

CDR BULLETIN



Construction Contracts

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By Bill Christenson

About the Author

Bill Christenson is a Case Manager for CDR emphasizing residential and commercial construction.

Contact CDR

206-232-9075
3047 78th Avenue SE
Suite 204
Mercer Island, WA 98040

Contracts between owners and contractors (or lack thereof) continue to be a major source of problems in the building construction industry. The number of projects that proceed without any written contract is quite startling. We recommend that all construction projects have a written contract to define the project scope and protect the interests of both the owner and contractor. The same applies to contractors and subcontractors. Verbal agreements from their inception are rarely mutually understood by the parties and the level of misunderstanding tends to escalate over time.

Project owners who are infrequently involved with building construction, such as typical homeowners, often rely and trust the contractor to prepare a fair contract for the project. However, contracts can be drafted to the detriment of the other party so it is imperative that both sides clearly understand the contents. Contracts are tools that are often negotiated in order to address all parties' interests. Negotiation of terms and conditions applies to more than just agreeing on a price for the work.

It is always best to consult an attorney to ensure the key components of a contract are in place. These include but are not limited to:

- Identification of the parties
- Property description/location
- Responsibilities of each party
- Price for the work
- Itemized cost of the work
- Clear and defined scope of work to be performed
- Duration or timeframe for performance of the work and any consequences for late work
- Terms of payment and a payment schedule
- Procedure to handle changes addressing scope, cost and effect on schedule
- Insurance
- Disputes
- Termination
- Mutuality of agreement and date

Next page ▼



Key considerations when deciding on a contract include:

Type of contract: fixed price (lump sum) or cost plus a fee for overhead and profit.

- Fixed price contracts shift additional risk to the contractor which the owner needs to acknowledge and be willing to pay for.
- Cost plus contracts often lead to misunderstandings as to what are legitimate job costs and backup documentation for such costs.

This is by no means a complete list of contract items though they are certainly important ones that should be addressed in every construction contract. The adage “**An ounce of prevention is worth a pound of cure**” could not be more applicable to construction contracts.

