

Construction Contracts: Back to Basics

It is a reality that on most construction projects, the contract between the parties is often not finalised, not signed or simply forgotten. While at the outset of the project agreeing the contract may seem like a tedious task, when a problem does occur, the contract quickly becomes the most important document to resolving the dispute and protecting the rights of the parties.



While the law recognises an oral contract and a contract agreed through the conduct of the parties (in certain circumstances), a written document prepared at the beginning of a project which sets out the parties' rights and obligations can save considerable time, cost and stress if something does go wrong. Additionally, for those who are embarking on a project which will be partially financed through a mortgage or borrowing facility, most lenders will require a signed construction contract as a condition of the borrowing.

Numerous factors such as the length of time the project may take, the supply or quality of materials, the quality of workmanship, the input of a sub-contractor or the payment of fees, can easily give rise to a disagreement between the parties and when that occurs, the contract is king.



Practically speaking, construction in the Cayman Islands presents its own unique set of challenges and uncertainties particularly in respect to the weather, the supply of materials, the availability of specialised professionals and complaint building regulations. As well as including standard terms and conditions, a properly drafted contract should account for the unique and often unpredictable nature of the local Cayman construction environment.

Set out below is a list of questions and issues that should be considered by the contracting parties at the start of a project and be factored into the final agreement.

Considerations for the Builder –

- An agreed price, timing of payments and what happens if payment of invoices doesn't occur.
- Arrangements with sub-contractors on the project and whether their engagement is by the builder or the building owner.
- The work that the builder will be contractually liable for, for example, just the builder's own work, or the work of other professionals and sub-contractors who are engaged on the project.
- Is the builder responsible for sourcing all of the construction materials or is this responsibility shared?
- Is the builder responsible for ensuring the that the building complies with the building law and regulations or will compliance be managed through the architect or other such professional?
- Insurance on the project, including the type of policy which will be taken out and what aspects of the project it will cover.
- When is "practical completion" and how is this term defined?
- An agreed resolution process if a dispute does arise.

Considerations for the sub-contractor(s) or design consultant–

- Who is the sub-contractor's agreement with: the homeowner/ developer or the builder?
- Who is responsible for paying the sub-contractor's invoices?
- What work is the sub-contractor actually responsible and liable for?
- Does the main project insurance also cover the sub-contractor's work or does separate insurance need to be obtained?
- Is there a limitation of liability clause to limit the recovery which can be made against the sub-contractor?

Considerations for the developer or homeowner -

- What work is the builder responsible for completing?
- Is the contract price a fixed sum, or is the price going to be determined throughout the build and as required?
- Who is responsible for engaging designers, engineers and various other sub-consultants? What happens if they do not do their job properly?
- Are limitation of liability clauses in the agreement which could prevent or limit recovery of compensation if a loss occurs?
- Is there adequate insurance in place covering the project and what circumstances will not be covered by the policy?
- What happens when the extent or cost of the work agreed at the beginning of the project changes? Can the contract price be increased or reduced, and if so, in what circumstances?

- What happens if the completion date changes? What happens if these changes cause you to incur other costs?
- Does the contract allow for a defects period? The “defects period” begins at the end of the project, (after practical completion) and allows a period of time for the building owner to request that any workmanship or defect issues are rectified by the builder. The contract should clearly set out when this period begins, how long the period will last, what type of issue is considered a “defect” and what the builder or sub-contractor will do.

As all construction contracts are unique and differ in one way or another to each other, the list above is intended as a guide only and it is strongly recommended that if you are going to be involved in a construction project (even to a limited extent), you should seek proper legal advice regarding the contract before it is signed. This should ensure that as the builder or subcontractor your rights are properly protected and that you are only held liable for the work that you are responsible for completing. Similarly, for the building owner, having the appropriate contracts in place should ensure that you only pay for the work you are responsible for paying for and have a clear path of recovery should things not go to plan.

Our team:

Broadhurst LLC have extensive expertise in construction projects in the Cayman Islands and are able to provide help and advice at every stage of the process. For further information, please contact our office on 1 345 949 7237 or email info@broadhurstllc.com

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