

WHAT IS "SUBSTANTIALLY COMPLETE"?

It is important to define terms used by workers on a project, to ensure that everyone is on the same page. For instance, the various parties to the construction project (i.e. remodeler, subcontractor, homeowner) don't always have the same understanding of the word "done." The phrase "substantial completion" is the legal equivalent of "done," and it is an extremely important term. It can determine the start of the time period for filing mechanics' liens if a Notice of Completion has not been recorded. It can also determine when the building department will finalize a building permit, and when the final payment is due from the owner to the remodeler.

Unfortunately, the definition is anything but clear.

The issue of substantial completion can arise when a subcontractor has not been paid for the work he performed on a project and wants to file a mechanics' lien several months after the remodeler has left the project. In many states, he is required to file his lien within 90 days following substantial completion. Thus, it is important to determine the exact date. The subcontractor will want it to be as late as possible to ensure a valid lien. The owner will want it to be as early as possible to defeat the lien.

In another scenario, a homeowner withholds final payment, arguing that the remodeler has not substantially completed construction because there are several items that still need to be done. The owner is concerned that once payment is made, the remodeler will not come back to finish the final items. On the other hand, the remodeler wants the final payment so that he can pay subcontractors and suppliers, intending to deal with the minor items under the warranty.

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The question most often asked is whether the items on a final punchlist must be completed prior to the project being considered "substantially complete." The answer depends on the nature of the items. If the plans call for a new roof, but the roof is not constructed, no one would argue that the project is substantially complete. But if the plans and specifications call for the installation of doors and the remodeler has failed to install all the doorknobs, is the project substantially complete? Since installation of doors includes all hardware associated therewith, the courts would most likely rule that the project is not substantially complete until the doorknobs are installed.

But if the painter dripped paint on the doorknob and the only punchlist item is that the doorknob be cleaned, the project is substantially complete. If all items required by the plans and specifications are constructed and installed and certain items simply need adjustment, repair, or cleaning, substantial completion has been accomplished.

Another approach is to add provisions to your contract which define substantial completion and specify when final payment is due to the remodeler.

The following are examples of such provisions:

Substantial Completion: The project is substantially complete when all items specified in the plans and specifications have been constructed or installed. Substantial completion shall not include adjustment, repair or cleaning of any item so constructed or installed.

Final Payment: The remodeler shall be entitled to final payment upon substantial completion of the project. Punchlist items requiring adjustment, repair or cleaning of any constructed or installed item shall not be cause for delay of final payment, but rather shall be considered warranty items.

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When all the parties have a clear understanding of the terms used during a project, less disagreement takes place and the project runs smoothly.

