Pennywise but Pound-foolish: Owners and Contracts for Residential Building Work

The purchase of a home will probably be the most significant commitment to expenditure many of us will ever make. No sensible person enters into such a transaction without qualified legal advice and representation on the conveyance. And yet, when it comes to the construction or refurbishment of a home, owners all too often accept a building contractor's terms without obtaining legal advice. Even where the price for the building work amounts to a six or seven figure sum the cost of an independent legal review of the proposed contract will routinely fall between $2,000 - $5,000; a cost effective and sensible precaution given the frequency with which construction work can go awry.

Properly informed by legal advice owners will commonly, realise they require some amendment to the contract that the builder has proffered. It is too late to recognise this once the contract is signed. Contract terms may be subject to interpretations or consequences that differ from a layman's reading. Similarly, prudent provisions that should have been included in the owner's interest may have been omitted. For example, many forms of contract may give the owner the impression that the builder will be held to a fixed price for the work. In fact the forms of contract where a fixed price is not conditional are extremely rare, and owners need to be aware of the circumstances that can lead to an increase in the contract price if they are to manage their budgets.

This last example is so commonplace that specific consumer legislation normally requires a residential building contract to prominently identify the circumstances and clauses that may lead to an increase in the contract price. In NSW the main instrument of that consumer protection for residential building work is The Home Building Act, 1989.

The Home Building Act contains a number of measures that seek to protect owners from naively agreeing to harsh or imprudent contract terms, but it is far from a panacea. Most contractors will offer one of the many standard form contract produced by industry groups favourable to builders, such as the Master Builders Association or the Housing Industry Association, with a further layer of special conditions that the contractor has developed during the course of its business. There is no standard form designed from an ordinary home owners' perspective. The nearest available in NSW would be the *'Home building contract for work over $20,000'* put out by NSW Fair Trading. This relatively user friendly standard form may be appropriate for works under $100,000, if the builder is prepared to contract on those terms, but it will often be too simplistic where the work is of significantly greater value or particular complexity.

The fact is that the contract provisions that best address the needs of owners reside not in available standard forms, but in the databank of specialist lawyers and consultants who practice in the area of residential building contracts. They know from experience the issues and disputes that commonly arise during construction works, and know what instructions to seek. They will normally have

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developed their own amendments to render each of the standard forms more suitable from an owner's perspective, which can be redrafted at minimal cost to suit individual owner's needs.

As the name implies, building contracts are part of the day to day business of a building contractor. A home owner may only enter into a building contract once in a lifetime. The contrast is stark, and where the stakes are high the owners shouldn't suffer the disadvantage. For a very miniscule percentage of the construction cost expert advice is available.

Key takeaways

- Homeowners often overlook the importance of legal advice when signing building contracts.
- Independent legal review of contracts can prevent costly misunderstandings.
- The Home Building Act, 1989 provides consumer protections but is not foolproof.
- Standard contracts may not adequately protect homeowners' interests.
- Expert legal advice can tailor contracts to better suit individual homeowner needs.

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