



Finishing up a renovation project: Supplying a completion date in the contract

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Clients often come to me when they have a renovation project that seems to be going on forever and should have ended months ago. They are desperate to know what can be done to bring it to an end or to sue if need be. One of the first things we must do is to look at the contract. We are looking to see if the contract actually specified a completion date. Sometimes it has and sometimes it has not. There may also be an amount per day for each day the project goes beyond the specified completion date. We also need to see if there are any signed change orders extending the time for completion. However, when I do this with new clients, it is not unusual to find that the parties have, in fact, not agreed to a completion date in the contract and did not have an attorney review the contract before they signed it. That does not mean that the project will never be completed, but it makes it more difficult to demand that the contractor complete it as soon as possible. It should be noted that one of the requirements under the home improvement contractors licensing law is that the contractor specify a completion date.

One client said to me, when I asked where the completion date was in the contract, "but he (the contractor) told me the project would be done by the end of June. Then he told me he would be done by the end of July. How can he finish when he only has one man working?" Good question. At the same time that the client was complaining about the contractor being late, it turns out that they were supposed to order all the appliances for the contractor to install and had not yet done so. This meant that even if the contractor was ready to install them, there would still be a lag time before they arrived. When things like that happen, it makes it easier for the contractor to claim that the owner is a factor in the delay.

One of the best ways to keep the project on track is to start off with a schedule from the contractor. It can be changed along the way, with approval by the architect, but the schedule shows that the contractor is planning his work in such a way that it will be completed in a timely fashion. Another important practice is to have signed change orders when the agreed-upon completion date needs to be changed. They also need to be approved by the architect. This keeps everyone on the same page. You have the written schedule, and any deviations from that schedule require a signed change order. This process also assumes that there is an architect or designer monitoring all of this. I hear stories all the time from clients about their contractors going off to exotic places for lengthy vacations in the middle of their projects. Therefore, it is a good idea to ask the contractor, before any work begins, if he has any vacation plans during the time he will be working on your project, if that will cause any delays and whether he has appropriate back up.

As the owner and the contractor get closer to the substantial completion date, there is usually a noticeable increase in tension, since the owner is probably holding retainage and the contractor is a little concerned about whether he will actually receive that money. It is important that the design

professional make it clear when there is major work that still needs to be completed, rather than punch list items. In other words, the contractor should not have a false belief that he is almost done, if there are still major items of work to be done or to be repaired.

In this time period, there is usually electrical and plumbing inspections that need to occur. Depending on the landlord and the type of building (eg. commercial rental versus condo), the building itself may want to look over the work and be satisfied that certain things have been done, especially when the work ties into building systems.

If for some reason the client does not know the names of subcontractors that have been used on the project, now is the time to find out and make sure that none of them have filed any mechanics liens. Some owners can be surprised to find that a subcontractor did work and left months ago and no one knows where to locate him. This underlines the importance of having partial waivers a mechanics lien each step along the way when payments are made. All of the checks and balances mentioned above add up and help to minimize the likelihood of problems.

A true punch list should be a list of small items here and there that need to be completed or touched up in some way. Fixing the air conditioning system is usually a much bigger work item and should not be found on the punch list. Limiting the punch list to small items means that there will be enough money left on hand to cover the work if for some reason the contractor does not complete it. Looking at it another way, if people pay out too much money and don't have any reserves to cover themselves, if the contractor abandons the project and moves on to something else, they will be left with a cash flow problem.

Construction projects are very complicated and are constantly changing. Anyone undertaking such a project should have an experienced construction attorney on their team, as well as an owner's representative or a construction manager.

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