

## Dealing With Owner Involvement & Project Delays

**W**hen a contractor takes on a project, he or she expects to complete it fairly close to schedule. The contractor also expects to have control over the entire project and use his or her own employees or subcontractors. Unfortunately, this does not always occur. While delays naturally occur on all projects, many are the result of actions by the homeowner. For example, some homeowners like to have an active role in the construction, some like to have friends or relatives who are "in construction" work on the project, and some take forever to pick out finish items. Usually the contractor feels helpless to do anything. With careful drafting of contract provisions, however, the contractor can either prevent the problems from occurring all together or, at a minimum, lessen the impact on the job as a whole.

### The amateur contractor

How many contractors have been confronted by homeowners who like to "dabble" in construction and thus want to do some of the work on the project themselves? Certainly most of you are raising your hands.

Homeowners most often like to retain painting or tiling work. For some reason they feel that (a) they are competent to perform these tasks and (b) it won't interfere with the contractor's work because it is at the "end of the project." We all know differently. The biggest problem stems from the fact that the owners usually get around to performing their portion of the project in the evenings after a full day of work at

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their regular job or on weekends. This wreaks havoc on the construction schedule, but the contractor usually doesn't want to hassle the homeowner too much for fear of creating animosity or losing a possible referral. Frustrated, the contractor usually sits by idly until the homeowner is finished, sometimes at great financial sacrifice.

To deal with this situation, the following are suggested provisions to include in your next contract:

1. "Contractor will provide Owner with a schedule indicating the time line within which the Owner must complete retained work. Failure to complete the work in a timely manner will result in a change order for delay and rescheduling charges. A minimum charge of \$ \_\_\_ per day will be assessed."

2. "If Owner fails to complete the retained work pursuant to the schedule provided by Contractor, Contractor, on two days written notice to Owner, may undertake the work himself and charge the owner on a time and material basis with \_\_\_ % added for profit and overhead."

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### The newly licensed brother-in-law

"By the way, my brother-in-law just got his electrical license and I promised him he could do all the electrical work on my house when I remodeled. He's really good!" Sound familiar? This scenario can cause many legal and practical problems. The contractor may be held responsible for the work performed by the newly licensed subcontractor when the contractor would never have chosen to use that person. In addition, the brother-in-law usually has no incentive to finish in a timely fashion because the contractor has very little, if any, control over him.

Here is a provision you can include in your contract which will eliminate the problem, or at least minimize it:

*"The Owner agrees not to use subcontractors, contractors, laborers, craftsmen, distributors or other persons on this project except as provided by the Contractor pursuant to the terms of this contract. Any deviation must be approved by the Contractor in writing. If such persons are used by the Owner the following provisions apply: (1) Any and all persons must obtain their own permits for work performed, separate and apart from the permit obtained by Contractor; (2) Contractor shall not be responsible for the quality of the workmanship and materials utilized by these persons, nor for any damage caused by these persons with respect to the rest of the project; and (3) Owner will be responsible for any delays caused by the use of any such person."*

### Allowance item decisions

Almost all remodeling contracts have provisions for allowance items, i.e. a maximum dollar amount that the owner may spend on a finish item without a contract price adjustment. While your contract may set forth the amount of the allowance, it probably does not detail the time limitation an owner has to actually

choose that item. Some homeowners just can't make up their minds on carpet color, refrigerators with or without icemaker, tile vs. solid surface countertops, etc. Such indecision can cause excessive project delays.

Here are some helpful hints and provisions to move homeowners along in their decision making process:

1. The contractor should specify in the contract a standard predetermined allowance item, such as "4" tile, Brand \_\_\_\_\_, Model No. \_\_\_\_\_, with matching grout." A predetermined default color should be designated from a limited list supplied by the contractor prior to signing the contract. The contract language should then read: "Contractor shall supply Owner with a deadline by which the Owner must choose, in writing, designated allowance items. If Owner fails to make a decision by such deadline, Owner hereby authorizes Contractor to install the standard predetermined allowance items set forth herein."

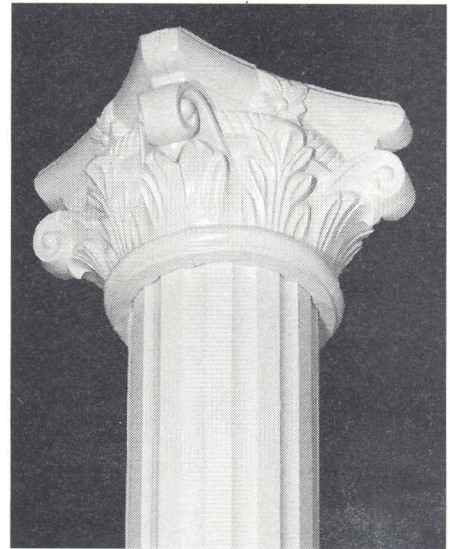
It would be useful to have the owner separately initial this paragraph so that they can't deny having read it.

2. The contractor can also charge the owner delay damages for failure to make a decision regarding an allowance item: "Contractor will provide Owner with a schedule indicating the deadline within which the Owner must designate, in writing, his choice for an allowance item. Failure to designate an allowance item in a timely manner will result in a change order for delay and rescheduling charges. A minimum charge of \$ \_\_\_ per delay day will be assessed."

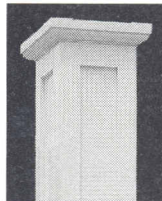
Usually when a homeowner is confronted with the financial ramifications of being personally involved in the project or delaying it, he tends to rethink the situation.

The above are generic contract provisions. I strongly recommend that you consult your own attorney to determine if these provisions comply with local law. ♦

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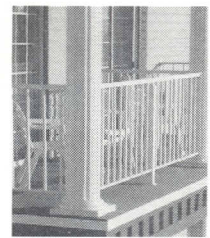


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