

Key Considerations for Developers, Contractors and Consultants – Novations

Before seeking legal advice on a construction novation, it is helpful to consider the following points and gather the relevant project information.

-  **The Existing Appointment**
Providing the complete professional appointment allows your solicitor to understand the consultant's current obligations and identify any existing provisions dealing with novation.
-  **The Proposed Parties**
Clearly identifying the outgoing party, incoming party and consultant is essential to ensure the agreement creates the intended contractual relationship.
-  **The Effective Date**
Agreeing when the novation takes effect establishes the point at which the new contractual arrangements apply and helps distinguish between services carried out before and after the transfer.
-  **Work Completed Before Novation**
Details of the services and design work already completed are important when determining how responsibility and liability for pre-novation work should be treated.
-  **Future Scope and Deliverables**
The consultant's remaining responsibilities should be clearly understood so that the post-novation arrangements reflect the services still required to complete the project.
-  **Liability and Financial Limits**
Any cap on liability, exclusions or other limitations should be reviewed to establish the actual level of protection available under the document.

Liability for Earlier Services

The parties should consider who will have rights in relation to work carried out before the novation and whether any obligations to the original employer or developer will continue.

Outstanding and Future Fees

Information about payments already made, outstanding invoices and future fee arrangements helps ensure the financial position is clearly addressed within the transfer.

Wider Project Documentation

Providing the relevant building contract, appointments, collateral warranties and other project agreements allows the novation to be checked for consistency with the wider contractual structure.



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