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# Finishing your Construction Project without Claims

In Russia the use of the courts to adjudicate on construction contract-related claims is still small, although it is a growing trend. Disputes relating to construction in Russia tend to be resolved in a variety of other ways, from the effective and judicious to the downright unpleasant.

There is no doubt therefore that the best way to end a construction or fit-out project is without claims, with all the parties having fulfilled their responsibilities and delivered all contracted goods and services at the right time and to the right quality. This is all easier said than done, so what practically can be done by the project manager to ensure that key deliverables are met and all defects or shortfalls are made up, before and instead of litigation?

The answer has a number of elements, and this article aims to provide a brief summary of the key stages and what can be done to negotiate project conclusion without pain. The elements are: key acts and documents; the definition of practical completion; the snagging and desnagging process; contractor retention; handover acts and payments.

Let's begin with the definition of completion. For new-build construction projects the definition of completion will have been defined in the contractor's scope document attached as an appendix to their contract. For fit-out projects similarly, completion of scope as specified in the contract with the relevant contractor is the mark of the close of their responsibilities. However, rarely do projects proceed to final and uncontested completion – don't forget that final completion implies that every element of the work, however small, has been completed and is ready for its stated purpose. It's much more useful to all sides to specify an intermediary stage: that of practical completion.

Practical completion implies that all works are complete excepting the correction of certain snagging (or punchlist in the US) items. By definition, these items should be relatively insignificant and not constitute an obstacle to the premises being used for their intended use. For instance, with regard to an office fit-out, a scratch on the wall or poorly fixed skirting board are snagging items – the heating not working or the entrance door blocked are not. If these more serious issues exist then the project is not practically complete. Similarly with new-build construction – a blocked riser is a snagging issue, a flooded underground car park is not.

Practical completion enables all sides to prepare their completion documentation and identify small defects during the snagging process that would otherwise be overlooked in the rush to complete major works.

The snagging process itself is crucial to final completion and the state of the delivered project. Doing a snagging examination is itself a skilled job and should not be left to

It is a commonly stated statistic that over 40% of construction projects in the United States end up in the courts, with claims by or against landlords, tenants, architects, contractors or consultants. Like many frequently used statistics there is little evidence as to where this number emanated. However, it is well known that whether its 40%, 30% or 60%, its too high and similar figures are likely to apply in other developed markets.

one of your normal admin staff to conduct. It requires architectural and engineering skills and will take some time – often many days – to complete. For new-build construction, snagging reports on all systems and services, as well as all build elements, can run into hundreds of pages, and indeed should if the project is to reach the required quality standards.

A snag list includes the date of the examination, an identification of the location, a detailed description of the fault or snag, and any associated comments (for instance, if repairing the snag is likely to affect or damage other areas). The snag

In Russia the closest equivalent is the KS-2 form. The differences in emphasis between them are minor although the KS-2 (and the accompanying certificate KS-3) is the standard work completion form, which is used not just upon practical completion but also at every payment claim stage.

The Completion Act (Russian equivalent, KS-11/14) is issued when you are sure that all snags worth removing (see above) have indeed been removed and you are happy to sign to confirm that all works are complete. Beware – after you sign this document you will have no ability to force the contractor to do works that relate to

contractor has promptly fixed any defects that show up after the Completion Act is signed. If they have not, you will be entitled to use that retention to repair such faults – the remainder being refundable to the contractor. This assumes therefore that another examination is done, a full one-year after the Completion Act is signed, to ensure that nothing has occurred which needs attention. Typical items that occur after the Completion Act is signed are the drying out and cracking of plasterwork, the need to rebalance HVAC systems, or the malfunctioning of simple equipment such as locks.

Depending on your agreement and contract with the contractor responsible, you may occupy (or in the case of new-build construction, move to the new stage) any time after the Act of Practical Completion is signed, assuming that all sides agree that the remaining snags/faults can be corrected around occupancy or other work.

list should also include a column listing the estimated date when that snag will be removed (the fault fixed). As this last item suggests, there should then be desnagging examinations scheduled, to give the contractor time to fix the snags so that you can remove them from the list. Perhaps the time between snagging and first desnagging should be a week, perhaps more, depending on the general seriousness of the faults.

Some of the snags identified may never be fixed – you may decide that some are too trivial and unimportant given the work and disruption involved in correcting them, so don't expect every single item to be removed. At some stage you must review the list after desnagging and take a view – have all the serious snags been removed and are the only remaining faults on the list so trivial as to warrant the signing of a final completion act in any case?

Acts and official documentation are similar in all markets although their titles differ. In western markets, the Act of Practical Completion is issued upon the practical completion of construction works. This is normally a contractual document that allows the contractor to claim the proportion of his total fee due upon completion of this stage.

problems that exist at the time the act is signed! Of course you will have contractor retention to rely on, but the sum retained is designed to cover any costs related to fixing defects that occur post-completion (assuming the contractor refuses to fix them himself) rather than initial faults and snags.

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When the contractor finishes work on site and the relevant Acts are signed, you should be aware that he will also naturally remove any security he has in place. Therefore, if you need to do other works before taking occupancy of the space, you will need to ensure that security and relevant insurance is in place to cover any possible risk.

Typically, even after final completion, you will retain 5-10% of the General Contractor's fee as a retention or guarantee amount. In the Moscow marketplace, this sum is typically held for one calendar year and released after that period if the

Most General Contractor contracts include the requirement on the contractor to produce as-built drawings and documents relating to what has been constructed. You will need these documents for approvals, for the landlord, or, in the case of new-build construction, to tender and appoint a fit-out contractor or lease/sell the space. This is usually one of the very last things to be delivered and is vital to your onward use or occupancy of the space. Monitor its production and on no account sign any final completion act until it is delivered and checked. Omissions are difficult to correct after its formal acceptance. This requires a professional eye.

There is no magic wand to ensure that your project completion process goes smoothly. The single best guarantee of a successful project is the choice of a professional general contractor with a good portfolio of completed projects, and a project manager who knows his craft. However, following the steps outlined above should mean that any faults (and there are always faults at the end of any construction project) are documented and tracked and their removal takes place in accordance with agreed contractual terms and your own objectives. ©IRIe