



INFORMATION SHEET

Workplace Services

Date: 27 July 2011
Reference: NFSCON0860

The use of email to serve notices under contract

As a general rule the procedure in the contract that deals with notices should be followed.

HIA's NSW Contracts provide that a notice under the contract (for example of prime cost items, extensions of time or breach or suspension of works) is given if:

- (a) Delivered by hand to the other party;
- (b) Posted by ordinary mail to the other party's last known address - on the day following the day it was posted
- (c) Send by facsimile to the party's last known facsimile number - on receiving confirmation of transmission.

Serving notices by email

Email is a good and fast way to communicate with the client over things like arranging times for owner access, or when work on particular items or areas (for example plumbing or painting) will be commencing, but you should not rely on emails to give notices unless the contract is amended to provide for email as a method of service.

TIP If you amend the contract this way you must insert each party's correct email address in the Particulars of your contract. A blank, incomplete or incorrect email address is likely to give you more problems if any dispute arises.

If your contract is amended, then you can treat emails in the same way as faxes – i.e. if the notice is complete and legible when received by email then it has been properly served. Provided the notice is received by fax or email, then failure to read or open the notice does not affect the validity of the notice.

Disputes over service by email

It is not unusual for disputes in building contracts to arise over service of notices by email. The courts are generally still cautious about relying exclusively on emails to show that a notice has been served on the other party.

To avoid this kind of argument, you need to ensure that your server is programmed to record and print delivery and read receipts if you are going to use email for serving notices under the contract. Absence of this type of record may mean that service by email is disputed by the other party. This may mean that you cannot rely on the notice at all.

In any event if any 'bounced' or 'message failed' response is received to the email, then service will not be valid. Also a message that your mail server is holding onto the message and will try again indicates that service has not occurred, and therefore cannot be relied upon as valid at that stage.

Best practice

HIA recommends that, if you have amended your contract to include service of notices by email, unless you have a read or delivery receipt for that email, you should also serve any notice under the contract in one of the other ways set out above. This may help to avoid technical and lengthy disputes later on.

For more information contact your Workplace Adviser on 1300 650 620.

DISCLAIMER - The above is intended to provide general information in summary form. The contents do not constitute specific advice and should not be relied upon as such. Formal specific advice should be sought by members with respect to particular matters before taking action.

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