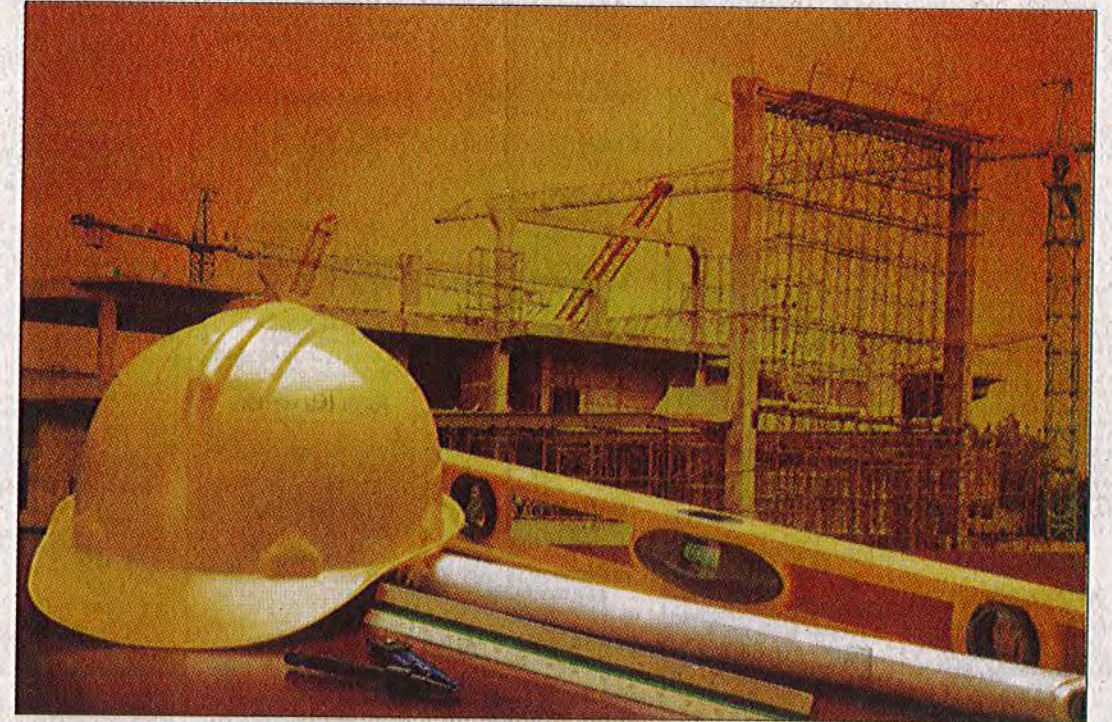


# The Star

## LEGALS



# Alarming lack of knowledge about building contracts in South Africa



About 100 000 people are involved with building contracts in SA every year – but most know little about the legal aspects, says JBCC.

LEGALS WRITER

AT LEAST 100 000 people are involved with building contracts in the South African construction sector every year – but the majority know very little of the contracts in common use, or the legal procedures to be followed during a building project.

This is the view of Uwe Putlitz, CEO of the Joint Building Contracts Committee (JBCC), authorities in the compilation of formal agreements that protect the rights of all parties involved in building contracts.

Putlitz says there is alarming lack of awareness among smaller, and “emerging building contractors”, about the need to protect their interests through proper contract documentation.

“Many emerging contractors lack communication and administrative skills in addition to limited technical skills and the use of labour-saving equipment. Subcontractors also are often abused by main contractors particularly when it comes to payments – often not made at all or late or partially.

This practice holds grave dangers when it comes to survival for the smaller builder in a struggling sector of our economy. The

situation is exacerbated because far too few subcontractors or emerging contractors work on a project without having had their appointment – and working operations – formally ratified in a recognised form of contract,” Putlitz stated.

“Then, to make matters even worse, many subcontractors or emerging contractors tend to read the contract they hold only when a crisis arrives on site,” he added.

Putlitz says JBCC is aware that the contractual needs of the substantially increased number of small builders and subcontractors operating in South Africa differ markedly from the situation, say 20 years ago.

JBCC has therefore already started simplifying the use of language and style of writing since the 2014 editions of its Agreements. Future editions will include further improvements in choice of wording, with more sub-clauses instead of long clauses to confuse the smaller operator, and incorporate simplification in text layout.

“But basically, if a JBCC Agreement is in place, the main and smaller contractors – as well as the principal agent – involved in a building project merely must follow the content of the Agreement’s clauses within the stipulated time limits to avoid disputes.

But far too many of these parties regard contract administration as time-consuming and consider compliance with statutory and contractual provisions as a nuisance and threat to productivity. So important contractual obligations, such as inspections on site, record-keeping, and issuing of instructions and certificates, are neglected.”

Indecisive and dictatorial employers and their principal agents can also cause strife on a building project. “Even with a binding contract between all the parties involved on a building project, far too many employers – after the Agreement has been signed – make changes that are unfair to contractors.

This leads to the contractors in turn imposing totally unfair performance and payment conditions on subcontractors.

There are inevitably consequences of such changes to the original agreement. The employer may think the change to the contract is minimal but often the repercussions are far-reaching for the rest of the construction team. The disputes that follow such unexpected late changes are extremely disruptive to performance but could be avoided if the provisions in the contract are followed by all concerned,” he added.