



SPECTRUM SPEAKS

THE COMPANY NEWSLETTER OF SPECTRUM COACH & SPECTRUM LAWYERS

NEWS AND UPDATES FOR THIS MONTH:

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Hi everyone,

Well, what a crazy few months it's been since our last newsletter! Life as we know it has been tipped upside down, and we have all had to quickly pivot to new ways of doing business (as well as homeschooling the kids for a few of us, just to add to the pressure)!

At this stage it seems that the building and construction industries are weathering the storm of COVID-19 fairly well, however, the future is far from certain. Federal Government assistance such as the recently announced HomeBuilder grant are welcome relief, but consumer sentiment will ultimately determine the health of the new home sector. Tight cashflow (for businesses and consumers) has also seen an increase in dispute resolution for non-payments claims.

Do you have any concerns for your new homes business in light of the current health crisis? Spectrum Coach and Spectrum Lawyers are always happy to talk through any issues you might be experiencing. Feel free to reach out, even if it's just to chat. If ever there has been a time when we need to lean on our networks, it's now.

Stay well,

Spectrum Coach & Spectrum Lawyers



Spectrum Coach provides tailored business coaching for construction professionals, giving you the tools you need to grow your new homes business. Fred can be contacted on:

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HomeBuilder-

How can it help your clients?

WRITTEN BY DONNA ABU-ELIAS

As many builders are aware, there are a lot of enquiries from Owners who want to take advantage of the Federal Government's HomeBuilder grant for new housing - and why wouldn't they, \$25K is a great bonus!

As a builder, there are some of key points of the scheme you must be aware of:

Clients who want to cancel their contracts:

Clients who signed a building contract prior to 4th June 2020 may ask to cancel their current contract and to sign a new one dated after 4th June 2020 to satisfy the legal requirements of the HomeBuilder scheme.

But Builder BEWARE... assisting the Owner in terminating a contract to take advantage of the stimulus could be seen as either fraud or anti-avoidance. It is important that you remind the Owner that any cancellation (without a legal basis) may incur additional fees (termination costs), and also that any new contract may incur additional costs (new price list) and new delays (as now they need to be scheduled in after the jobs that are ready to go to site).

Be careful not to over promise:

It is not for a builder to 'guarantee' the Stimulus for the Owner. That is, when you are obtaining finance for the Owner, it is important to ensure they have finance without the stimulus. This is so if they do not satisfy the requirements to receive the stimulus amount, they can still meet their financial commitments under the Contract.



HOMEBUILDER - 4 KEY POINTS

There are 4 key things to be clear on with your client:

- 1. Clients cannot cancel existing contracts without legal grounds**
- 2. Be careful not to over promise**
- 3. Be clear on your timeframe**
- 4. Does your form of contract apply?**

Be clear on your timeframes:

One of the criteria for an Owner to be eligible for the stimulus is that the Builder commences building works within three months of contract signing. What does 'commencement' mean under your building contract? Be mindful not to start early so the Owner obtains the grant but then exposes the Builder to delay damages. Again, don't over promise to the Owners that you can meet this requirement, as there are a lot of factors which may deter a commencement within 3 months including finance issues, delays to obtain the building permit, obtaining the PIC, etc.

Does your form of contract apply?

There are many different forms of building contracts – off the plan, 10:90, spec homes, etc. So again, it is important to ensure that the building project is a project that is eligible for the package.

Still confused about how HomeBuilder works? Contact Donna for a no obligation discussion.

Sales in a volatile market

WRITTEN BY FRED ABU-ELIAS

In light of the current market and the HomeBuilder grant, there is nothing more important than operating at an efficient rate. As business owners, you need to make sure your processes are clear and transparent. This is equally applicable for Builders with a sales team, or those that operate as a one man show.

In sales there is a distinct process you need to follow, but above all you should never forget to be customer centric. To increase our sales rate, there are a couple of areas that we need to be perfect at:

Understanding your product

This area of sales is absolutely vital, and there are a few different parts to it:

1. What's standard and what is an upgrade
2. How does the house suit the clients lifestyle and showcasing this, and
3. Why the house is designed the way it is, i.e. the importance of open plan.

