

Issues Faced by Owners Corporations When Dealing with Construction Contracts

Owners corporations often enter into construction contracts with builders, architects, project managers, contract administrators and other contractors, dealing with a wide range of issues, such as adding to or altering the structures erected on the property, repairs and upgrade works.

These commonly involve large sums of money and deal with complex issues, e.g. those which arise in relation to fire safety works. Often, an owners corporation relies on its managing agent to deal with such issues, not appreciating that its managing agent is not in a position to provide legal advice in relation to the complex legal issues which arise from such contracts.

Construction contracts are generally negotiated using one of the construction industry standard contracts as a template, such as those published by Standards Australia, the Master Builders Association, the Housing Industry Association and NSW Fair Trading. Each of these has advantages and disadvantages, but all require some modification to deal properly with a range of legal and practical issues pertaining to strata schemes. For example:

- The price, the nature of the works, the role and liability of the particular party and/or the scheme's particular circumstances may necessitate specific provisions not contained in the industry standard contracts.
- The owners corporation will generally be required to give the contractor access to the common property and to lots. The owners corporation may incur liabilities to the contractor if access is frustrated by owners and/or their tenants, necessitating tripartite arrangements between the owners corporation, the contractor and owners/occupiers.
- Issues may arise in relation to homeowner warranty insurance requirements under the Home Building Act 1989. It is not unusual for contractors to carry out work without effecting such insurance, which can cause owners corporations serious problems.
- Issues may arise under the Work Health and Safety Regulation 2011, which in some cases requires the appointment of a principal contractor and imposes obligations in relation to site induction training, safety management plans and other matters. Such issues are generally beyond the expertise of the owners corporation thereby placing the owners corporation at considerable risk.
- Issues may arise in relation to variation of the contract price or the construction period, the potential for which may not be appreciated by the owners corporation at the time of entering into the contract.

- Issues may arise where certification of works meets the minimum mandatory standards but does not meet the owners corporation's reasonable expectations.
- Owners corporations' attempts to seek redress may be frustrated, if there are problems with the works and proper provision has not been made for the allocation of liability between the contractor or between multiple contractors.

It should be noted that many short form contracts are not suitable as they do not comply with the requirements for residential building works under the Home Building Act 1989.

Bannermans Lawyers has extensive experience in this area and would welcome the opportunity to assist owners corporations and their managing agents with negotiating and preparing such contracts and providing them with guidance as to the issues involved and how they may best be addressed, so as to ensure that owners corporations are given proper protection.

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30 March 2011



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