JULY 2023 | VOL NO. 9

SPECTRUM SPEAKS

As we find ourselves at the midway point of 2023, we reflect on a year that has been a mixture of challenges and opportunities. While some may be ready for this year to end, we are hopeful for brighter days ahead. The construction industry has witnessed both the collapse of many builders and the growth of others who have seized the available opportunities.

At Spectrum Group, we have experienced our fair share of ups and downs, like many. We are delighted to welcome Heather to the Spectrum Coach team. Her valuable contributions and close collaboration with our clients have made a significant impact. Our group seminars, conducted both interstate and in Melbourne, have motivated sales teams to secure crucial deals. Unfortunately, we have also supported clients through difficult times, witnessing some businesses close permanently. Spectrum Lawyers has assisted homeowners facing the daunting task of engaging a new builder for their half-commenced projects due to builder insolvency.

On a brighter note, we celebrate the upcoming wedding of our senior lawyer, Hannah, which was postponed due to COVID-related lockdowns. We extend our heartfelt wishes to her as she prepares for her September nuptials. Additionally, we congratulate the Spectrum Group team for successfully completing The Push-Up Challenge in June, making a positive impact for a great cause.

Moving forward, we remain committed to supporting our clients throughout 2023, helping them uncover sales opportunities, safeguard their contracts, and navigate any potential disputes.

In this month's issue:

Builder's Warranties and Domestic Building Insurance

BY DONNA ABU-ELIAS

With an unfortunate surge in builders facing administration, it becomes crucial for builders and owners alike to have a comprehensive understanding of insurance types in domestic building projects.

Express Warranties vs. Implied Warranties: Building contracts often include warranties regarding the promises made by one party to another regarding the services provided. While commercial building projects have no statutory warranties, domestic building projects fall under the Domestic Building Contracts Act 1995 (DBC Act), which implies warranties even in the absence of expressed contractual warranties. Section 8 of the DBC Act outlines these implied warranties, which are both contractual and legislative obligations, as they are typically included in standard form contracts. Importantly, these warranties extend to subsequent purchasers, and attempts to restrict or remove the right to pursue a builder for breaching these implied warranties are invalid, except when the breach was known or reasonably foreseeable at the time of the agreement.

Liability and Limitations: The builder remains liable for these implied warranties for generally 10 years from the date of the Certificate of Occupancy or Certificate of Final Inspection under section 134 of the Building Act. However, this period may extend to 15 years for cladding-related building actions. In cases where no occupancy permit or final inspection certificate exists, the Limitation of Actions Act 1958 applies, establishing a six-year period from the accrual of the cause of action. It's essential to distinguish this limitation period from the defect liability period (DLP) specified in the domestic contract, which varies based on the agreement, typically ranging from 90 days to 24 months. The DLP allows the builder to rectify defects or maintenance issues discovered after practical completion.

Domestic Building Insurance: For building works exceeding $16,000, builders are required to obtain domestic building insurance (DBI).

DBI serves as insurance of "last resort" and allows claims in cases where the builder dies, disappears, becomes insolvent, or fails to comply with a Tribunal/Court Order. Building surveyors must ensure the builder's name matches the building contract and certificate of insurance. Builders must provide a copy of the policy and certificate of currency before accepting any deposit. While the majority of DBI in Victoria is provided by the Victorian Managed Insurance Authority, a few other providers are available.

Current DBI policies cover costs up to $300,000 for structural defects over six years and non-structural defects over two years. In the Bachmann v Calliden Insurance Limited (Domestic Building) case, a home owner initially had an insurance claim rejected because the owner-builder had not met the criteria of dying, disappearing, or becoming insolvent. However, the claim was later successful as the builder's insolvency occurred within the relevant six-year period. Timing of events does not determine insurance coverage, instead claims must be made during the applicable period.

Understanding these crucial aspects of builder's warranties and domestic building insurance is vital for all stakeholders involved in domestic building projects.

