



Avoid Verbal Contracts

by Quenda Behler Story

Is there such a thing as a valid verbal contract? If you offered to do the work, the customer accepted your offer, and you can demonstrate what the deal was, then yes, your verbal contract is probably enforceable. There are some exceptions, however, such as a contract with more than four payments, or a contract that exceeds a certain amount of money and, therefore, in some states must be in writing.

The kicker is demonstrating what the deal was. Proving offer and acceptance can be easy, especially after you have already done the work. The simple fact that the customer allowed you to perform the work is compelling evidence that you and your customer had agreed to something. Now the law has to figure out exactly what that something was. But people get honestly confused about what they said and when they said it.

Usually during the first interview with clients to discuss a job, it's clear what everybody wants. But as the work progresses and changes to the job specs are made, the original terms can become vague. After all the discussions, change orders, additional work, and weeks of the customer's house being under construction, your customer may honestly and sincerely believe you agreed to something else.

In the typical scenario, it's clear there is a contract, but there is nothing written to use to determine what the terms of the contract actually were at the time of the original agreement. Legal crystal-ball gazing starts with the idea that you, the builder or remodeler, are the one

who could have put it in writing and didn't. So when customer and contractor disagree about the terms of a contract, the customer's version will win, unless the contractor has additional evidence to back up his or her version.

Handyman syndrome. Suppose a customer calls you for a price on replacement windows. You give the customer a verbal estimate of \$1,500. During the conversation, the customer says, "While you're here, would you fix that broken kitchen cupboard?" You do the work, but when you hand the customer a bill for \$1,700, including the cupboard repair, the customer exclaims, "I thought the \$1,500 was supposed to be for everything!"

With only a verbal contract, you will have a problem proving that the \$1,500 didn't cover the cupboards. In this kind of disagreement, the law will usually side with the customer. And why not? All you had to do to avoid this confusion was put the agreement in writing — the customer would have seen that the cupboard was not included.

What you heard is not what I meant. Sometimes the customer isn't confused about the terms of the contract — it's the contractor who didn't understand what the customer actually wanted.

Suppose your customer asks you to build a new staircase, with a replacement railing on the upstairs hall. To your customer, "staircase" also includes a new railing for the upper hallway that leads to the head of the stairs. But in your mind, "railing" and "staircase"

are two different animals. Detailed written specifications, describing exactly how many feet of railing will be installed and where, will reveal the confusion immediately. If not, written specs will give you something to fall back on when, at the end of the job before the last payment, the customer says, "But you haven't installed the upstairs railing yet."

Put it in writing. Writing the specs and submitting them to the customer is a much better way to clear up misunderstandings than waiting until after the work is completed. That's why written contracts are so much better than verbal agreements. A written contract makes you look more professional, and nobody has to do any retroactive mind reading to figure out exactly what the contractor and the customer intended.

Do I recommend putting contracts in writing because I believe your customer is a deadbeat who might accept your work and not pay you? Well, it's not the only reason. If your customer is a collection problem, you may still have to resort to liens and lawsuits and all the rest of that legal stuff. But with something in writing, when you go to court you can prove, without difficulty, exactly how much the customer failed to pay you.

Remember that written contracts don't have to look like Henry Ford's last will and testament to be enforceable. Printed forms filled out by hand are fine. Even notes on your letterhead that the customer has signed are okay. What you need is something that clearly spells out the specifications, the payment terms, and any warranties and time frames. ■

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