If you are a business that runs a display, walk the client through the home and highlight the value in your standard inclusions, focusing on what they get over and above the standard. Highlighting what you include in your starting price item by item is of value the client is looking for. You should also discuss what they can add to the home as you walk through; these are your upgrades.

Quite often I am asked the secrets of a walkthrough. In all my years in the industry I have seen many different ways that they are completed, however, I'd suggest starting from the front of the home (the façade) and then making your way through the entry, through to the back, whilst always asking the client if they can visualise themselves in the home with reference to how they currently live.

If you don't have a display, you should have a standard that you build to and some sort of marketing material to support this. This is used as a teaser to showcase what you include and how you determine the price. As you do not have a Display home to showcase these items, marketing material from your suppliers will always come in handy. Utilise any builds you currently have on the ground to walk a client through; not only does this showcase your inclusions, but also your build quality.



Understanding operations

Does your sales consultant understand your back end? I always ask this question and then ask the consultant to give me the spiel. In most cases, I am pleased to say that the consultants I have discussed this with know it back to front and understand the importance of this.

With the grants T's & C's around signing a build contract by December 2020, this is the time to sharpen your sales spiel around your process after you take the initial fee. This is also the time to look at your time frames and understand if there are any delays and how you can rectify these.

I sometimes have Sales people try and change the process to suit them, however, this cannot happen - set your process up first, and then a good consultant should be able to sell it.

When discussing time frames with a client, make sure you do not over commit and under deliver - it is very important that you are able to meet the time frames. Remember, they are relying on you to get them to contracts

Do you have a duty to inspect every warranty claim?

WRITTEN BY DONNA ABU-ELIAS

As a builder, you may receive a lot of warranty calls (especially now that Owners are more aware of their rights, and the limitation period is 10 years in Victoria). Does that mean that you have to inspect and investigate every complaint you receive?

In a recent discussion I had with an insurance assessor (who was engaged by the Builder's Professional Indemnity Insurer), the assessor said that the Builder had an obligation to notify every single 'claim' made to the builder... but does that mean every 'claim' is a legitimate claim that must be reported and investigated?

In a recent VCAT decision *Garuda v Mimosa Homes Pty Ltd [2020] VCAT 615*, VCAT held that when a builder fails to investigate a maintenance claim by an Owner, the Builder denies itself of the opportunity to confirm if the 'defect' is a maintenance item, or an item of defective building work.

This case related to the construction of a dwelling in Hillside, Victoria, where the Certificate of Occupancy was issued in June 2015. The Owner (the Applicants in this case) emailed the Builder (the Respondent) in November 2018 and stated:
"After some recent rains, we have experienced major roof leaks in our garage area. Can you please attend to this as part of the builder's warranty on the house? Our newly built Mimosa house was handed over to us in mid-2015 so the warranty should be applicable".

The Builder responded on the same day to state:

"Unfortunately, roof leaks are not considered to be [of a] structural nature and are...home-owner's responsibility. We would recommend that this matter is discussed with your insurance provider".

The Builder accordingly did not inspect the roof, but did (as an act of goodwill) agree to repair the consequential damage to the internal areas. The Owner, in turn, then engaged a third-party plumber to repair the roof. In performing these works, the third-party plumber prepared a report with photos showing the defective plumbing works.

The Builder attempted to argue that if there was a 'structural defect in the roof rendering it susceptible to water entry, it would have occurred much earlier than November 2018, being three years after the Certificate of Occupancy was issued', therefore suggesting that the leak was caused by poor maintenance of the roof gutters and downpipes, which is the Owner's responsibility.

VCAT relied on the expert report of the third-party plumber (as there was no conflicting evidence produced by the builder) that the workmanship by the Builder was defective, and had therefore breached its implied warranties and was liable in damages to the Owners.

This case serves as a timely reminder that all complaints should be assessed by a builder to consider whether the works are in fact defective, or whether they are truly maintenance issues, which should be supported by photos, reports or other supporting documents.

When will a Builder be held personally liable for defective building works?

