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NEWS | SAN DIEGO

So you want to be a developer: A primer for the first timer

By Pamela J. Scholefield

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There is no doubt that a soft real estate market causes havoc for many developers and contractors. But, at the same time, it may offer unparalleled opportunities for those who have been hankering to be a project owner/ developer.

With the cost of real estate still plummeting, and a ready supply of good contractors looking for work -- this could be an opportune time for many first-time small project developers to realize their dream.

With that in mind, I would like to offer the following very basic list of items any first-time developer should keep in mind when embarking on a new venture.

First, realize that construction is an extremely time consuming, excruciatingly detailed process. If you are good with that, then proceed with caution.

The architect

Assuming you have your funding lined up, the first step is to hire a qualified architect who will provide the plans for your project.

This is not an area in which you should attempt to save money.

A good, complete design could very well be priceless. At the very least, a good, complete design will enhance the constructability of your project and minimize delays and change orders.

Select someone who has experience in the particular type of project you want to develop. And then, take the time to tour previous projects and talk to the architect's reference. Obtain estimates from a few potential architects.

Take the time to meet with the potential architects in person to gain insight as to their work ethic and style.

A good architect should also be able to provide you with an estimate of what your project may cost to build, as well as offer suggestions of alternate designs and materials to keep within your budget.

Once you find a good architect with whom you believe you can have a comfortable working relationship, insist that you enter into a written contract for the design services.

Make sure the architect's scope includes a complete design of all components of the project. And, include a list of extra services that are not included in your architect's basic services. Decide if you want the architect to stay involved with the construction and at what cost.

Also, make sure there is a time-line as to when the design will be completed. As always, it is a good idea to seek qualified legal counsel to make sure that the contract terms adequately protect your interests.

The general contractor

Avoid the temptation of being an "owner-builder" even if you have managed your own small-scale office tenant improvements or home renovations.

Despite the "can-do" attitude of the entrepreneurial spirit within - including the desire to save costs by not having to pay a general contractor's profit or fee - don't do it. I know of no projects where the owner/developer saved quantifiable amounts by acting as an owner/builder.

Most of the time, it just results in the separate subcontractors pointing their fingers at each other -- or at you -- for problems during construction. That is one thing that is guaranteed, you will have problems during construction -- it's the nature of the beast.

So, bite the bullet and hire a qualified general contractor using the same qualification and selection process that you use with the architect.

Your contractor should be able to provide you with a cost breakdown, or schedule of values, which shows the total contract price broken down by subcontractor or trade.

It also should include line items for contingency -- if any, and the contractor's overhead and profit.

Most likely, your construction lender will require you to submit this and it should be an exhibit to the construction contract.

Another exhibit that should be included with the construction contract is a construction schedule showing when each major phase of the project will be complete. The construction contract itself should include firm start and completion dates.

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Because of the potential risks and large sum of money involved with the construction of the project, it is essential to seek the assistance of a qualified attorney to help you negotiate the construction contract.

It is a small price to pay in comparison of the investment in time and money you are about to take on.

Here are just a few more of the items you need to consider:

- Insurance -- make sure the contract requires adequate insurance by the contractor with you named an additional insured. Considered obtaining course of construction or builder's risk insurance yourself.
- Fund control -- fund control is a service that administers the progress payments to the contractor based on the percentage completion for each trade. Most construction lenders have either their own fund control or hire a third party service to act as fund control. Even if you are funding the project yourself, deposit the money into a fund control (such as B>Dixieline Lumber). For a relatively minor fee, fund control will disburse a payment only when they receive the proper supporting documents and lien releases from the contractor. They track the funds disbursed against the cost breakdown and provide a variety of financial reports.
- Retention -- Include in the contract a hold back 10% of each payment until the project is completed and you confirm that all subs and suppliers have been paid, or will be paid from the retention proceeds. Use joint checks for any sub or supplier who has not yet been paid.
- Change orders -- Expect them and have a procedure in your contract to handle them. Before the work is performed, always agree in writing exactly what is to be done, what it will cost and whether there is a time impact.
- Plans and permits -- always require that the permitted plans and inspection card remain on-site.
- Mechanics' liens -- To avoid mechanics' liens get releases from all subs and suppliers and understand the purpose and importance of these documents:
- Conditional and unconditional waivers and releases upon progress payment.
- Conditional and unconditional waivers and releases upon final payment.
- Notice of completion -- record a notice of completion within 10 days of the completion of the project. This sets the time limits for mechanic's liens.
- Warranties -- get all manufacturers' warranties in writing.
- O & M manuals -- require that your contractor obtain operations and maintenance manuals for equipment (HVAC systems, appliances, spa and pool equipment, etc.)
- As-built documentation -- Include in the contract a requirement for the contractor to keep a set of plans showing all "as-built" changes to the project.

Being a developer can be a rewarding experience, and a key to keeping it that way is to not skimp on the professional services. Put together the best team you possibly can, including a qualified architect, contractor and legal counsel. And, if you've done your homework and selected a good general contractor -- get out of their way and let them do what they do best -- which is ... build your project.

Do you have a construction question? Send it to: info@construction-laws.com

General disclaimer

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