For more information, consult our experts at Spectrum Lawyers & Consultants.

Defining Sales

BY FRED ABU-ELIAS

Sales are an important part of almost every business, and they can be the deciding factor in whether a business succeeds or fails. Making a sale involves convincing someone to buy a product, service, or idea, and it requires a lot of skill and effort to do it well. There are many techniques and strategies that can be used in sales, and the most effective ones are those that are tailored to the specific needs and preferences of the customer.

Perhaps the most important skill in sales is the ability to listen to the customer. This involves paying careful attention to what the customer says, as well as their body language and tone of voice. By understanding the customer's needs and concerns, a salesperson can tailor their approach to meet those needs and build a relationship with the customer. This requires genuine empathy and a willingness to put the customer's needs above their own.

Another important aspect of successful sales is preparation. This involves identifying your target customer, understanding their needs and preferences, and developing a sales pitch that is tailored to those needs. You also need to be familiar with your product or service and be able to explain its features and benefits in a simple and compelling way. By doing your homework and preparing carefully, you can approach potential customers with confidence and win them over.

One effective sales strategy that many companies use is the so-called "scarcity principle." This involves creating a sense of urgency by emphasising that a product or service is only available for a limited time, or that there are only a few remaining in stock. This can help motivate customers to make a purchasing decision quickly, before it's too late. However, this approach should be used with caution, as it can also be seen as manipulative and insincere if overused.

In addition to these techniques, successful sales also requires persistence and follow-up. Even if a customer initially says no, a skilled salesperson will continue to build a relationship with them and try to understand why they didn't make the purchase. By addressing any concerns or objections the customer has, and by offering additional information or incentives, you can often overcome their initial resistance and close the sale.

Ultimately, successful sales are about building relationships with customers. This requires honesty, transparency, and a genuine interest in helping the customer find the right product or service for their needs. By demonstrating that you are a knowledgeable, trustworthy, and helpful resource, you can build a loyal customer base that will return to your business time and time again.

However, the world of sales is constantly changing and evolving, and as a salesperson, it's important to stay up-to-date with the latest trends and techniques. This means attending conferences and training sessions, reading industry publications and blogs, and networking with other sales professionals. By staying on top of the latest developments and sharing best practices with your peers, you can continually improve your sales skills and achieve greater success in your career.

In conclusion, sales is an art and a science. It requires a combination of interpersonal skills, savvy marketing, and strategic thinking to succeed. By focusing on building relationships with customers, careful preperation, using effective sales techniques, and staying up-to-date with the latest trends, any salesperson can achieve great success and help their business thrive.

Understanding the importance of Preliminary Agreements

BY MARIA FOKIANOS

Preliminary agreements play a crucial role in construction projects, serving as valuable tools for both builders and clients during the initial stages. This article aims to shed light on these agreements, focusing on the HIA Preliminary Agreements and their importance in the construction industry.

When engaging in residential construction projects, it is essential to have a clear understanding of domestic building work and contract law. Domestic building work encompasses a range of activities related to home construction, including physical construction, landscaping, fixtures, and associated components. This work also involves electrical, heating, ventilation, and air conditioning systems, as well as work performed on residentially zoned land. Plans and specifications for such work are critical and fall within the scope of domestic building work.

It is equally important to differentiate non-domestic building work, which is not covered under domestic building contracts. Examples include farm buildings, structures for business purposes, animal accommodations, and design work by architects or building practitioners. Transporting buildings from one site to another and handling related data also fall under non-domestic building activities.

Regardless of contract value, certain rules apply to all domestic building contracts, including statutory warranties, deposit limitations, restrictions on cost-plus contracts, and the prohibition of cost escalation clauses. Clients also have the right to access the construction site, and prime cost and provisional sum items should be included.

Distinguishing between domestic and non-domestic building work is crucial for separating costs and ensuring compliance with the law when both types are involved in a project.

