

# What should I expect from building surveyors?

## Fact Sheet



### This fact sheet covers:

- The role of the building surveyor
- Dealing with building surveyors
- What to do if you're unhappy about your building surveyor's conduct?
- Building surveyors and DBDRV

## 1. The role of the building surveyor

Building surveyors are engaged as part of the building process. A key part of their job is to provide independent oversight of the building work to ensure that it complies and that it's safe.

A building surveyor's role includes:

- approving or rejecting applications for building permits
- carrying out inspections of buildings and building works
- issuing directions to ensure building works are carried out with the relevant permits, and in accordance with relevant laws and standards
- issuing occupancy permits / certificates of final inspection, and
- issuing building orders, including orders to evacuate a building, stop building works or perform building works.

### THE BUILDING ACT

In Victoria, the role of the building surveyor is set out in the *Building Act 2003* (Victoria) (**Building Act**) and the *Building Regulations 2006* (Victoria).

### 1.1 Types of building surveyors

There are two types of building surveyor.

- 1. Municipal building surveyors** – are building surveyors who are appointed by the relevant local council if you apply directly for a building permit.
- 2. Private building surveyors** – are appointed by you, or by your agent. They are independent from your builder.

### ! BUILDERS CAN'T APPOINT PRIVATE SURVEYORS

Since 1 September 2016, builders can't appoint private building surveyors on behalf of owners, and private building surveyors mustn't accept appointments by builders.

### TIP – HAVE YOU HIRED AN ARCHITECT OR DESIGNER?

If you have hired an architect or designer to design your building work, check if your contract with the architect or designer includes an authority for that person to appoint a private building surveyor for you. Don't agree to the authority unless you're happy for the person to appoint a private building surveyor for you.



## 2. Dealing with building surveyors

How you appoint a building surveyor will depend on if you are going to use a municipal building surveyor or a private building surveyor.

Only one building surveyor can be involved in a building project at a time. If two building surveyors are appointed at a time, this is an offence under the *Building Act* and can result in a fine.

### WHO?

Your domestic building contract will set out who is responsible for appointing the building surveyor.

### TIP – MUNICIPAL OR PRIVATE?

Decide whether you want to use a municipal building surveyor or a private building surveyor. If you want to use a private building surveyor, appoint that person before starting works which require a building surveyor.



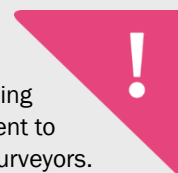
### 2.1 Appointing a municipal building surveyor

If you use a **municipal building surveyor**, you don't need to formally appoint them. They will be appointed by your council when you apply for a building permit.

#### USING A MUNICIPAL BUILDING SURVEYOR

If you use a municipal building surveyor, you can't change your mind and use a private building surveyor. This is because the provisions of the *Building Act* which allow you to request consent to terminate the appointment of a private building surveyor don't apply to municipal building surveyors.

This means, once the municipal building surveyor has started carrying out building surveying functions for a project, that person (or any person who replaces that person at your local council) must remain as the building surveyor for those building works.



### 2.2 Appointing a private building surveyor

If you want to use a **private building surveyor**, you or your agent will need to enter into a separate contract with that person. This can be by a professional service contract, or may be set out in a letter from the private building surveyor.

Make sure you understand the terms of the private building surveyor's appointment before you agree to it or sign it.

You should make sure you:

- understand how and when the building surveyor is going to be paid
- whether there are any limitations on the building surveyor's liability, and
- that the building surveyor has the right insurance for the job

### PRIVATE BUILDING SURVEYORS ARE INDEPENDENT

To ensure that private building surveyors are independent, they can't accept an appointment if they have prepared the design of the building, or if they have a financial interest in the building or building work.



## 2.3 Termination of a private building surveyor

### 2.3.1 Changing or transferring private building surveyors

If you want to change your private building surveyor before a project has started, or before the work is complete, you need to **notify** the Victorian Building Authority (**VBA**) and your local council that the role has been transferred to a new private building surveyor.

When you notify the VBA about a transfer, you need to:

- identify a new building surveyor who is willing to take over the works. This person will need to provide a letter setting out that they agree to take over, and
- show that the existing private building surveyor also agrees to the transfer.

More information about transferring to a new private building surveyor, including copies of the forms that need to be completed, is available [here](#).

### 2.3.2 Ending the appointment of your private building surveyor

If you want to end the appointment of your private building surveyor before the building work is complete you need the VBA's **consent**.

Unless you are terminating a private building surveyor because you're not proceeding with the building work, you need to identify a replacement private building surveyor who will take over the job. The new private building surveyor needs to provide a letter confirming they can take over the job.

To seek the consent of the VBA, you need to fill out an application form available [here](#).

The VBA may give you or your agent a direction to facilitate the transfer of the services to your new building surveyor.

