

REMODELERS & THE LAW



BY NANCY A. CHILLAG

Some Advice for Avoiding Litigation

Most people believe we live in a litigious society, and thus they spend an inordinate amount of time organizing their activities to avoid litigation. Remodelers are no exception, and are usually concerned whether their contracts will "protect" them either from being sued for defective construction or needing to sue to collect money owed them. A contract, however, is not the only means of protection. Here are some tips to help avoid the courtrooms:

Unfortunately, the issue rarely comes down to who is right, but rather who has the resources to survive the legal process

1. Document decisions and comments. At the end of the job, it is difficult to remember what took place a month ago. For example, the homeowner picks a paint color, the remodeler buys paint and paints the house. The client hates the color and claims that the remodeler used the wrong one. This problem can be avoided by simply keeping a tape recorder or a sheet of paper in your vehicle. Document all comments, statements, suggestions and decisions, then either have the client initial the memo, send a confirming letter to the client, or, at a minimum, put the memo in the job file. Later, if a dispute arises, you can show the letter or memo to the client.

2. Limit the punch list items. Specify in the contract or

at the end of the job that the client gets one "go through" for punch list items. Tell them you'll be happy to come back if they notice something later that needs correcting, but they must make full payment after one punch list is complete. Otherwise, clients will delay final payment and keep making lists.

3. Mediate or arbitrate disputes. Usually, you need a provision in your contract requiring such a resolution of disputes. Normally, either one of these methods is much less expensive, and a conclusion is reached a lot quicker. Unfortunately, you may also be giving up any right you have to a jury trial and appeal of a bad decision.

4. Know the mechanics lien procedure, and then follow it. Acquaint yourself with all the requirements in your state for pre-lien notices, mechanics liens and foreclosures of the lien. Timing on these items is critical. Usually a homeowner will settle a dispute once they realize you have control over their property. If you don't follow the procedures, you will lose your bargaining power.

5. Respond quickly to call backs. Call backs involve problems the homeowner has found after the job is complete and after all payments have been made. Any and all defects should be addressed *immediately*. Otherwise, the client starts to get irritated, and takes a closer look at the entire job — where they will undoubtedly find additional problems.

6. Improve communication. The most common complaints by homeowners when they see a lawyer is: "He won't return calls,

he doesn't show up, he doesn't let me know when he is coming to work, he doesn't warn me in advance about making a mess." Once communication breaks down, the homeowner begins to dislike the remodeler and thus finds fault with the construction.

Be honest with your client up front. Tell them in advance how you plan to schedule the job, that messes will occur, that you cannot be on the job every day or that your crew will not be there every day, etc. You may even want to put it in writing (an outline for construction expectations). Call the client on a regular basis if you are not on site to find out if they have any questions or problems.

7. Be prepared to settle. Regardless of how careful you are or how meticulous your work is, you will have problem situations. Do not get emotional about it. Analyze what your potential exposure is, including the cost to get to the final outcome (i.e., damage liability, attorney fees, time spent away from your business, etc.) and ask yourself if there is a way to settle for less. Unfortunately, the issue rarely comes down to who is right and who is wrong, but rather who has the time and resources to survive the process. ♦

Next column: Answers to QR subscribers' legal questions.

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