Preliminary agreements, also known as pre-construction contracts, play a vital role in the construction process. These agreements, typically used before entering into a domestic building contract, facilitate necessary preparatory work such as plans, specifications, and foundation data.

When utilising a HIA preliminary agreement, tasks like preparing plans and obtaining approvals, conducting soil tests and engineering assessments, or completing design work by architects or draftspersons can be undertaken, provided the value does not exceed $10,000. For domestic building work exceeding this amount, a Major Domestic Building Contract is required as per legislation.

Understanding the distinction between domestic and non-domestic building work is essential, as it affects insurance requirements. Builders must obtain Domestic Building Insurance (DBI) policies for domestic building work contracts exceeding $16,000. This policy should be provided to the owner within seven days of contract signing and before receiving the deposit. It's important to note that this requirement does not apply to other insurance policies.

Builders should consult a solicitor to ensure compliance with legislation, proper separation of building work types, and to navigate preliminary agreements and domestic building contracts effectively. Understanding when a Major Domestic Building Contract is necessary and ensuring insurance requirements are met are key considerations.

In conclusion, a comprehensive understanding of applicable regulations and agreements is crucial when navigating domestic building work and contract law. By following proper procedures and guidelines, builders and homeowners can ensure smooth construction projects and mitigate potential disputes or complications.

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Sub-sales, Land Development and Parallel Arrangements – Stamp Duty in Victoria

BY HANNAH SMITH

Did you know that certain events in Victoria can trigger "double duty" for builders? These events include nominations and land development, as well as parallel arrangements. It is crucial to understand the potential consequences of nominating your land contracts.

It is not uncommon for builders to purchase property and nominate substitute or additional purchasers before settlement. While nomination can serve various purposes, it's important to be aware of the provisions in the Duties Act 2001 (Vic) that can trigger "double duty."

Scenario:

Let's imagine a scenario. Tim, a builder, often buys land, constructs homes, and sells them upon completion. Tim purchases a vacant lot in a new estate in his personal capacity, but intends to complete the purchase under a new corporate entity he is setting up. Facing cash flow challenges, Tim decides to nominate Jake, a developer and his close friend, to step into his shoes and complete the purchase of the vacant land. They complete the nomination form without any additional payment from Jake.

After settlement, Jake wants to begin construction immediately. He obtains a building permit and hires Tim, who provided the lowest construction quote, to build the home. They sign a domestic building contract.

Double Duty Implications:

Unbeknownst to both parties, Section 32B of the Act imposes duty on a sub-sale (nomination) when a vendor enters into a contract to sell property to a purchaser (in this case, Tim), and a subsequent purchaser (in this case, Jake) obtains a right to the property upon completion and provides additional consideration for that right (such as nomination).

According to the Act, additional consideration includes any consideration or value, even in the absence of a parallel arrangement.

For instance, if a "fee" is required for nomination as specified in Contract Special Conditions, additional consideration can be triggered.

A parallel arrangement refers to an agreement made by the subsequent purchaser or an associate within 12 months after obtaining a transfer right from the first purchaser. If the first purchaser or an associate is required to construct or arrange for construction improvements on the property, it is considered a parallel arrangement.

In our example, even though Tim didn't settle the purchase or receive payment from Jake for the nomination, the Act deems that Jake has provided additional consideration through the parallel arrangement. As a result, both Jake and Tim are liable to pay stamp duty on the transfer.

Land Development and Double Duty:

Double duty issues can also arise when nominations are involved in conjunction with "land development" between the signing of the land contract and settlement. The Act defines land development as:

- Preparing a Plan of Subdivision;
- Applying for or obtaining a Permit under the Planning and Environment Act;
- Requesting a planning authority to prepare an amendment to a planning scheme affecting the land;
- Applying for or obtaining a permit or approval under the Building Act;
- Undertaking any land-related activity requiring a permit or approval under the Building Act; or
- Making changes to the land that enhance its value.

