

Stopping Work During a Dispute

by Quenda Behler Story

Your new client has just missed a progress payment on his kitchen remodel. The reasons are not entirely clear to you, but you are not comfortable incurring any additional expenses until you get this straightened out. Your next phone call is to your lawyer. Can you stop work until the payment is made?

The simple answer is yes. If your client isn't paying according to the terms of the contract, then the client has breached the contract. Legally, that releases you from the obligation to keep working. But, unfortunately, there remains the issue of why the client withheld the payment in the first place.

Contract Language

The client may have the right to withhold payment if the contractor breached the contract first. Sometimes this depends on how the contractor wrote the contract.

For example, suppose the contractor isn't finished with the kitchen because the upper cabinets weren't shipped as ordered. The client sees that the kitchen isn't done and refuses to make the next progress payment. If the terms of the contract require the payment on June 5, the client is obligated to pay on June 5, whether the cabinets are all in or not. Since the draw is tied to a specific date, rather than a point of job progress, if the client doesn't make the payment on June 5, the client has breached the contract first, and the contractor is justified in shutting down the job.

However, if the draw is tied to an event, such as the completion of cabinet installation, the client would be justified

in withholding the payment until that event takes place. In this situation, if the contractor were to stop work, the contractor would be the one breaching the contract.

Even with job progress payments, there may be some relief for the contractor if the contract refers to "substantial completion," which means that most of the job has been completed as intended. However, missing the upper cabinets is a big enough item to impair use of the space.

Let's change the facts a little. Suppose it was just a wine rack that has not been installed because it had to be returned to the manufacturer; in this situation, the kitchen is "substantially complete" otherwise. In a case like this, the work can move ahead, making the space usable as intended, and the client cannot withhold payment without breaching the contract.

A Court Case

A different twist on this recently landed in court in Michigan. The client visited the job site after hours and noticed that the newly installed firebox for the family room fireplace was actually touching a wall stud, instead of allowing for the necessary clearance. The client knew how dangerous that was, and he intended to point it out to the contractor the next day. But when the client arrived on the job site the next morning, the drywall had been hung already, making it impossible to see if the situation had been corrected.

The client requested that the drywall be removed so that the correction could be viewed. The contractor

refused, stating that the necessary clearance had been provided, and there was no reason to do so. The client withheld his progress payment, the contractor shut down the job, and off they went to court.

A compromise. The lawsuit was eventually settled out of court, and a subsequent inspection revealed that the situation had indeed been corrected. However, a simple compromise could have been worked out before going to court, such as this: If the tear-out reveals no problem, the client pays for the repair. If the problem still exists, the contractor is responsible for the repair expense after correcting the problem. Or they could have agreed to split it — anything would have been better than the time and expense incurred in court.

In another incident, the client was an engineer and believed that the header installed over the new front door was insufficient to carry the load. However, the header met code, matched the plan, and was within the span charts. In this instance, the contractor was in the clear to leave the header in place, since the contract did not allow the client to withhold payment in a disagreement of that sort.

How To Stop

If a situation comes to a point where you are considering halting a job, first ask your lawyer. And be sure to document everything. Usually the best procedure is to send, via registered mail, a written demand for payment with a specific date by which payment must be received, say, seven days from the date of the letter; otherwise, work will stop


on that day. The letter should refer to the specifics of the contract to show exactly what is missing and why.

The goal of such a letter is to pressure the client into complying with the terms of the contract. You might mention the effect that stopping work will have on your completion dates. Any tools, equipment, and materials not yet paid for can be removed from the site if the demand isn't met, and you might start removing things like ladders and

scaffolds not immediately required by your crew as the date gets near.

Starting work again after the disagreement has been resolved can be a little tricky, because you will need to mend fences and rebuild your relationship with the client. Also, you must document the effect that such a work stoppage has had on your completion dates so you don't wind up at odds again before the project is completed.

A negotiated settlement is always

preferable to a legal action. The legal right to stop work ignores the logistics of the job site and client relations, and should be a last resort. Of course, some situations become so difficult that stopping work is the best option. Just make sure you're right before you do. 

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