Why You Should Get Legal Advice on MBA Standard Form Contracts

Owners of apartments within strata schemes often want to add to or alter their lot property. This invariably involves entering into construction contracts with builders, architects, other contractors and consultants, as well dealing with the owners corporation. It is important that network of relationships is managed carefully and consistently. A key factor in this is a proper understanding of how contracts should be set up in each case.

Construction contracts are generally negotiated using one of the construction industry standard contracts as a template, such as the Master Builders Association (MBA) and the Housing Industry Association (HIA). 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, Home owners entering into an MBA BC4 form of contract need to be aware of some of the potentially onerous conditions of that contract, and seek expert legal advice on the amendment of the standard form if they find those conditions unacceptable. Those kinds of conditions include:

1. Response Time Requirements: There are a number of conditions where claims made by the builder cannot purportedly be disputed unless the owner has issued a written notice with reasons within a prescribed number of days (usually 5 working days) from the date of the claim. Self-executing administrative provisions like this have much to commend them in terms of saving administrative costs and the potential for disputes, but they are 'high risk' in that if the owner slips up the owners could be liable for a large claim, even if that claim is otherwise without merit.

2. Ambiguous Delay Provisions: Normally a builder will only incur a delay cost where the delay is such as to effect the end date for practical completion. The MBA form leaves open the possibility of a claim for any delay.

3. A Profit Grab on Omissions: Where a variation deletes work from the contract, the owner is only credited the cost of the work deleted, not the share of the contract price that includes profit overheads and preliminaries.

4. Final Certificate Risk: Under the MBA BC4 form, the builder is not required to obtain the occupancy certificate or final inspection certificate. On turnkey projects this places the onus on the owner, when the builder should be better placed to deal with the relevant authorities.

5. Unbalanced Termination Clauses: In the event of a show cause notices the builder is allowed 25 days to remedy any default, whereas the owner is only allowed 10 days.

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In some cases owners may find such clauses acceptable, particularly if the contract price is attractive. But it would be a foolish owner who accepts such terms without giving serious thought into how the resultant risks are to be managed.

Context is everything, not just in terms of the circumstances of a particular project or owner's requirements, but also the regulatory world of bylaws, council approvals, legislative changes, and developing case law. A layman cannot be expected to keep pace with changes in what is in any event a specialist form of contracting.

Unamended the HIA and MBA BC4 standard forms do not make provision for architect supervision, although the MBA do provide a supplement sheet that can be used where the owner wants to use a supervisory architect.

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 miniscule percentage of the construction cost expert legal advice is available.

Key takeaways

- Owners of strata apartments must understand the implications of entering into construction contracts.
- MBA and HIA standard contracts require careful modification to address specific legal issues.
- Certain conditions in MBA contracts can pose significant risks to owners if not properly managed.
- Legal advice can help navigate the complexities of construction contracts and protect owners' interests.
- The stakes in construction contracts are high, making expert legal advice a worthwhile investment.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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