Using our example, any building permit issued between the contract date and the settlement date, even if neither Tim nor Jake had initiated the application, could be considered land development, potentially triggering double duty once again.

Avoiding Double Duty:

To avoid triggering double duty, it is advisable to follow these steps. First, as a builder, refrain from signing a contract for the sale of land as the owner. Avoid having your building entity sign the land contract.
If nomination is necessary, consult with your lawyer and seek legal advice before signing any nomination documents. It may be possible to negotiate with the nominee to provide an indemnity against double duty, ensuring they bear the brunt of the parallel arrangement provisions. In short, always seek advice on the consequences of nomination before proceeding.

By understanding the complexities of double duty and being proactive in seeking legal guidance, builders can navigate these challenges and mitigate potential financial repercussions.

For more information, consult our experts at Spectrum Lawyers & Consultants.

Why Do We Lose Sales?

BY FRED ABU-ELIAS

Losing sales can be a frustrating experience for any business owner. It can be difficult to pinpoint exactly why sales are being lost, but there are a few common reasons that may be contributing to the problem.

1. Poor Customer Service

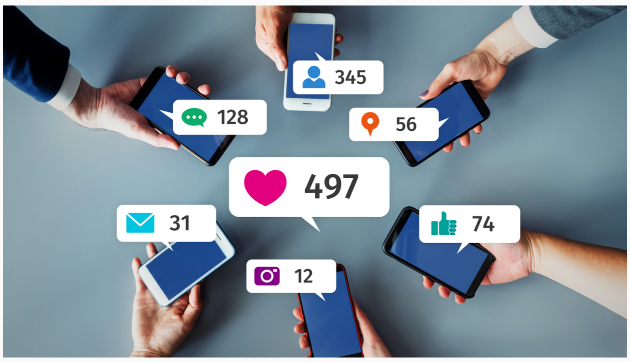
One of the most common reasons businesses lose sales is due to poor customer service. Customers want to feel valued and appreciated, and if they don't receive the level of service they expect, they are likely to take their business elsewhere. It's important to train your staff to provide excellent customer service and to make sure that they are friendly, helpful, and knowledgeable.

2. Lack of Trust

Another reason why businesses lose sales is due to a lack of trust. Customers want to feel confident that they are making the right decision when they purchase a product or service. If they don't trust your business, they are unlikely to make a purchase. To build trust with your customers, make sure that you are transparent about your business practices and that you are always honest and upfront with your customers.

3. Poor Marketing

If your business is not effectively marketing its products or services, you may be losing sales. It's important to have a strong marketing strategy in place that targets your ideal customer and effectively communicates the benefits of your products or services. Make sure that your marketing materials are visually appealing, easy to understand, and highlight the unique value that your business provides.



4. Lack of Follow-Up

If you're not following up with potential customers, you may be losing sales. Many customers need to be reminded of your business and its offerings before they make a purchase. Make sure that you have a system in place to follow up with potential customers and that you are providing them with the information they need to make an informed decision.

5. Poor Website Design

In today's digital age, your website is often the first impression that potential customers have of your business. If your website is poorly designed, difficult to navigate, or doesn't provide the information that customers are looking for, you may be losing sales. Make sure that your website is visually appealing, easy to navigate, and provides all of the information that customers need to make a purchase.

In conclusion, there are many reasons why businesses lose sales. By focusing on providing excellent customer service, building trust with your customers, having a strong marketing strategy, following up with potential customers, and having a well-designed website, you can help prevent sales from slipping through your fingers. Remember, every lost sale is an opportunity to learn and improve your business practices.

Chat to our team at Spectrum Coach for more tips on how to take your sales to the next level.

The Resilience Project with DJM

BY DONNA ABU-ELIAS

The team from Spectrum Lawyers & Consultants recently joined DJM and The Resilience Project for an enlightening afternoon on building resilience. With the construction industry facing tough times, the timing couldn't have been better. This event not only provided invaluable knowledge but also offered a much-needed break from our daily challenges, allowing attendees to reflect on the importance of mindfulness and resilience.

