

Protecting yourself

I HAVE WRITTEN MANY ARTICLES AND GIVEN many speeches addressed to homeowners titled "How to protect yourself when hiring a contractor." The ironic thing is, however, that many times the contractor is the one that needs protecting. The following examples are problems that could arise and how to deal with them in advance.

The client with no money

Ever hear the saying, "Your eyes are bigger than your stomach?" This normally refers to taking too much food on your plate and not being able to finish it. The same is true in construction. Many a homeowner hires an architect that designs the Taj Mahal for them, when in fact they need to save for six months just to afford a new television set. The owner is sure that they can come up with the money for the remodel during the course of construction.

Unfortunately, you as the contractor get into the project only to find that the homeowner puts it on hold one-third of the way through because they don't have the money. And, of course, once they get a little bit more money they expect you to be back immediately to do the amount of work that they can afford. I have seen projects last for five years due to a lack of funds.

Solution: There is nothing wrong with you requiring the owner to prove in advance that they have sufficient funds to afford the construction. And this is not just the contract price, but an additional 10 to 15 percent for change orders and unexpected occurrences on the project. If they cannot produce the proof of funds, don't accept the job. Your contract should also contain a provision that the owner

must provide proof throughout the project upon reasonable request, especially if a large change order has been signed.

Inability to make a decision

Yesterday the dining room was going to be green, today the owner wants pink. You have shown them 100 carpet samples and they can't quite choose. The owner is responsible for buying the light fixtures, but they never seem to appear on-site for you to finish the electrical. The project that was to be finished in February is now stretching into May, all because the owner can't make a decision.

Most owners do not realize that the delays are costing you money because you cannot work efficiently. In addition, they do not realize that in the long run the delay will cost them money as well; because their project will not be finished on time, they cannot move in on time and costs of materials may increase.

Solution: Put a provision in your contract which gives the owner specific dates by which certain decisions must be made. Then put in a penalty for each and every day the owner delays the decision. Normally, if an owner is shown an actual dollar penalty that they can compute on a daily basis, their incentive to make a timely decision increases dramatically. I have witnessed situations where owners subject to such a penalty provision are faxing decisions and making calls to verify receipt of the fax to ensure they do not get penalized!

Clearly this approach requires you to be organized and timely yourself. You can hardly expect an owner to meet a deadline for a decision if you are not following a timely schedule yourself.

The never-ending punch list

You thought the project went fairly well and you are almost through. You have done the walk through with the owner and developed a 15-item



punch list. You are almost complete with the list, and lo and behold, another list appears with another 15 items on it. You agree to do the list and just as you are about to finish, another list appears. Usually at this point there is a retainer amount still owing on the contract, and you are seriously considering just walking away from it in order to be done with the job.

Solution: First, try to minimize your retainer amount so that if it becomes necessary to walk away, you are not out a lot of money. Second, put a provision in your contract that the owner is entitled to only one punch list, and when the items on it are complete, the final payment must be made. Any additional items will be covered under your warranty. Third, if the owner insists on more than one punch list, make them pay the retainer less a reasonable amount to cover the additional punch list items. Usually the dollars on these items are very small in comparison to the overall retainer.

Keep in mind, the owner is going to be reluctant to release the funds if you have not been responsive to them throughout the project. Releasing the funds at the end of the project takes trust on the part of the owner that you will actually come back to fix the additional items. Develop that trust throughout the project and you should not have a problem.

The owner that wants a bargain

The saying "you get what you pay for" is true, except some owners don't agree with it. They believe that all construction is the same and therefore the lowest price is the best. They will look at your bid and then want to know how they can cut the cost. They will tell you that they really don't want "high-end quality" — wrong! They will not only want it, they will demand it! They just don't want to pay for it. You, trying to be the accommodating person you are, look for ways to lower your price to fit within their budget. Inevitably, they do not like the quality of the work and they refuse to pay you. You end up in litigation to collect your contract price, and they sue you for failing to provide quality work.

Solution: As a contractor you should, and probably do, have a standard of care and quality of product that you provide. For this quality you have established a price that you charge. Do not reduce that price. If you do, you will be sorry every time. In addition, education here is critical. Explaining to the owner the difference in the quality will enlighten them to the fact that the lowest bid is not necessarily the best.

If for some reason after reading this you are still inclined to lower the quality of your work to obtain

this project, make sure that your contract clearly defines the quality standards by which your work will be judged at the end. And remember, the quality must never fall below the legally required building standards in your area.

The incomplete plans

I'm sure you are all familiar with the owner that brings you to their home to give them a price estimate, only to find out that they have no plans. They simply wave at the bathroom and say, "How much would it be to remodel this room?" Or the owner that paid \$300 for a set of plans for an addition, which shows no detail, doesn't define floor coverings, trim, lighting, etc. The owner tells you he wants a bid and "By the way, we also think we want to add a fireplace, so could you include that in your price?"

Solution: The most appropriate way to handle the situation is to tell the owner that the plans need to have more detail and to call you when they are more complete.

Obviously this solution, however, will not get you the project. An alternative solution is to tell the owner, in writing, that the bid you are providing is based only on the detail in the plans and does not include any assumptions of what will ultimately be included or any oral statements made by the owner as to what they also want to include. Explain that this means, if there is no detail for electrical work, you are not including it in your bid, regardless of the fact that electrical will need to be included later. Make sure you indicate the date of the plans. Also indicate that when the plans become more detailed, you are entitled to totally rebid the project because miscellaneous details in one area will affect the overall work and detail in another area. Then, when the more detailed plans come, you rebid the project, even if you have already started construction.

Trust your gut

Sometimes your instinct about a particular project is your best indicator as to whether or not you will have problems in the future. Listen carefully during the initial meetings with the owner to pick up on any potential problems. Don't assume that the problems will work themselves out. Experienced contractors have learned to think about problems that could happen and have a plan for what to do if a problem occurs. ■

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