WRITTEN BY DONNA ABU-ELIAS

In a recent decision, *Lu v Oakmont Properties Pty Ltd (Building and Property) [2020] VCAT 604*, Member F Marks considered where a Director would be personally liable for defective building works and where a builder engaged in misleading and deceptive conduct.

In this case, the Vendor, being the developer, engaged the Builder (First Respondent) in 2010 & 2011 to construct a home and a swimming pool. The Owner (The Applicant) purchased the property from the developer in 2012. The Owner contacted the Builder regarding defective works in the home. The Owner brought a claim against the building company for breaches of the warranties in s8 of the Domestic Building Contracts Act 1995 relating to the defective building works. The Owner also brought a claim against the individual building practitioner, Mr Just, who is a builder for the purpose of the DBC Act, claiming Mr Just was personally liable for the defective building works and that he engaged in misleading or deceptive conduct in contravention of the Australian Consumer Law (ACL) by agreeing to rectify the defects in 2015, but failing to do so.

Whilst the Owner and Builder did resolve some of the issues relating to defective works, one substantial issue, relating to the dampness in the basement walls, remained unresolved. The Builder alleged that it had rectified the defect, but the Owner had not maintained her property properly, which has caused or exacerbated the issues. They had offered to do further work, but have not been allowed access to complete these works.

The Owner denies that the damage is caused by her failed maintenance, and she disputes the rectification proposed would fix the dampness in the basement.

Is a director of a building company personally liable for defective works?

As stated above, Mr Just is a director of the builder, and he is also a registered builder and qualified engineer. In relation to this job, he was heavily involved in managing the building project. However, he was not personally named in the building contract. The relevant parties to the building contract were the builder and the vendor. VCAT did not accept that because Mr Just managed the building project on behalf of, and as director of, the builder, that he is personally liable for the building works.

Did the Builder engage in misleading and deceptive conduct?

The Owner also sought to argue that Mr Just's representation that he would rectify the defects, was misleading or deceptive because the defects were not in fact rectified. The Owner says she relied on those representations and as a consequent she was delayed in having the rectification works completed by other trades and she claimed to have suffered loss and damage.

Mr Just and the Builder denied these claims, and say they agreed to repair all defects but have been refused permission to attend to repair the wet patches in the garage. They also said that any alleged representations made by Mr Just were made 'on behalf of the builder' and not in his personal capacity. VCAT accepts that in certain circumstances, directors may be found to be personally liable for misleading or deceptive conduct. However, here there is no evidence to support the claim.

Therefore, when acting on behalf of a company, it is important to ensure that any representations made are within the ambit of your authority and employment so that you cannot be held to be personally liable.



Ride for Autism

**Get on your bike from Sunday 5th - 12th July.
Have fun, get fit and change lives one kilometre at a time.**

People on the autism spectrum see, hear, feel and experience the world differently

About 3 years ago, our son Jayden was diagnosed with Autism. Since that time we have had our ups and downs, but we are passionate about making the world a better place for people on the spectrum.

Jayden has taught us how to see the world differently, and how to treasure the relationships we have both personally and professionally. He has taught us not to give up no matter how tough life gets, and to realise that there is nothing 'wrong' with him – he is only on the spectrum.

By taking part in Ride for autism, you will help break down the barriers that keep people excluded and provide the best opportunities for people on the autism spectrum to engage, participate and thrive in the world around them.

It's up to all of us to adapt our behaviour, perspectives and environments to be inclusive of all people. Some of the best opportunities for people on the autism spectrum are provided when the people surrounding them make some adjustments.

When we look at our son, we see a 5 year old that has exceeded every challenge thrown at him; he is truly an inspiration.

Together, we can create a more inclusive Australia.

Register to join our team



"Spectrum Rides" by clicking [here](#)



If you can't ride with us, you can donate by clicking [here](#) - every cent counts!

Ride for autism in 4 easy steps



1. Register

Sign up to take part as an individual or get a riding team together.



2. Set

Make your kilometres count by setting a riding goal and a fundraising target. Ask your friends, family and workmates to sponsor you.



3. Share

Post your fundraising success to Facebook and other social media to let everyone know you are raising funds and riding towards a more inclusive world.



4. Ride

Get on your bike, start pedalling and show the autism community that you believe in a more inclusive world.