

What you need to know about

Terminating the appointment of a building surveyor



A building surveyor is the statutory official who is authorised to assess building proposals for compliance with the Building Regulations. Building surveyors are able to issue building and occupancy permits, conduct building inspections and serve Building Notices and Orders under the *Building Act 1993*. Building surveyors are trained in building construction and building law. They are registered by the Building Practitioners Board and are required to carry professional indemnity insurance.

Building surveying services are provided by private individuals and businesses as well as by municipal building surveyors employed by local councils. Even though building owners engage the services of a building surveyor, building surveyors nonetheless work in the community interest to ensure building standards are met.

When must I appoint a building surveyor?

Under the *Building Act* a person may not carry out building work unless a building permit has been issued for that work. The building work must be carried out in accordance with the Act, the *Building (Interim) Regulations 2005* and the permit. The Building Regulations exempt certain building work from this requirement.

Building owners or other people intending to carry out most types of building work must first obtain a building permit from a building surveyor.

How do I appoint a building surveyor?

To avoid confusion, once you have appointed a building surveyor, you should write to that building surveyor confirming the appointment. If you decide to engage a municipal building surveyor you will effectively appoint that person when you apply for a building permit. If you are using a private building surveyor, it is preferable to appoint the building surveyor before you apply for the building permit.

In most cases a private building surveyor will ask you to sign a professional service contract or will write to you to confirm their appointment.

Even if you have not signed a contract, or provided written confirmation of the appointment, if a building surveyor commences to carry out the statutory functions for your project, that person may be considered to be appointed as the building surveyor for your project.

Can my builder appoint a building surveyor for me?

You can authorise your builder, or another person to act as your agent, to appoint a building surveyor for you. You must provide your agent with a written authority before they can act on your behalf. When you sign a building contract or a contract for building design services, check to see if it includes an authority for your builder or designer to appoint a building surveyor. You should only sign this authority if you agree to allow the builder or other person to appoint your building surveyor.

Can I appoint more than one building surveyor to a project?

You can only appoint one building surveyor to perform the statutory functions for a building project. Other building surveyors can be engaged as advisors, but not as the "building surveyor". It is important that you appoint the most suitable person to your project, and that you are informed if your builder or agent is making the appointment on your behalf.

How does my local council know if I have appointed a private building surveyor?

A private building surveyor must notify the relevant council within seven days of being appointed to a building project. Also, when building work is underway, the person in charge must ensure that the building surveyor's registration number and contact details, as well as the building permit details, are displayed on a site sign.

What if I want to end the appointment of a private building surveyor?

Building owners or building surveyors sometimes want to end their appointment arrangement. Under the *Building Act* the appointment of a private building surveyor cannot be terminated without the written consent of the Building Commission. The Building Commission must consider requests for consent to terminate the appointment of a private building surveyor. The Commission does not have the authority to consider requests to terminate the appointment of a municipal building surveyor. In effect, the appointment of a municipal building surveyor cannot be terminated.

Why is it difficult to terminate the appointment of a private building surveyor?

The Act is written so that a person cannot terminate the appointment of a building surveyor without the scrutiny of the Building Commission. When implementing building standards, a building surveyor may need to make difficult decisions that are not comfortable for a builder or owner. The Act ensures that a person, who is dissatisfied with a building surveyor's decisions, cannot simply end the building surveyor's appointment.

People who disagree with a building surveyor's decision can appeal to the Building Appeals Board. For more information regarding this option, please refer to the Building Commission brochure on the Building Appeals Board.

Who terminates the appointment of a private building surveyor?

The building owner or building surveyor terminates the appointment of a private building surveyor after obtaining written consent from the Building Commission. A new building surveyor may require written evidence of the Building Commission's consent before taking on a project started by another building surveyor.

How is a private building surveyor's appointment terminated?

The building owner, builder or building surveyor must seek consent to terminate a private building surveyor's appointment by writing to the Building Commission. Any supporting documentation should be attached to the written request. If a second building surveyor has been selected, it may assist the Building Commission to know who the new building surveyor will be.

It is recommended that an owner or builder seeking the consent should discuss it with both building surveyors affected so they are aware of the situation.

Please write to:

Manager, Advice and Assessment

Building Commission

PO BOX 536

MELBOURNE VIC 3001

terminationservices@buildingcommission.com.au

The Building Commission will make its own enquiries into the circumstances of the termination. Once a decision has been made, the Commission will inform the applicant and other involved parties.

If the Building Commission consents to terminate a private building surveyor's appointment, a newly appointed building surveyor must notify the local government in which the building is located within seven days.

On what grounds is the commission likely to give consent for termination?

The Building Commission only consents to the termination when the reasons are in accordance with the Act and with Commission policy. There must also be no indication that the request is being made because of a dispute between the owner and building surveyor. Some reasons that the Commission may accept include:

- The building surveyor is no longer registered
- The building surveyor has retired or is insolvent
- The building surveyor has left the employment of the company that is providing the building surveying service

- The owner intends to complete the building work through the municipal building surveyor
- The original owner sold the property to a new owner before the commencement of building work at the property
- There is a legal action between the owner/agent and the building surveyor that may prevent the building surveyor from properly carrying out his or her functions under the Act.

Frequently asked questions

When can it be considered that a building surveyor has commenced carrying out his or her functions?

This will vary from case to case but certainly when an application for a building permit is submitted, the building surveyor has commenced carrying out his or her functions under the Act.

Does the Building Commission appoint a new building surveyor?

The Commission has no role to play in selecting or appointing the new building surveyor. Once consent to terminate is given, the owner or authorised agent is free to appoint another building surveyor of their choice.

Is the Building Commission involved with the transfer of work from one building surveyor to another?

The Commission may give written directions to facilitate the transfer of functions to the new building surveyor. Failure to comply with these directions is a prosecutable offence carrying a maximum fine of \$10,000 for an individual and \$50,000 for a body corporate.

What happens if the second appointed building surveyor issues the building and/or occupancy permit without consent being given to terminate the first?

Where a second building surveyor claims to be appointed for building work that is covered by an earlier appointment, the second appointment may be invalid. Any functions that the second building surveyor carries out on the basis of that appointment may also be invalid.

What if I want to terminate an appointment of a municipal building surveyor?

The Act provisions that allow a person to request consent to terminate the appointment of a private building surveyor don't apply to municipal building surveyors. Once a municipal building surveyor has commenced to carry out building surveying functions for a project, that person, or that person's replacement as municipal building surveyor, must remain with the project.

What if I want to terminate the appointment due to a dispute with the building surveyor?

If a request to consent is sought because of a dispute, the Building Commission is unlikely to provide consent for the termination. Disputes can be resolved through the Building Appeals Board or by other means. If you have concerns about a building surveyor's professional conduct you should take your concerns to the Building Commission or the Building Practitioners Board.

What if I want to terminate an appointment when no building work has commenced?

The Commission is more likely to consent to the termination at an early stage of a project when there has been no building work carried out. This alone however, may not be a sufficient reason for consent to be granted.

How long does it take to process a request to consent for termination?

When the necessary information is provided, most applicants are informed of the consent or refusal within two weeks of application.

Can I appeal the Commission's decision?

If the Building Commission refuses consent for the termination, the building owner or building surveyor can appeal to the Building Appeals Board.

Need more information?

Telephone +61 3 9285 6400 Facsimile +61 3 9285 6464
Level 27, 2 Lonsdale Street, Melbourne, Victoria, 3000

publicrelations@buildingcommission.com.au
www.buildingcommission.com.au

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