SOME HINTS TO AVOID BUILDING CONTRACT DISASTERS

PRE-CONTRACT

- Define your objectives – what do you want to achieve
- Fix your budget (include in that amount a contingency sum – you will use it. Also include an allowance for indirect professional fees and expenses (i.e. banker/lawyer/valuer/accountant/insurance broker) – Ignore the temptation to ‘upsize’ and stick to the budget
- Obtain comprehensive plans and specifications prepared solely for your job (not generic specifications) – make sure you understand the documents fully - ensure that the scope of the work and all materials to be used including fittings and finishes are comprehensively specified in advance of building so that you know precisely what you are going to get
- Ensure that any covenants and easements on the property title are complied with
- Call tenders/obtain fixed price quotes from three or more reputable contractors
  - Ask friends or family for recommendations
  - Ask for references from contractors’ last three clients
  - Check each of the references thoroughly – ask about quality of work, reliability, time for completion, how easy was the contractor to deal with – did they keep them informed as to progress and issues that required their input throughout the job – were there any financial/billing issues. Ask to look at the workmanship – ignore/look past the furniture and furnishings – they will be eye watering in any showhome but that’s not what you are buying and anything can be dressed up nicely
  - Check the Companies Register – know who you are dealing with and how long the company has been in business (particularly important when dealing with group builders who operate on a franchise basis – remember it is not the brand owner that you will be contracting with – it may be a company recently incorporated for that purpose and the directors may have no building experience whatsoever – walk away if in doubt – there are plenty of competent experienced contractors available without letting someone learn at your expense)
  - Request a comprehensive breakdown of the quoted price (this will help identify pricing anomalies and assist in valuing progress payments)
  - Request a start date, a completion date and a building programme
  - Fix an amount to be paid by the contractor for late completion (liquidated damages)
  - Request a schedule of progress payments (dates and amounts)

Building Disputes Tribunal (NZ) Ltd

Postal PO Box 33297 | E registrar@buildingdisputestribunal.com | P + 64 9 486 7143
Takapuna 0740 | www.buildingdisputestribunal.co.nz | F + 64 9 486 7144

An Authorised Nominating Authority under the Construction Contracts Act 2002
Resolving building and construction disputes fairly, promptly and cost effectively
Avoid milestone payments (they will often be ‘frontloaded’ leaving insufficient funds available to complete the work towards the end of the project)

Avoid including provisional sums or PC sums in the contract price – if you must (and there would need to be a very good reason) then understand the exact basis upon which the monetary allowance has been calculated and how and when it will be expended

Agree rates for variations (there will almost certainly be variations)

Include a defects liability period and maintenance retentions (you need an incentive for them to complete promptly)

Require a third party guarantee for the work

- Do not enter into a charge-up contract on the basis of an estimate if at all possible – if that is the way you wish to proceed then define the exact scope of the work encompassed by the estimate, the hourly rates to be charged, whether onsite and offsite time will be charged, clarify whether travelling time/vehicle expenses will be charged, clarify the hours to be worked and charged (the number and length of meal breaks), agree the margin to be paid on subcontractor’s and materials invoices

- Engage a building professional (quantity surveyor/project manager/building surveyor) to analyse the tenders/quotes and project manage the build and certify payment claims

- Ask for a copy of the formal written contract to be used. Do not just accept the terms - ask your lawyer to review (and amend) the conditions of contract before you sign anything!! Many standard form contracts contain grossly inequitable provisions regarding payment, performance and possession of the property that are heavily weighted in favour of the contractor – once you agree to those terms you will be bound by them. It is better to spend money on a lawyer getting good advice at the start of the contract rather than on a dispute at the end

- Do not pay a deposit directly to any contractor in advance of work being undertaken unless you’re prepared to lose it – Contractors require and are entitled to evidence of financial commitment on your part to the project however a deposit should be held in trust by an independent third party (i.e. BuildSafe®) pending completion of the contractor’s obligations

- If you own the land, photograph all aspects of the site and neighbouring properties and amenities before work starts – i.e. fences, drives, footpaths, retaining walls, berms in case there is a dispute regarding responsibility for property damage

- Confirm who will be responsible for insuring the contract works and that they are insured - obtain copies of the contractor’s contract works and public liability insurance policy cover notes and/or notify your insurer if you are carrying out alterations to your home – ensure that the contractor has adequate public liability insurance

- If it is important to you that your selected contractor is a member of a trade organisation ask for the membership number and check with the organisation that the membership is current - membership of a trade organisation alone will seldom give you any protection or adequate redress in the event of a dispute arising

AT THE START OF THE CONTRACT

- Ensure that you have a written building contract that records the agreement (the agreed terms) that you have made

- Request a construction programme (a timetable that sets out when all of the various tasks are to be undertaken and completed) to monitor the progress of the contract works against - identify any key dates by which you must make decisions or provide items that will affect the progress of the building work
• Request contact details for the person managing/supervising the project – with group builders or larger operators it will seldom be the salesperson you have dealt with to date

• Request regular (say fortnightly) site meetings to discuss and check progress, quality of work and materials, adherence to specification - require formal minutes of those meetings to be taken and circulated

DURING THE CONTRACT

• Attend site meetings and monitor progress of the works against the construction programme and the plans and specifications

• Ensure any owner selections or owner supplied items are provided on time so that you are not held liable for any delay

• Ensure you respond to any Payment Claim with a valid Payment Schedule otherwise you may become liable to pay the whole of the claimed amount even if it is wrong – make sure your finances are organised and that monies are available to allow you to pay progress claims on or before the agreed due date (and all obligations in relation to that i.e. valuation reports)

• Raise any issues of concern about quality/detail/performance as soon as you become aware of them and resolve them – do not leave them to be sorted out at the end of the job – they will always escalate and the cost and the process for resolving them will be horrendous

• Do not instruct variations without first agreeing the price in writing – you will always be surprised how expensive that ‘little’ change was

• Record all discussions and instructions in writing at the time

• Take lots of photos – particularly of anything that concerns you

• Obtain all keys and change any security codes on taking possession of the works

• Ensure that you advise the contractor in writing of outstanding items of incomplete and/or defective work before the end of the defects liability period

• Obtain all manufacturer’s warranties and guarantees and maintenance requirements/obligations for the various components of the dwelling

• Obtain copies of any producer statements/certificates required pursuant to the Building Consent – often required in relation to geotechnical, structural, fire, electrical, gasfitting and siting requirements

• Ensure that you obtain a Code Compliance Certificate issued by the Building Consent Authority on completion of the contract works

• Pay the final account promptly on the expiry of the defects liability period and completion of all outstanding items of incomplete or defective work

• Insure the building works and contents on completion of the contract

• Under no circumstances cancel or purport to cancel a building contract without first taking legal advice and following any agreed notice procedures strictly