

UNDERSTANDING CONTRACTS IS ESSENTIAL

New Property

By KIM LOVEGROVE

IT NEVER ceases to amaze me why people tend to adopt a cavalier approach to contracting. I would have thought that it is as important to get a lawyer to vet a building contract as it is to get a lawyer to oversee a land conveyance.

A building contract is the embodiment of the most significant financial transaction of a person's life. As regards the builder, it is equally important as it is a charter of contractual rights. Vigilance may end up protecting the builder's very livelihood.

A lack of understanding of contracts leads to uncertainty and confusion. When confusion reigns, disputes often result.

Even though it may sound self serving from the legal profession, my first piece of advice is get a lawyer involved at the front end. Ideally the lawyer should be a construction lawyer.

Building law is an idiosyncratic and complex area. There is the Victorian Building Act 1993 and the Domestic Building Contracts and Tribunal Act 1995, with well over 400 sections between them. Both acts, being very intrusive (in a positive sense), require an intimate working knowledge.

In addition, there is a rich heritage of contract and tort law that has evolved with building disputes over the years. To track down a construction lawyer, one can contact the Law Institute of Victoria Referral Service or the Building Disputes Practitioners Society. The latter can also provide the names of technically qualified experts, such as building consultants, engineers, mediators and the like.

Once you have chosen your lawyer, get him or her to explain the contract in detail. Have explained to you the contractual terminology. Building contracts involve a distinct and tailored language of their own. Terms such as variations, liquidated damages, prime costs and provisional sums are case in point. Much of the vernacular does not have ordinary usage connotations.

Case in point is the word "completion". The Domestic Building Contracts and Tribunal Act defines completion to mean: when an occupancy permit or a certificate of final inspection has been issued by a building surveyor, and when the building has been completed in accordance with the contract, drawings and specifications.

Get the lawyer to explain the workings of a contract. Understand how a variation works. Many builders still do not realise that it is a legal requirement that a variation must not only be in writing, but must describe the subject matter, the time impact, the cost etc of such variation.

The lawyer can also play a key role in negotiations. Where an individual may not feel confident about negotiations, a lawyer can both demystify the process and clarify that the parties understand what they are bargaining for.

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