

# Basic Contracts to Conduct Business

By Nancy Chillag

When a remodeler starts a business his first thoughts are about obtaining clients, finding qualified workers and accurately bidding projects. Rarely does he think about all the paperwork associated with running a business, especially the legal paperwork. The following is a list and discussion of the various contracts that every remodeler should have in place:

**BID FORMS:** Many contractors use a bid form as a substitution for a contract by simply having the client sign the bottom if he or she accepts the bid amount. Wrong! Your bid form should not be your contract; it should, however, become a part of your contract. In other words, the bid form will be referenced in your contract, or be attached to it, and thus its form is important.

The bid form should contain the following: (1) A description of the project; (2) A reference to the plans and specifications (including the date to eliminate confusion if the plans are later amended); (3) The bid amount; (4) Disclosure of all assumptions made in bidding the work (i.e., reuse of a heater, no upgrade to electrical panel, etc.); (5) A list of the items not included in the bid; (6) Allowance items; (7) Any unusual items or considerations (such as pointing out that a minor change in the plans could significantly reduce the bid amount); and (8) How long the bid is valid.

There should also be a statement that says something like this: "Upon acceptance a formal agreement will be presented for signature. No contract between the parties is formed, and contractor has no legal obligations to owner, until the formal agreement is fully executed."

**CLIENT CONTRACTS:** Now, why do I use the plural term "contracts"? Because, depending upon the variety of work you perform, you may need more than one contract for your projects.

**HOME REMODEL CONTRACT:** This is a contract

between you and your client for the remodel of their home. A written contract, while legally required in some states, is the first step in educating your client about the project before the work commences. Among other things it spells out what is going to take place, how much money the client is going to pay, how long it will take, and what happens in the event of a dispute. The contract does not need to be lengthy, but it does need to include the basic terms of the agreement. This is also your opportunity to spell out all the items for which you will not be responsible.

Beware! Some states (like California) have special statutes that govern home improvement work

*Hiring a subcontractor on a handshake is a big mistake. You need contracts with your subcontractors.*

and require that certain provisions be included in this type of contract.

**NEW CONSTRUCTION:** You are probably wondering why you shouldn't use the home remodel contract for new construction. You probably could. Consider, however, if you live in a state that has special rules for home improvement contracts that are not necessarily favorable to the contractor, you may want to remove them from the new construction contract (if new construction is exempt from the statute). Also, many of the disclaimers in the remodel work (i.e., "we will try to match existing material as much as possible") will not apply to new construction.

**COMMERCIAL CONSTRUCTION:** Some remodelers also do commercial work, such as tenant improve-

ments. Again, different provisions may apply, such as when you are granted access to the property, deadlines, etc. Also, the warning provisions in your standard home remodel contract (i.e., "keep children and pets out of the construction area") probably don't apply to the commercial setting. A prospect might question your ability to handle commercial work if your contract is geared toward home improvement.

**BID VS. TIME AND MATERIAL:** You may undertake some projects on a bid basis and others on a time and material basis. If so, this will require different documentation. The time and material contract (as discussed in the February 2000 *QR* "Owner's Manual") requires disclosures regarding hourly rates, material markups, etc. Bid contracts do not need this information. However, bid contracts need provisions to deal with unforeseen conditions, change orders, or other items that would increase the scope and price of the work. This information is irrelevant to a time and material contract.

**VARIOUS CONTRACT ADDENDA:** It is possible to avoid having so many different contracts floating around your office. Careful drafting could allow you to use a basic contract form with a variety of attachments to match the specific project you are doing. The bottom line — don't assume that one contract fits all situations.

**CHANGE ORDERS:** You probably do not think of "change orders" as contracts, but they are, in the sense that they are separate documents which become binding agreements. One of the biggest problems in construction projects is the lack of documentation when changes occur. You should have preprinted forms for changes that contain all the information necessary to modify the main contract, including a description of the work, the price for the change and any extension or modification of the completion date. (Most contractors forget this last item, and it gets them into trouble when the owner still thinks the project will finish on the original due date.)

**SUBCONTRACTORS:** Most remodelers hire their subcontractors on a handshake (and sometimes not even that). This is a big mistake. You need to have contracts with your subcontractors. Now you are

### Key Notes:

*Legal paperwork is needed to run a remodeling business.*

*You may need more than one contract form, depending upon the work you do.*

*Some states have special statutes.*

*Change orders are contracts in the sense that they are separate documents which become binding agreements.*

probably saying, "but things will really get bogged down if I need to have my subs sign a contract every time I hire them for a job." Well, you can avoid that if you draft your contract with language that indicates it is a one-time signing and will apply to all future work they are requested to perform. Then, all you need in the future is their bid, your acceptance and the contract terms attached.

**EMPLOYMENT AGREEMENTS:** Most contractors do not have written employment agreements with their employees, and I am not necessarily recommending you should have them. You should, however, have an employment policy manual. This is a document that spells out the rules and regulations of your business, such as hours of work, vacations, absences, behavior, paperwork requirements, benefits, etc. If you have a problem with an employee, the first thing your lawyer will ask you is "what is your company policy dealing with this issue." A manual allows you to answer correctly.

**REMEMBER THE FOLLOWING:** (1) Your contracts should be prepared, or at least reviewed, by an attorney. If there is an ambiguity in the contract, the ambiguity will be decided in favor of the client since you are the one that prepared the contract. The attorney can make sure this does not happen. In addition, your attorney is familiar with the construction laws in your state and can ensure that all the necessary provisions are included. (2) Read your contracts. The operation of your business needs to coincide with the terms of the contract. To make sure that is happening, review your contracts and make adjustments, either to the contract or the way you conduct your business. **QR**

Nancy Chillag is a Menlo Park, CA, attorney specializing in real estate and construction law. Her web site address is: [www.chillag.com](http://www.chillag.com).