

Pushing the Right Buttons: Lift Contracts for Strata Schemes

Lifts and escalator refurbishments and upgrades are amongst the largest items of expenditure that owners in strata schemes commission. Yet such works are excluded from the consumer protection provisions of the Home Building Act (NSW) 1989. This requires strata managers and executive committees to be particularly vigilant to protect the owners' interests when entering into lift contracts. Because such work is inevitably expensive it is tempting to be lured into false 'upfront' economies at the risk of incurring more serious costs later on.

Expert Advice

It should be considered essential for the owners to engage a qualified and reputable lift consultant independent of the contractor. That consultant should not only ensure the specification for the works meet the owner's requirements, but monitor the adequacy of the works in progress and advise the owners on any technical issues that may arise. The consultant should also liaise closely with the strata manager to ensure that the building can continue to function during the works with minimum inconvenience to the occupants.

Lift Refurbishment and Upgrade Contracts

Most lift contractors will seek to impose their own standard terms and conditions into any contract. Even the most seemingly benign clauses in these contracts can be drafted in a prejudicial way, and they require attentive review. Amongst the types of provisions that commonly require attention are:

- Deposits - Lift contractors commonly seek deposits which exceed the amounts otherwise allowable under the Home Building Act. This may not be unreasonable. Lift work often requires a significant expenditure on equipment prior to commencing work. However, where this is the case the 'up front' payment made by the owners needs to be protected, either by some form of financial security, or property rights with respect to the off-site equipment.
- Exclusions of liability – In the absence of statutory protections, owners are particularly vulnerable to 'small print' clauses that seek to minimise or extinguish lift contractors' legal liabilities.

- Bespoke clauses to meet the particular needs of strata schemes – these are usually entirely absent, and expose the owners to variations and extras when matters that should have been anticipated are not raised until after the contract has been signed.

Lift Maintenance Contracts

Lift maintenance contracts give rise to a different set of issues. The types of provisions that require special consideration include:

- Roll-over provisions – Contractors usually include an automatic rollover to a further maintenance contract at the end of the maintenance period. If such provisions do not give the owners a genuine option on favourable terms, then the clauses should be excluded. In any event, the notice mechanism to avoid the rollover needs to be expanded to give the owners a reasonable opportunity to review the contractor's performance and alternative options.
- Termination – Such contracts are notoriously vague on the grounds upon which the owners can terminate for unsatisfactory performance. It is important that there be an express mechanism for doing so, with reference to measurable performance criteria.
- Price adjustments – Because maintenance contracts run over a number of years, especially if they are rolled over, there is usually a formula by reference to indices (such as CPI) to allow for adjustments in price in line with inflation. However, such formulae are sometimes unfairly favourable to the contractor, and reference indices that are either inappropriate or of dubious authority.
- Documentation requirements - The contract should require that all services and call outs be properly documented, and that the documentation be provided to the strata manager for inclusion with the schemes records.

There are two basic types of maintenance contracts, comprehensive and non-comprehensive. Comprehensive contracts are intended to cover the cost of any replacement parts that become necessary during the maintenance period. Usually the owners are best advised by an independent lift consultant as to which type of contract is preferable in each case. Where a non-comprehensive contract is chosen, it is advisable for the owners to ask the consultant to provide a contingency estimate for the additional cost that may be incurred during the maintenance period.

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