

CHAPTER EXCERPT

HOW TO SURVIVE A REMODEL

Should I Have a Written Contract?



Yes, yes, yes, you need a written contract! The days of handshakes are long gone. The construction process is so complex that it is better for all parties if various issues are dealt with in writing. Some contractors will still expect you to let them do work without a contract. One of my clients thought she was getting a \$180,000 remodel based on the verbal representation of the contractor, only to be invoiced in excess of \$300,000. The difficulty is trying to prove what was actually said at the beginning of the project. If it is in writing, there will be no misunderstanding.

WHAT SHOULD THE CONTRACT LOOK LIKE?

BASIC FORMS AND BID SHEETS

There are a number of forms floating around that contractors use as contracts. Many contractors use what is called a “bid sheet.” A bid identifies the work they are going to do and the price that they are going to charge for that work. Unfortunately, most contractors simply get the owner’s signature at the bottom of the bid document and consider that the contract. This is totally inadequate. It usually fails to deal with any other provisions or circumstances surrounding the project as a whole.

Whatever form the contract takes, it is important that you read it and understand it. The following is a minimum list of items that should be dealt with in a construction contract:

- Name, address and license number of the contractor.
- The address of the project.
- The approximate date when work will commence. This can be an exact date or a formula (*e.g.*, within 15 days after issuance of building permit).
- Date when work will be completed. Again, this can be an exact date or a period of time (*e.g.*, 60 days). If stated in number of days, it should always reference “calendar days” as opposed to “working days” or “business days.” It is much easier to calculate calendar days instead of trying to figure out which days the contractor is working.
- Description of the work to be done and description of materials and equipment to be used or installed.
- Agreed price for the work. The price can be either a fixed price or time and materials. These differences will be discussed below.

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- Deposit amount (some states have a maximum initial deposit that can be charged. In California it cannot exceed \$1000 or 10% of contract price, whichever is less).
- Schedule of payments that reference amount of work or services to be performed and any materials and equipment to be supplied. It is always a good idea to have the payments tied to milestones – for example, completion of foundation or completion of framing. These completion items should also correspond to Building Department inspection and approval. This makes it simple: if the inspector approves the work, you write a check. If he doesn't, you don't.
- Time period for making payments. The contractor should give you a few days after presenting you with an invoice before demanding payment. This gives you an opportunity to review the work to make sure it is finished.
- Penalty and bonus provisions. If you are going to penalize the contractor for not finishing by your deadline, the penalty needs to be in the contract. Enforcing a penalty provision is very difficult because there are usually several reasons for delay, and they are not all the fault of the contractor. Likewise, if you are going to pay the contractor a bonus for finishing early, it must be in the contract. I generally discourage bonuses for early completion. It might encourage the contractor to cut corners in order to expedite the project. And cutting corners is usually not in your best interest.
- Whether a performance or payment bond will be used. These are similar to insurance policies and guarantee that the contractor will finish the project for the price stated and that he will pay his subcontractors and suppliers.
- Name and contact information of the contractor's general liability carrier. You also need to get a copy of the certificate of insurance, and you should be named as an additional insured on the policy. A separate certificate will be issued to you.
- Warranties provided. This provision should indicate that a walk-through of the project will be conducted one year after completion to detect any warranty items that need attention.
- Indemnification. The contract should have a statement that the contractor will indemnify and defend you from any claim that is made as a result of his work, or his employees' or subcontractors' work, on the project.
- Standard of review. Most contracts do not contain this provision, but they should. At the end of the project, if you have a disagreement with your contractor regarding a certain construction item, it will be necessary to determine who is correct. I normally specify that the National Association of Home Builders standards will apply. They actually publish a list of standards that you can obtain and refer to when reviewing work with your contractor.
- List of allowances and amounts (not included on a time and material contract – discussed below)
- The hourly rate you will be charged if this is a time and material contract or for change orders performed on a time and material basis.

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- Discounts: whether the contractor will pass any discounts through to you as part of the allowance amount. Most contractors get discount prices from their suppliers, sometimes as much as 30% off the retail price.
- A notice explaining your right to cancel the contract, if you have one in your state.
- Description or list of other documents incorporated into the contract, such as the bid, the plans, etc.
- Termination provisions: what happens if you want to terminate the contractor? The contract should contain a provision for giving notice of breach of contract and a time period for curing a breach.
- Dispute resolution: The contract should provide for the use of mediation to resolve disputes. Mediation is where a neutral person tries to get the parties to come to a settlement. I am a firm believer in mediation and have been successful in settling about 75% of my clients' disputes when we resort to mediation. If mediation is not successful, you might want to consider using arbitration. Arbitration is where an independent person will actually hear the dispute and make a decision. In order to be binding on all parties, an arbitration provision must be in the contract and contain particular language. If you think you want arbitration, be aware that you may be giving up your right to a jury trial, discovery and appeal of a bad decision.
- Signature line for all parties.

Check with your local licensing board to determine whether there are any additional requirements in your state. See the Appendix for the contact information for your state's licensing board. If your remodel is extensive, it would be a good idea to have a construction attorney review the contract before you sign it.

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