

NEWSLETTER SEPTEMBER 2018

THE LEGAL RIGHTS OF CRAFTSMEN & CONTRACTORS

JEAN-MARC REYMOND PUBLISHES AN ARTICLE ON THE LEGAL RIGHTS OF CRAFTSMEN AND CONTRACTORS AND GIVES PRACTICAL ADVICE TO AVOID YOUR TENEMENT FROM BEING STRIKED OF SUCH GAGE

Jean-Marc Reymond

When building or renovating a building, it is usual for the owner (client) to entrust the execution and supervision of the works to a general contractor or an architect. The contractor or architect will then be responsible for allocating work to subcontractors (craftsmen and contractors, i.e. the different professionals who will carry out the works) and also for paying them. This will result in several contracts being signed, a contract linking the owner to the general contractor on the one hand, and the contracts between the general contractor and each of the subcontractors on the other hand.

The work and materials provided by the subcontractors and which become an integral part of the building give it an added value. However, it can happen that the general contractor does not pay the subcontractors or does not pay them in full, if it considers that the works are defective or if it does not have the money required, either

because the general contractor has not itself been paid by the owner or it has gone bankrupt. If applicable, the legal rights of craftsmen and contractors defined in the Swiss Civil Code allows them to obtain, in certain conditions, the registration of a claim of partial ownership of the building on which they carried out their works and for which they provided materials.

In specific terms, the craftsman or the contractor whose claim remains unpaid must apply for provisional registration of a legal claim on the property as a provisional measure approved by the court with jurisdiction for the area where the property is located. This legal claim, which requires the involvement of a lawyer, is made against the owner of the building and not against the debtor (the general contractor).

The legal claim must be registered in the land register no later than four months after the

the bank undertakes to pay the subcontractors or pay the amount of the security provided in the event of a registration of a legal claim on the property. Finally, before paying the general contractor in full, it is recommended that the owner should require the general contractor to confirm that all the subcontractors have been paid.

The owner therefore has various ways to protect himself against the risk of a legal claim on his property and especially the "disaster scenario" of having to pay twice for the works he has ordered. The selection of a good contracting partner as well as a careful drafting of the general contractor's contract are therefore very important in such projects.

Par Jean-Marc Reymond, docteur en droit, LL.M. (King's College London), avocat à Lausanne, Reymond & Associés

Pour plus d'informations :
Jean-Marc Reymond (reymond@jmrlegal.ch)

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