

RULES THAT BIND INDUSTRY'S PRIVATE LAW ENFORCERS

New Property - Building and the Law

By KIM LOVEGROVE

BUILDING surveyors play one of the most pivotal roles of any practitioners in the building industry. They ensure that buildings are built in accordance with regulations.

Their origins can be traced back to the 17th century and the Great Fire of London. Concern about building conditions resulted in the birth of this important profession.

The building surveyor's position is unique in that their job description is literally set out in a piece of legislation. The Building Act articulates their statutory obligations, their role in relation to the Building Control Commission and their public responsibilities.

They are not allowed to have any financial interest, direct or remote, in the property or design in question. This is to guarantee surveyor impartiality.

It is illegal to carry out building work without a building permit. Fines applicable can be up to \$10,000. Building surveyors are the only practitioners who can issue such permits.

Once appointed, they monitor regularly the compliance of the project and carry out mandatory inspections.

Inspections must be carried out in person and on site. "Drive by" or "second gear" inspections are illegal.

When the building is completed, the surveyor issues an occupancy permit if satisfied that the building is fit for occupation.

Until 1993, building permits could only be obtained from council building surveyors. Today, one can engage a private or a council building surveyor.

Since the act was proclaimed, about 50 per cent of building surveyors have joined the private sector.

Private building surveying was introduced because, under the old system, permits took an inordinately long time to process, on average, five to seven weeks, the building applications of unpopular builders being sometimes relegated to the bottom of the pile. The hours of service to the public were also often very restricted. Needless to say, customer satisfaction was wanting. Those were the bad old days.

Since the introduction of the act, building-permit issue time has dropped to an average of between five and seven days.

Mr Ross Thompson, president of the Australian Institute of Building Surveyors, said: "Quick permit and inspection service is now the name of the game, with private sector and council building surveyors working in full and open competition."

But, alas, all is not perfect. I recently overheard a building surveyor tell someone that he used to describe himself as a regulator but now considers himself to be a facilitator for builders, a partner, so to speak. Well, I have some news for those of this persuasion. Building surveyors are in the business of regulatory enforcement.

The courts will ultimately judge a building surveyor's client allegiances in terms of how well the building surveyor has acquitted him/herself to the public, and the fee payer will be of secondary concern.

A related issue is the matter of pricing for the service. Mr Thompson stated that "an apparent over supply of building surveyors has resulted in an aggressively competitive environment where there is talk in the industry of unrealistically cheap fees and corner-cutting".

He added that one should "avoid practitioners who sell their services on the basis of cost-cutting - cost-cutting means less time on the job and less time ensuring that the owner ends up with a top-quality job. Instead, choose an AIBS member, bound by a code of ethics and engaged in on-going education.'

It is critical that building surveyors charge a reasonable fee for their service. Underquoting can lead to "corners being cut". This increases the risk of defective building work and breaches of regulations. Statutory breaches are indictable, and defects lead to liabilities which in turn lead to law suits.

One should be ever mindful of the Building Practitioners Board and the Building Control Commission's auditors. Both bodies are vitally interested in the progression of the industry and the auditors have powers that allow them to be very inquisitive.

In summary, the introduction of private certification and the raising of the benchmark for qualifications for building surveyors has been a major step forward. The beneficiaries are both the public and the industry.

For any practitioner who does not fully understand the nature of the job, their job description is located in the Building Act. It is very much about regulatory compliance and enforcement. Remove this, and there is very little need for the profession.

After all, history shows that this is the reason why the profession was created. Failure to realise this will inevitably lead to severe consequences in the light of the very potent punitive arsenal in the Building Act.

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