



Construction Law: Regarding construction contract change orders - by C. Jaye Berger

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The nature of construction and renovation projects is that they are always changing. Whatever work and price that was agreed upon when the project was commenced, can and usually does change. It can be due to any number of factors. Something may be ordered and a decision is made to order something else which will cost more money. The work may begin and it is discovered that there is some unforeseen condition and more work needs to be done. The parties may have agreed to have certain work done, then decide that they no longer want to have that work done and the contract price needs to be lowered. Sometimes it is difficult to put a price on the value of what is being taken out, since the price was all part of one big scope of work.

Most people only think of change orders for changes in the price. However, they are just as important to have when the time for completion has changed. If there is additional work which will require more time to complete it, then a change order is needed to extend the date for substantial completion. This is especially important if there is a provision for liquidated damages for each day the contractor is late with completion. If the contract price is increased, but not the time for completion, there may be a dispute down the road when the contractor asks for more time to complete the work and the owner refuses.

Since the contract is a document signed by both parties, change orders also need to be signed by both parties. Verbal changes are not enough and are a recipe for disaster. As the project goes on, there may be a number of change orders extending the substantial completion date. A few change orders are normal. A lot of change orders often signifies a problem with the project.

I am often consulted about such issues because they raise red flags that can develop into disputes, with mechanic's liens being filed. At the first sign of such issues, consult legal counsel to discuss the ramifications.

C. Jaye Berger, Esq., is the principal of The Law Offices C. Jaye Berger, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540