

WAPMA Project Management Agreement

The W.A. Project Management Association (Inc) has recently prepared and published a standard form agreement entitled "Terms of Engagement for Project management Services".

The document sets down basic guidelines for establishing a contract of service between client and project manager for the provision of management, advisory and co-ordination services. The agreement incorporates:

- a schedule setting out basic services to be provided by the project manager (to which additional services can be added);
- a schedule of conditions dealing with the project manager's responsibilities and authority and client responsibilities; and
- an outline basis for determination of fees.

A list of optional services that may be considered for inclusion in the agreement is available separately.

The foreword to the agreement states, "The approach in this particular guide document has been to have the project manager act as advisor to the client and as an organiser, co-ordinator, expeditor and monitor of the various activities involved in the development, design and construction of a project. Hence, consultants and contractors are shown as employed directly by the client and not by the project manager".

Copies of the Terms of Engagement for Project Management Services are available by contacting:

The Secretary
WAPMA
PO Box 6130
East Perth WA 6004
Telephone: 09 221 5080

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Damages - Calculating Diminution in Value for Defects

- Philip Davenport

In this brief item, Mr Davenport comments upon a proposal for assessing damages for negligent valuations.

In an article in (1990) 134 Solicitors Journal at p 452 Professor Malcolm Hollis, a chartered building surveyor in England, discusses the problem of assessing compensation where, due to defects undiscovered by a negligent valuer, a purchaser pays more for a building than it is worth.

Professor Hollis points out that some courts have awarded the cost of rectification while others have awarded the diminution in value. He says "the law has become a lottery" and suggests that the solution is to adopt the formula:

$$D = P - \frac{C}{Y}$$

where:

- D = diminution in value
- P = price paid for the building
- C = cost of essential repairs
- Y = number of years the work can be deferred.

Professor Hollis argues that it is reasonable to assume that P is the market price of a building comparable to the defective building but without the defect. He argues it is not possible to provide a range of comparable properties matched to the precise degree of disrepair that has been discovered in the property and therefore the diminution in value cannot be ascertained by comparison.

However, the net cost of the building work necessary to eliminate the defects can be estimated with some degree

of accuracy. He argues that the estimate must be of the cost of work if carried out at the time of completion of the purchase. If repairs must be carried out immediately (e.g. on account of an outbreak of dry rot) then the value of item 'Y' in the formula is 1.

If there is no urgency to effect repairs then the diminution in value is less.

Professor Hollis says:

"If there is no great urgency for a repair to be carried out, for instance where there is an indication that the roof will require re-covering somewhere over the next 7 years, the unit that will become the divisor might range from 3 to 7. The effect that such a problem has on the value of the building will be much less than dry rot."

The value of the property must not be reduced below the land value. Item 'Y' in the formula is the number of years after the time of completion of the purchase that the work required can be deferred. Professor Hollis calls 'D' the diminution in value but it appears to be the diminished value of the building.

While it is interesting to follow Professor Hollis's argument for adoption of a formula, it suffers from the same shortcomings as other formulae such as the 'Hudson Formula' (Hudson on Building Contracts, 10th Ed. p 598). It is not a valid basis for assessing damages unless the parties in dispute agree to its use or there is evidence that its use is appropriate in a particular case (*State of South Australia v Fricker Carrington Holdings Pty Ltd* (1987) 3 BCL 72.