a builders license has become an administrative nightmare. Besides which is only as good as the time for which it was applied. Builder need to update their knowledge with regular refresher training. It should be mandatory to have yearly BCA testing to keep abreast of changes.

References

I can provide photos, dispute documents, correspondence and other reference material as required.