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How Well Do You Know Your Customer?

By Andrew Skinner – Ulrich Milne Lawyers

We recently prepared a set of terms and conditions for small jobs for a residential builder client. The client felt that the standard form building contracts were too complicated for smaller jobs and needed a simpler set of terms for these smaller jobs. In preparing the terms we asked the client a few questions regarding what checks they do as part of deciding whether to take on a job. Checking some basic facts about your customer is really important because whilst it is important to have a strong pipeline of work, we all need to be sure that the person we are dealing with has necessary authority and that we will ultimately get paid.

Who am I dealing with?

This may seem like a simple question but it may also often be overlooked in the chase for winning new work. These days houses are held in various ownership arrangements. One such example is a family trusts where the owners of the property will be all of the trustees of that family trust (and not just the person you are mainly dealing with).

A simple way to confirm that you are dealing with the correct owners is to ask your solicitor to carry out a title search for the property where the job is to be carried out. These searches are inexpensive and will clarify who should be your counterparty for the building contract. If the property is held in a trust, then you will want all of the trustees to sign your building contract for the job.

If you are doing the building work for a company, you will need to consider whether you request personal guarantees from the owners of that company in order to provide you with further assurance regarding payments.

If you fail to confirm who the correct owners of the property are and you subsequently end up in a dispute situation, the ability to enforce the building contract may be compromised if you have not entered into the building contract with all of the property owners. In particular, many standard form building contracts contain an ability to caveat the property in the event of non-payment. If you do not have all of the owners sign the building contract and agree to this caveat protection, then you will not be able to instruct your solicitor to lodge a caveat.



Proof of Funds

Even with staged progress payments, you will likely be committing a significant amount of your resources into purchasing materials and paying your workers. You will then be relying on the owners of the property to pay bills in order to meet your existing commitments.

But what checks do you do on the financial capability of your customers? It is perhaps a difficult conversation to have but it is better to be clear from the outset that your owners have either the necessary savings or approved loans from their bank in order to meet their commitments. Again, check the savings account and/or the loan is in the name of the owners. Just because it is a nice house on a good street is not enough.

We see a lot of loan applications and approvals. One trend that we have noticed is the banks requiring a significant instalment payment upon the builder obtaining code compliance certificate. This will need to be factored into your programme of work and payment schedule.

The above checks may seem relatively simple, but they should be part of your process for new building contracts. Whilst it is very helpful to have a robust building contract or set of terms governing the building work, if you haven't accurately identified who you are dealing with or whether they have the financial resources to meet the commitments in the building contract, you may be setting yourself up for difficulties in the future.

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