



A lawyer discusses construction contract change orders - don't let your project come to a halt

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The nature of construction and renovation projects is that they are always changing. Whatever work was agreed upon when the project was commenced and the price that was agreed upon for that work, can and does change. It can be due to a 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 and they decide that they no longer want to have that work done and the contract price needs to be lowered. It can be due to any number of reasons, but the main idea is that the terms of the signed contract will need to be changed.

Since the contract is a document signed by both parties, change orders also need to be signed by both parties. They can cause the project price to go up or down. 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 on projects where there is a fixed date for completion and time is of the essence to complete the project. There may be a provision for liquidated damages for each day the contractor is late with completion. As the project goes on, there may be a number of change orders extending the substantial completion date. There may be 30 days added in one change order and 10 days added in another change order and so on. Thus, the new substantial completion date may be very different from the original one.

In a worst case scenario, the parties may have agreed to pay additional money for additional work, but they did not agree to additional time, even though it took more time. Those kinds of situations can wind up in litigation, because it is not clear when the liquidated damages provision should kick in and the contractor starts owing money back to the client. On one project I was consulted about, the client had agreed to 1,000 additional days. It was very complicated because some of the additional days agreed on pertained in part to work that was taken out of the project and the number of days which should be credited back to the owner may be subject to debate.

If a line item in the contract or proposal for work that was taken out entirely, then the amount of the credit will be clear. However, if there is a partial credit and no line item breakdown, it can become controversial. The owner may feel that they are not receiving enough of a credit and may disagree with the dollar amount being claimed by the contractor and the opinion of the architect or engineer.

The golden rule is that change orders for additional work should be signed before the work is done. That way, everyone is in agreement on the scope of the additional work that is to be done and the cost. Unfortunately, that is broken more often than not. There may be verbal communications about the additional work, then the work will be done with nothing being signed. Weeks or even months later there is a change order presented for that work. By that time, people do not remember the details as well and there can be controversy about the price and how much additional time should

be allowed for that work.

I have been consulted by angry owners whose projects have doubled in price from the original contract price. Contractors have consulted me in such situations because they are owed a lot of money and have not been paid. That is often an indication of a poorly organized project, which may have commenced before the plans were completed. The designs are being worked out in the field as they go along. That is a recipe for disaster.

When all of these factors converge and come to a head, the project can come to a crashing halt. No payments are being made because the owner feels the contractor has been paid too much relative to the percentage of work completed. The contractor does not want to do more work, because he is afraid he will never be paid. These situations often wind up with one or more mechanic's liens being filed. This is why a knowledgeable construction attorney should be consulted before and during the project. When clients confer with me before the project begins, I am often able to offer some advice on ways to improve the arrangements for the project.

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