



Rebuilding Our Communities Strategically Legal Resources to Help Your Small Business

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Today's Presentation Goals

1. Understanding and revising the construction contract and negotiating changes
2. Developing and focusing on your key contract provisions—the “Top Ten List”
3. Recognizing the importance of best practices in reviewing and revising construction contracts
4. Identifying insurance requirements



How do you start strategically rebuilding?

- Keep a file
- Notice to insurer
- Do you need an architect, designer or engineer?
- Do you need a construction manager or general contractor?
- Your liability when there is a dispute between the designer and contractor
- Do you need a lawyer?



How do you select an architect, engineer or contractor?

- Assuming you have financing or insurance coverage to rebuild
- Do not fall for pressure tactics – be careful of scams
- Research the company and obtain license and bonding information
- Shop around and get multiple bids
- Get recommendations from someone you trust



Carefully read any quote and/or contract before you sign it



- **Beware of the fine print that requires you to pay more than a quoted price, or that obligates you to pay for unwanted services that you did not discuss with the contractor.**
- **Don't sign any contract if the oral promises made are not backed up in writing.**
- **Minnesota law requires contractors to reduce all contracts and change orders to writing. Any item not included in the contract can be considered an extra that may end up costing you more.**

Contract Contents

- **The contract should be detailed about the kinds of materials to be used and the work to be done and include:**
 - A detailed summary of the services to be performed;
 - Start and completion date;
 - Building permits and inspection;
 - A description of the specific materials to be used or a list of standard features to be included;
 - The total contract price or a description of the basis on which the price will be calculated;
 - Wherever possible, brand names, colors, grades, styles, and model numbers;
 - The names of any subcontractors and material suppliers; and
 - Payment and holdback clauses.



Top 10 Negotiated Terms in Construction Agreements

1. **Price and Payment**
2. **Precedence and Incorporation (avoid ambiguities and scope of work disputes)**
3. **Schedule, Including Substantial and Final Completion**
4. **Liquidated Damages (delay and performance)**
5. **Consequential Damages**
6. **Change Orders**
7. **Warranty Length and Project Closeout**
8. **Notices (and statute of limitations)**
9. **Security: Bonds (payment and performance), Insurance, Indemnity and Waiver of Subrogation**
10. **Claims and Dispute Resolution**



Best Practices

- **Revise, review and sign—before any work starts**
- **Take advantage of LegalCORP and free legal resources to review the contract**
- **Make sure your architect and construction forms have the same dispute resolution forum**
- **Make sure your architect and contractor procure the required insurance for the promised durations**
- **Understand the notice requirements in your contracts and follow them**
- **Nonconforming work: understand what you are accepting before you accept it**
- **A fair contract is a good contract**



Form Construction Contracts

- **AIA Contracts:**
 - Lack adequate insurance requirements to protect the project owner
 - Are contractor friendly
 - Need to be modified



Flow Down Provisions

- **A flow-down clause is a clause that makes all the obligations of the general contractor also the obligation of the subcontractors and suppliers**
- **Make sure the general contractor is entering into flow-down provisions with its subcontractors and suppliers**
 - How do you do that?
 - Put it in the contract



Insurance

- **Contact your insurance broker**
- **Considerations depending on project size:**
 - **General Liability**
 - **General Contractor: \$1-2 million per occurrence**
 - **Subcontractor: \$1 million per occurrence**
 - **Specific additional insured endorsements**
- **While project is ongoing**
- **Completed operations/Umbrella**
 - **General Contractor: \$3-5 million**
 - **Subcontractor: \$2 million**
- **Flows down to subcontractors too**
- **Assurity bond: 1-1.5% of project costs**



Additional Insurance Considerations

- **Automobile**
 - Owner listed as additional insured
 - Waiver of subrogation in favor of owner
 - Coverage for hazardous waste removal
- **Workers' Compensation**
- **Professional Liability**
- **Pollution Liability**
- **Owner's Professional & Protective Indemnification (OPPI) Policy**
- **OCIPs and CCIPs**



Other Considerations

- **Waiver of Subrogation**
 - AIA agreements provide that each party waives its rights and its insurer's rights to subrogate
 - Found multiple times in AIA contracts
 - If waiver is not deleted in the contract, your insurance will pay for damage caused by your contractor
- **Team With Professionals**
 - Review all construction contracts with attorney and risk consultant to develop an appropriate contract and include in your bid documents
 - Don't use the "one-size fits all" approach to construction agreements (or design professional contracts)

Payment

- **Do not pay unless you get a mechanic's lien waiver for the completed portion of the work**
- **If a subcontractor or supplier contacts you directly for payment, this is a red flag**
- **Monitor payment carefully**
- **You can write a joint check to the general contractor and subcontractor or supplier to ensure the subcontractor or supplier gets paid**
- **Right to withhold payment**

Mechanic's Liens

- What is it?
- What does it do?
- How does it differ from a pre-lien notice?





Need Help? Contact Us For Pro Bono Assistance!

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Questions can also be submitted by contacting Dorsey Pro Bono Counsel Alysia Zens at zens.alsia@dorsey.com or 612-752-7333.

In addition to the information above, if you need legal assistance with business law needs, LegalCORPS client intake lines are available for small business owners and nonprofits in Minnesota, by calling 612-752-6687. The intake line will be staffed Monday through Friday from 9:00 a.m. to 4:00 p.m.