If you are unhappy with the way the VBA has dealt with your request to terminate your building surveyor, you might be able to appeal to the Building Appeals Board (see [paragraph 3.3](#))

#### ! VBA'S POSITION

Disagreeing with a decision by your building surveyor isn't sufficient grounds to terminate the engagement of your building surveyor.

Similarly, there must be no indication of a dispute between you and your building surveyor for the VBA to provide its consent to the termination of the engagement of the building surveyor.

## 3. What to do if you're unhappy about your building surveyor's conduct?

Most complaints about building surveyors are dealt with by the Building Appeals Board (**BAB**). You might also be able to complain to the VBA.

### 3.1 Complaints to the Building Appeals Board

Various types of complaints can be **made** against a building surveyor to the BAB. Complaints to the BAB about building surveyors generally relate to decisions about a permit or the building surveyor's inspection of building works.

For example, a complaint could include where you disagree with the building surveyor's:

- decision to demolish, open, cut into or test building work as part of its inspection
- estimate of the cost of works when seeking a permit
- refusal to:
  - provide a permit, or
  - amend or cancel a permit (including an application to amend or cancel the permit)
- failure to decide an application to amend or cancel a permit within a reasonable time (or within the time prescribed)
- inclusion of a condition on a permit other than conditions prescribed or required under the *Building Act*
- amendment of a permit or permit application, or cancellation of a permit, or
- request for more information regarding a permit application.

#### BUILDING APPEALS BOARD'S WEBSITE

The Building Appeals Board's [website](#) includes helpful information about how to apply for an appeal, dispute or modification, including copies of the forms and lists of fees that apply.



### 3.2 Dealing with the VBA

In some circumstances you can complain to the VBA about your private building surveyor. This is because the VBA has authority to change or cancel the appointment of private building surveyors when:

1. **Your building surveyor can no longer perform their duties** - (e.g. because they are dead, or their registration has been suspended or cancelled). Here, your application to the VBA will require evidence that your replacement building surveyor agrees to take over the job.

#### NOTE

The VBA doesn't offer a dispute resolution service.

2. You want to terminate your building surveyor – we set this out at [paragraph 2.3](#), above.

3. You want to cancel your building work – if you are cancelling the building work, you can notify the VBA and the appointment of the private building surveyor will be cancelled. But, if you later decide to continue with the work, the appointment of the building surveyor noted on the building permit will be automatically reinstated.

## 3.3 Appeals to the Building Appeals Board

Some decisions the VBA makes can be **appealed** to the [BAB](#). This includes where the VBA:

- fails to consent to the termination of a private building surveyor within a reasonable time or refuses to consent; or
- fails to consent to the appointment of a replacement private building surveyor within a reasonable time or refuses to consent.

### NOTE

If you are terminating your building surveyor for one site – VBA’s processing time is 30 working days (if you provide all of the relevant information with your application).

An appeal to the BAB is conducted as a “rehearing” about the issues, but the BAB may consider new matters in addition to those considered when the initial decision was made.

The BAB has broad powers to determine an appeal, including to affirm the previous decision, vary the decision, substitute its own decision or send the decision back to the initial decision maker along with directions or recommendations as to how the initial decision maker should consider that decision.

### TIP

Check out the Building Appeals Board website ([appeal applications](#)) which includes helpful information on how to appeal a decision, including copies of the forms and lists of fees that apply.



## 4. Building surveyors and DBDRV

### 4.1 Complaints to DBDRV and VCAT

If you have a dispute against your building surveyor and your builder, you may be eligible to apply to Domestic Building Dispute Resolution Victoria (**DBDRV**) for dispute resolution. This can arise where, for example, you dispute the building surveyor’s decision to sign off on building works which you do not consider to be complete, and you are making a claim against the builder for the cost to finish the job.

If you have suffered a loss which you say was caused by the building surveyor, and the builder isn’t a part of that dispute, you may be able to apply directly to the Victorian Civil and Administrative Tribunal (**VCAT**).

# 5. Resources

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## Related Resources

- ✔ Victorian Building Authority [www.vba.vic.gov.au](http://www.vba.vic.gov.au)
- ✔ Building Appeals Board [www.buildingappeals.vic.gov.au](http://www.buildingappeals.vic.gov.au)
- ✔ Domestic Building Dispute Resolution Victoria <https://www.dbdrv.vic.gov.au/>

## Legislation

- ✔ [Building Act 1993](#) (Victoria)

### WAS THIS FACTSHEET HELPFUL TO YOU?

Please take the time to give us some feedback by completing a quick survey [here](#).  
Your comments and suggestions will help us to develop tailored content in the future.

A Domestic Building Legal Service resource. Access more resources at [www.justiceconnect.org.au/building](http://www.justiceconnect.org.au/building)

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