Builder's retention: How long can it be kept?

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A reader asked for clarity on keeping back a rentention amount on building work.

"I would like to know where do we, as developers, draw the line on retention work ?"

Les has provided the following response:

Thank you for your enquiry. The question that you are asking has three parts as far as I can read it so I will address all three.

The main issue here is to ask what form of contract are you using? The most common form of contract being the JBCC Series or the MBA contracts.

If either of these are being used then the stipulations for formulating and administering (See JBCC Principal Building Agreement Clause 14) and keeping a retention amount are quite clear. The end of the retention period and the final release of the retention money relates to the issuing of the Final Completion Certificate by the Principal Agent. (See JBCC Principal Building Agreement Clause 26) This certificate has to be issued within 90 calendar days of the date of Works Completion. The Defects Liability period starts at works completion and will end 90 calendar days later. Final Completion Certificate can then be issued by the Principal Agent provided that all listed defects have been satisfactorily attend to by the contractor. If the Defects List has not been satisfactorily attended to then the Principal Agent can withhold the Final Completion Certificate until such time as he is satisfied that all defects have been corrected. All retention money including 90 days interest on that money is then due for payment to the contractor.

The Latent Defects period starts at the beginning of the Construction Period and ends five years after the issuing of the Final Completion Certificate.

If there is no recognized contract between the builder and the client then one has to rely on the goodwill of the architect to sign the Final Completion Certificate and on the goodwill of the client to release the retention money with interest.

I would suggest that you contact your local Master Builders Association branch if you require further input.