



To Avoid Disputes, Put It In Writing

by Gary Ransone

As a practicing attorney who also manages a residential construction business, I know from experience that disputes can arise when clients and contractors have different sets of expectations about how specific parts of the job will be handled. Very often, the disagreements are minor at first, but small problems have a way of

turning into big ones. Letting your clients' pet get loose or ruining their new \$2,500 computer with fine plaster dust cost time and money. But more important, they weaken whatever trust there is between you and your client, creating a fertile atmosphere for future disputes and lawsuits.

Fortunately, you can avoid most

of these problems if you have a system for documenting and clarifying everyone's responsibilities and expectations. We've developed a number of commonsense communication forms for this purpose. Depending on the size and type of job, these forms cover many areas not usually addressed in the contract, from construction schedules to change-order policy to simple housekeeping matters. Our goal is to give the client a more realistic sense of what to expect during the course of the project and to reduce job-site friction and minimize our potential liability. As a side benefit, putting things in writing requires us to be better organized.

Documenting the Small Stuff

So that we'll interfere as little as possible in people's daily lives, we use a simple *Preconstruction Information* form (see Figure 1). It covers housekeeping matters like work hours, where to pile debris, and who may be issued house keys. These things seem petty until you have a run-in because your laborers trashed the landscaping that your client planned to remove and save. We also use this form to instruct clients on how to protect valuables from airborne dust, and to inform them that extra finish materials like towel bars should be supplied to us when the framing starts so that we can install the necessary blocking.

We also list basic safety requirements that everyone must adhere to while we're on the job site, like the necessity of keeping kids and pets out of the work area. If an accident does occur, having put everyone on notice goes a long way toward diffusing the client's anger and our legal liability. It may even prevent such accidents from occurring.

Time Overruns

A lot of tension arises when the client expects the job to take three months, but you know that five months is more realistic. A construction schedule puts clients at ease and helps us to better organize our own job performance. Even a simple description of the commencement and completion of major phases of the work prevents clients from asserting that you're behind schedule when you're not.

Another simple form we use on remodeling projects describes the

typical reactions — both highs and lows — that many people experience as residential projects progress (Figure 2). This advance notice helps to set expectations, so it's less of a surprise, for example, when the framing goes fast and seems exciting, while other phases of the project don't.

We also tell people to expect some degree of disruption to their normal lifestyle as a result of dust, disorder, and uncertainty. Preparing people up front for inconveniences, like the temporary loss of their driveway, reduces friction later. We also tell them that completing our preconstruction forms helps us to avoid some of these inconveniences.

Change Order Information Form

Also helpful is a brief statement on how change orders arise and how change order costs can be controlled. Our *Change Order Information* form (Figure 3) indicates that we will issue change orders in writing and that they must be signed by the client before we commence change order work. We also give clients an actual copy of our change order form, which clearly defines what constitutes a change order. Finally, we recommend that between 5% and 10% of the planned costs of a typical project be budgeted for possible change orders. This percentage goes up on more complicated projects and those with lots of concealed conditions.

The Payoff

In our experience, nine out of ten clients appreciate our efforts to better communicate our expectations in writing. And the process of exchanging this type of information up front and throughout the course of the job helps us run our business much more efficiently. If clients are less surprised about certain events because we have prepared them up front, our relationship will be much less strained and the potential for disputes and litigation will go down. At the same time, we significantly raise the potential for getting through the project with both our profit and peace of mind intact. ■

Gary Ransone is a working general contractor and a practicing attorney specializing in construction law. He lives in Santa Cruz, Calif.

Preconstruction Information

Location of Contractor's Tools and Equipment: The best location for the Contractor's tools and equipment is:

Bathroom Use: Contractor's employees and subcontractors may use the bathroom located: _____

Locking Doors: The following doors are to be locked whenever Contractor and his employees are not on the job site:

Owner wants key to be hidden in the following location: _____

Debris: The best place for a debris pile or dumpster is: _____

Figure 1. These fill-in-the-blank questions are part of a form the author uses to establish day-to-day site procedures.

Remodeling Ups and Downs

Every remodeling job creates some disorder, dust, uncertainty, and inconvenience. Your house will be torn apart and put back together again, mostly by people you have never met before. We understand that this can be unsettling, and we expect our crews and subcontractors to respect the fact that this is your house they are working in, not some vacant warehouse across town. We want to know immediately if you have any problems in this regard so that we can take immediate steps to correct the problem.

Figure 2. The author uses a two-page letter to prepare his clients for the best and the worst aspects of construction.

Change Order Information

Based on experience with projects similar to this one, the Contractor recommends that the Owner initially budget 5% of the projected job cost as a contingency for Change Orders. This percentage is an estimate only. The actual total amount of all Change Orders will vary, depending on such currently unknown factors as:

- Number of Owner requested changes and upgrades
- Concealed conditions encountered during the work
- Completeness and amount of detail shown in as-built and construction drawings

Figure 3. The author uses a separate form to explain how change orders arise and to prepare clients for the extra expense.