

BUILDING DISPUTES AND HOW TO GIVE THEM A WIDE BERTH

New Property - Building and the Law

By KIM LOVEGROVE

BUILDING disputes are horrendous. They can destroy your sex life, your livelihood, even your marriage. Why? Because they often degenerate into monsters, devour money at an insatiable rate and throw a person's life into a total state of disarray.

It is easy to blame lawyers for the costly dispute resolution process but, in reality, they are the scapegoats normally brought into the fray in a post-mortem or damage-control capacity when it is virtually impossible to reach an ideal outcome.

After years of experience as a construction lawyer, my advice is to stay out of building disputes and below are some suggestions on how to do so.

Building is for the average person the most serious financial transaction to be entered into. Yet it is generally approached in a cavalier and almost careless fashion. So, the first piece of advice is take the task seriously, treat it with the respect it warrants.

Get quotes from a number of builders along with written references from previous clients. Do not be afraid to ask to inspect their previous work - this will confirm the standard of their work. If they decline to give references, proceed with considerable caution. Also inquire whether the builder has ever been involved in a building dispute and, if so, find out why and the outcome.

Once a short list has been compiled get each builder to submit detailed tenders and quotes. Don't just consider the lowest quote because low quotes don't equal cheapest "end cost". The successful contractor should be chosen for a track record of quality, good service and the ability to build for the price quoted.

Give the builder as much detail as possible in the contractual specifications. A builder can only price what he has been asked to price. Ambiguous details, drawings and specifications will be a recipe for extras and variations, and the net outcome will be cost haemorrhaging and disappointments.

It has always been said that people have an aversion to contractual fine print, yet much hangs upon contractual wording. Failure to understand a building contract will prove to be no excuse if a contract goes off the rails.

An astute person will engage a construction lawyer to negotiate and explain a contract before it is signed. It is a false economy to save money by entering into a contract that you don't understand.

Know the contract. It is your charter of rights, remedies and expectations. Ensure that the contract complies with the Domestic Contracts and Tribunal Act. Contracts that don't are illegal. Make sure that all negotiable elements of the contract like price, completion time and damages are negotiated, agreed upon and incorporated into the contract.

Do not sign an incomplete document and ensure that the contract is executed by both parties, because the DCTA provides that if a contract is not executed it has no legal effect. Ensure that the builder is a registered building practitioner with the Building Practitioners Board by asking for a copy of the builder's building practitioner's certificate. The law requires that the builder must carry a valid insurance policy. Check the builder's insurance policy, and talk to an insurance broker, if need be, to find out whether the amount of cover is adequate and the nature of the cover comprehensive.

In the case of married couples and de factos, one partner should be nominated as the spokesman to communicate with the builder. There is nothing worse than a builder having to take differing sets of instructions from two different people. The outcome is always confusion, conflicting instructions and (costly) variations.

Once the contract is entered into, try not to crowd the builder and his tradesman. Let him get on with his job and never give his subcontractors or employees instructions. Instructions should always be given directly to the builder.

Check progress claims carefully and ensure that all of the work claimed has in fact been done. If there is an over-claim, convene a meeting with the builder and insist that the claim is corrected.

Ensure that the builder does not claim ahead of time - the building contract is required by law to specify when and how much the builder is entitled to claim. Once satisfied that the claim is due and payable, pay it quickly. Keep a close eye on quality of workmanship throughout the contract. If there is a problem, deal with it quickly, don't let it fester. Organise a site meeting and get an agreement on how to remedy the problem. Once a solution is arrived at, confirm it in writing. If a variation is lodged by the builder make sure it is in writing, comprises a cost estimate, description of works and is legitimate. If the variation is accepted, countersign it and keep a record.

It is important to keep meticulous records of all correspondence, variations and a written record of important conversations. Don't rely on memory, because it tends to fade and distort key facts.

If there is any hint of a dispute brewing, try to resolve it through negotiation, which, on occasion, may involve concessions. If negotiations fail, see a construction lawyer immediately.

These strategies are not exhaustive but they are good starting points. Remember, building contracting is full of pitfalls so do your homework, put in the time to protect your investment and when in doubt always seek expert advice.

Kim Lovegrove runs the legal practice Lovegrove Solicitors which specialises in building contract law. He is also the author of 12 books on building law and is co-author of the User's Guide to the Domestic Contracts Act.