

IT PAYS TO KNOW WHO YOU ARE DEALING WITH

New Property

By KIM LOVEGROVE

Building contracts lawyer Kim Lovegrove outlines the safe way to choose a builder.

WHEN choosing a builder, make sure they are registered with the Building Practitioners Board and have insurance.

Get references, ring up the referees. Check previous jobs.

Don't necessarily be hoodwinked by the cheapest quote. Never confuse "cheapest quote" with "cheapest as built cost". There can be a quantum gap. The critical thing is that the house is built for the cost quoted. Equally important is getting what the builder contracts for.

Be mindful of the saying, you get what you pay for.

Another word of advice for builders and owners alike. Don't just enter into a contract with someone just because they are a nice guy, a second cousin, a pal of Dad's or a mate. A number of times I have heard a disputant say, "Oh, but he was such a nice guy, I trusted him". I always say, so what - you wouldn't have been interested in contracting with someone if you thought they were a ratbag.

Builders, likewise, should do their homework on the owner. Ensure that he or she has finance in place. Make sure that you are not dealing with a "fly by nighter". Once the contract is on foot, ensure that payments are made on time.

Beware the "dreaded drip feed". This is where the owner, in default of the contract, part-pays the builder but promises that the money is on the way. The unsuspecting builder completes the contract, only to be owed 60 per cent of the contract sum.

This was a common late '80s tactic. Unscrupulous operators drip fed the builder, then at the end of the contract said, "Sue me for the money!" The tactic was to punt that the builder wouldn't be able to afford the costs of litigation. It often worked and the industry is littered with stories of builders going bust because of this mala-fide practice. There are builders who have lost everything in these circumstances and it doesn't stop with the builder. When a builder goes down, the domino effect applies and sub-contractors and suppliers are also affected.

There is also a saying called the "90 per cent factor". Builders have relayed stories where they were paid promptly until the final 10 per cent payment, when the owner haggled and bickered about minutiae. This hard bargie continued for weeks until the builder cut his losses and got out.

A wise practice is to only use a contract that complies with the Domestic Contracts and Tribunal Act. The contracts published by the MBA and HIA are equally good. They are succinct and easily understood.

Try to avoid the "home grown" contracts. These are "one-off" contracts designed by individual companies. There is a risk that they may not comply with the legislation or may contain traps for the unsuspecting.

Even though humans have a pathological aversion to fine print, overcome the aversion. The contract is a manifesto of rights. There is likely to be little judicial sympathy shown for a person who says, "I didn't read the contract," or, "I didn't understand it."

Be very coy about amending a standard form contract. Amendments, particularly those prepared by the uninitiated, often contradict standard-form clauses. This can make a contract void for uncertainty.

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