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Reduce Your Risks with a Standard Contract

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Builders are used to working with tools. When it comes to running their business, however, there's one tool that too many contractors don't know how to use properly: a construction contract.

Put it in writing

A construction contract is an essential tool in every contractor's toolbox, says Brian Perlberg, senior counsel, construction law and contract documents for [The Associated General Contractors of America](#) (AGC). "Working as a general contractor without a contract is not advisable," he says. "It's literally part of a general contractor's job title."

An agreement between the builder and the client, a contract is a way to formalize a business relationship and officially state all agreed-upon services, payments and processes.

"At its fundamental core, it protects you and it protects what you're trying to achieve," Perlberg continues. "It protects you by outlining in writing what you are going to do, when you are going to do it and how much you are going to get paid for it."

Adds Kenneth W. Cobleigh Esq., managing director and counsel, AIA contract documents at the [American Institute of Architects](#) "It establishes terms up front so that parties can proceed with the project in an orderly way."

However, construction contracts are as unique as they are necessary, says Perlberg. "It's probably the only type of contract in our society where both parties sign it and expect to have changes to it before completion of the project," he says. "You don't nullify the contract because you have changes to the project; you enter into it knowing there's going to be changes. One of the reasons you should have a contract, then, is to work out an

agreed-upon process for handling the inevitable tricky, sticky problems that arise during a project.”

Clauses you can count on

Without a written contract, contractors open themselves up more to a variety of risks, according to Cobleigh, including litigation. “The obvious consequence is that without a contract, there may be two different sets of expectations about a contractor’s performance,” he says. “The more varied those expectations are, the greater the potential there is for conflict, which may ultimately result in payment issues or, worst case scenario, some sort of legal action against the contractor by the homeowner.”

To help protect his or her business from conflict and, ultimately litigation, a contractor’s standard contract should always include the following elements, according to Cobleigh:

- Scope of work
- Payment terms and conditions
- Project timeline
- Insurance considerations
- Terms associated with correction of work
- Terms associated with changes of scope

A solid construction contract also should include—or at least reference—numerous relevant attachments and exhibits, including detailed blueprints, drawings and specifications, all of which will help define the scope of work.

Finally, every construction contract should include an indemnification clause—usually called a hold harmless clause—which ensures you’re not liable for someone else’s mistakes. “Without a hold harmless clause, you could be lassoed into litigation for things you weren’t involved in or for things that weren’t your fault,” Perlberg says. “You want to be responsible for your actions, but you don’t want to be responsible for the negligence of others.”

Off-the-shelf standards

Builders who don’t have a construction contract can benefit from using one of several standard contract documents that are produced in plain English for contractors by industry associations. “Unique to the construction industry is the prominent role that standard contract documents play,” Perlberg says. “More than a model or a template, they’re off-the-shelf contracts that parties can easily read through and, with some project-specific information, use for their projects.”

Among the most popular standard contract documents are those produced by AIA, which currently offers more than 100 standard forms and agreements, and AGC, which is one of several founding sponsors behind ConsensusDOCS, a coalition of 23 industry stakeholders that publishes a comprehensive catalog of standard contract documents.

“What’s good about standard documents is they save so much time and money and increase efficiency by using national best practice standards that parties can modify to suit their particular projects’ needs,” Perlberg says.

Adds Kyle McAdams, director of sales and marketing for AIA’s contract documents program, “We have a staff of lawyers that have been doing this for a very long time and

know what needs to be included. Your average contractor is certainly not a lawyer, so our lawyers have already thought through many of the issues.”

Whether you use your own contract or a standard contract document, what’s important is that you use something, according to Perlberg, and that you use it before problems arise. “If you wait until you have a problem to sign a contract, it’s too late,” he says. “It’s essential to have the contract signed, sealed and delivered before you start any work.”