

# Dirty Deeds

## Insulting payment offers and deeds of release

I wish I had \$20 bucks for every client that called me up telling me he had just received a Deed of Release from the builder or developer with a curt request that he sign it and return it.

What is a Deed of Release? Basically it is a legal agreement where both parties agree to release themselves from further performance of their contract for an agreed payment.

The most typical situation we have seen is a subcontractor who is owed (let's say) \$350 000 by the builder and one day receives a Deed of Release stating that the Builder will pay \$50 000 in exchange for the subcontractor ending the contract and making no further claims. Often a conversation follows where the Builder says that the subbie can either take the fifty grand now or spend months fighting and get nothing.

Many contractors feel fear and panic. This is a threatening take-it-or-leave-it deal with no warning.

The purpose of this article is to demystify this pathetic practice and let you in on what is really going on.

When you get a Deed of Release from your client that comes without warning and with a ridiculous and threatening offer in it, this tells you three things: a) your client is having financial difficulties, and b) your client has probably waaaaaaay under-quoted the job and is trying to claw back some profit at your expense, and c) your client is fearful of how you might react.

Think about that for a second... in terms of relative power your client is the weak one, not you. So weak that he has to resort to this kind of pathetic practice in order to make a profit (which means that he's also incompetent).

I have run many claims for my clients where the debtor has threatened to sue for millions, start multiple court actions, Tribunal hearings, cross-claims, destruction, chaos, bla, bla, bla. The more of that talk you hear, the weaker your client actually is.

So with the above in mind, what do you do when you get a Deed of Release?

It's a two step process: 1) Tell your client what he can do with it, 2) Tell him where he can shove it.

Low-ball Deeds are an insult to the value of your work, and your client thinks that he can simply walk away because your invoices don't suit him anymore. Imagine if the roles were reversed? What if you decided one day that you could not afford to continue on a project. Could you just send your client a Deed of Release demanding that he agree to pay you 75% of what you are owed so you can just walk away? I don't think so!

The reason I am suggesting you reject these Deeds is that they don't offer you any benefit except to pay a small part of what you are owed.

Think about it. For the benefit of getting just a small amount of cash that will not make much difference to your debtors, you are walking away from your entitlement to the true value of ALL the work you have done. That is a bad deal and if some one wants to try that on you it is better to fight like hell for what is yours.

There is no best pathway to dealing with Deeds of Release or low-ball settlement offers. But the best first step is to get some accountability. That is, get your client to explain himself. Not only does it make life uncomfortable for him but it gets you valuable information as to how your client will try to justify the move if it went to court.

Write back to your client asking some of the following as appropriate to your circumstances:

The valuation of my work is (let's say) \$86 000.00. How did you come to your valuation of (for example) \$25 000.00?

Can you please itemize my work and value each item so that I can see how your settlement figure was arrived at?

Have you used any of the contract's provisions to assist you in valuing our work? If so, which ones?

Why was I not consulted regarding this Deed?

On what basis did you think I would settle for such a low amount when the value of my work is far higher?

At what point in the project did you decide that you did not wish to complete our contract?

Clearly you are offering this Deed/Offer because you have been unable to complete this project profitably; is this because you under-quoted or because you did not plan it properly?

Your offer is only for the work. What are you offering my company for the loss of profit due to not completing the balance of the work?

How many other contractors on the project have you sent a Deed to? Please send me their details.

Is your company going into administration? If so, who is the administrator and what are their contact details?

Now use the ones that are relevant to your project. Now you are of course thinking *"There's no way they'll answer questions like that!"* And you'd be right. What we are after is what they **do** come back to you with. They may answer some of them but may otherwise give away good information will they are busy abusing you for asking. That's what we want!

It will yield invaluable information about your client's thinking. You can then use this to get your money which brings me to my final point.

Refuse the offer!

And take some form of action to get your money: Either by adjudication or statement of claim. These Deeds are attempts to scare you off and if you come out fighting you stand a much better chance of getting what's owed or else a much higher payout.

Finally you must regard the above as a general strategy that we have found works. It may not be appropriate for your situation or the contract you are working under. Get professional advice when dealing with a Deed of Release or a final offer. There may be repercussions that are not immediately obvious.

The most important thing is not to just give in because you are desperate for money. Most of the time it is not enough to make a difference to your debtors, and you are throwing away the true value of your work.