The event took place at the magnificent MCG in the serene Jim Stynes Room, which provided the perfect setting for this memorable occasion. Attendees were treated to an afternoon of inspiring talks and powerful insights, starting with Collingwood's Mason Cox. Mason captivated the audience with his candid reflection on his journey from Texas, United States, to the Collingwood Football Club. He shared the challenges he faced, including eye injuries and numerous operations that threatened his vision. Mason's story exemplified resilience and showed that it's possible to overcome even the darkest days.

Following Mason's remarkable story Martin Heppell, representing the Resilience Project, took the stage to teach us the three pillars proven to cultivate positive emotion: Gratitude, Empathy, and Mindfulness (GEM). This presentation struck a chord with Donna, our Principal Lawyer, who sits on the Kulture City Board alongside Hugh van Cuylenburg, the Co-Founder of the Resilience Project. Given the industry's current struggles, Martin's talk served as a timely reminder to prioritise mental health and well-being.

The construction industry, like many others, faces significant challenges, with companies dealing with insolvency and other hardships. In such difficult times, it becomes critical to practice resilience and maintain a focus on mental well-being. Martin's session encouraged us all to take a few moments each day to identify three things we are grateful for. While seemingly simple, this practice has profound effects on our mindset and overall outlook.

Thank you to DJM and The Resilience Project for inviting us to this invaluable event!

SPECTRUM LAWYERS & CONSULTANTS

Spectrum Lawyers provide legal services with legal expertise across all areas of building & construction law.

Building and construction law
- To assist builders and/or owners efficiently resolve building disputes
- Developing streamline procedures and training to manage the spectrum of challenges in today's market
- Advising consultants and contractors on their legal obligations under the Building Act and Building Regulations
- Advising building surveyors on compliance issues
- Debt recovery
- Dispute resolution at private mediations, DBDRV, Tribunal and Courts
- Reviewing building contracts and advising on rights and obligations

Conveyancing
- Assisting clients with the purchase or sale of residential or commercial property

General Counsel Services
- Reviewing and advising on procurement contracts and licenses
- Advising on general business law and day-to-day business operation issues
- Drafting policies
- Reviewing and drafting polices and terms and conditions
- Negotiating contractual documents
- Providing training (contract law, Australian Consumer Law, advertising, warranty, etc.)

Probate, Wills and Powers of Attorney
- Administering estates
- Drafting Wills and Powers of Attorney to protect your family and assets

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SPECTRUM COACH

Spectrum Coach provides 5 core areas of service, Sales, Marketing, Operations, Home Designs and Business Coaching. They are designed to understand your business intimately, which allows us to provide the focused, dedicated support that we hold to high standards to all our clients. We understand that every business is different, and will have different needs. Choose one of our services or choose them all – whatever works for you and your business.

Sales
Without sales, you don't have a business. Our training gives you guidance at a micro level, arming you with specific strategies that are proven to close sales.

Operations
Your front end and back end operations are key to turning a profit. From taking the initial sale to getting to a site start, we have designed processes that are easily adopted to improve efficiencies, increase profits and help you to manage your jobs more effectively.

Design & Drafting
Our extensive design library has a range of plans you can use to sell your new homes which are fully customisable. Our training will equip you with the tools you need to sell these plans based on their respective features and benefits. Need a custom design? We can do that too.

Marketing
You're busy doing what you do best – building homes. Let our in-house team help you market your business so you can do more of what you love. We can guide you through marketing your brand, generating leads, and can even help you build a website. We can also manage your social media, including writing content and posting on your social media pages.

Business Coaching
We get it - running a new homes business is complicated. As the business owner, you have to be across every aspect, and not all of them are going to be your specialty. Our general business coaching gives you a team that are skilled in all areas of business, from construction to finance.

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