

Indian Housing Construction Disputes Overview: Prevention to Resolution

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Introductions



- Combined 54 Years of Legal Experience
- Counsel to TDHEs, PHAs, other Owners and Contractors
- Introduction Overview
- *Understanding and Prevention Are Keys*

Our Agenda Today



1. Addressing Construction Disputes
2. Understanding the Players in Conventional Construction
3. Learning Construction is a Complex Scheme
4. The Importance of Prevention
5. Methods to Resolve Disputes
6. Q&A

Players in Construction



Owners (and staff) ♦ Contractors
Design Professionals (A&Es) ♦ Subcontractors
Laborers ♦ Suppliers
Lenders ♦ Grantors ♦ Guarantors
Investors ♦ Banks
TEROs ♦ Zoning & Building Depts.
♦ Tribe Sureties ♦ Title Offices ♦ Lawyers ♦
Inspectors♦
Tenants and Homebuyers

Construction is a Complex Scheme



- Planning & Design
- Procurement
- Contracts
- Construction
- Construction Management
- Dispute Resolution

Prevention



- Good & Experienced Players
 - Understanding the Scheme
- Good Contracts
- A Wise and an Understanding Attitude

Resolution



- Understanding that Conflicts Are Inevitable Throughout the Processes
- Use Attorneys Sparingly But Wisely

Construction Contracts



The Contract is the First Line of Defense in Construction Disputes:

- Use clear and unambiguous terms
- Ensure all necessary provisions are recorded in the Contract.
- Scope of Work must be carefully and thoroughly described
- Change Orders/Amendments
- Must describe what happens when disputes arise
- Contract should protect Owner's rights

Contracts



Some Considerations for Selecting Type of Contract Documents:

- Scope of Work or services to be performed
- Cost of the Project
- Project Manual
- Small Purchases
- History or Experience of the Contractor

Construction Forms



- A.I.A.
 - American Institute of Architects
- HUD
 - Some Forms Available
- Supplied by Contractor
- Internet Documents
- **Your Own Contract Documents**

Negotiating the Contract



Recommendations

- Owner provides Contract
- Contractor provided contracts should always be reviewed by an attorney
- It is okay to make changes to proposed contracts

... you are the Owner, you set the terms

Some Dispute Resolution Terms



Key Clauses

- Sovereign Immunity
- Liquidated Damages
- Termination Clause
- Possible Forums for Dispute Resolution
 - Tribal Courts
 - State Courts
 - Alternative Dispute Resolutions/ADR
(arbitration, mediation, etc.)

Other Special Requirements



Part 200 Required Contract Provisions

- NAHASDA (and other federal contracts)
- Administrative, contractual or legal remedies for contracts in excess of \$150,000
- Termination for contracts that are in excess of \$10,000

Types of Disputes



- Scope of Work
 - disagreement over work to be performed
- Construction or Project Schedule
- Deviation from Drawing or Plans
- Change Orders/Unplanned for Work
- Errors in the Contract documents

Dispute Examples



- TERO/ or Indian Preference
Noncompliance
- Improper Delegation of Duties
- Incomplete Projects
- Construction Defects
- Payment Claims
- Subcontractor Issues
- Personality Disputes

Other Dispute Examples



Some Owner Mistakes or Omissions

- Land issues
- Project Access
- Site issues
- Paying too much for mobilization
- **Poor contract administration**
 - Failing to address little problems as they arise until it becomes a larger problem

Resolving Within the Contract



in the contract

- Setout within the Contract
- Notification of Dispute is Usually Required
- Dispute Processes Must be Followed
- Owner/Owner Reps Initially Decide Disputes
- By Design Construction Proceeds.

Resolving Disputes Externally



...outside the contract

1. Sureties Claim
2. Mediation
3. Arbitration or the ADR
4. Litigation
5. Debarment

Remember...



*Understanding that construction is a Scheme
... and that Prevention is a key.*

Q&A



THANK YOU!

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