

## Do You Want to Be the Second Contractor on a Job?

by Bryant Byrnes

**M**ost of my clients are general contractors who do remodeling and renovation. In several recent instances, clients have been asked by homeowners to continue or complete jobs that were started by other contractors. The original contractor had been fired in most cases. This kind of thing happens regardless of where we are in the economic cycle, but contractors seem to be more inclined to accept such projects in uncertain economic times. I advise clients to take some commonsense precautions before they agree to finish other contractors' projects.

### What's the Problem?

Figure out what the problem was with the previous contractor. If the problem was clearly due to his incompetence or a personality clash with the homeowner, you might consider taking the job. But if the problem had to do with the client or the architect, you'd be better off turning it down. After all, history does repeat itself.

### Is There a Dispute?

Be sure to ask whether there's a dispute *and* whether any attorneys are involved. Both questions are important. There can be a dispute without attorneys, and attorneys can be involved in the absence of a formal dispute. If the answers are no disputes and no attorneys, splendid — go on to the next point below. If the answer to either question is yes, you need to find out more.

In the vast majority of disputes, not only are there two sides, the truth is usually somewhere in the middle. One big red flag is nonpayment by the owner. Carefully inspect the previous work. If the work seems acceptable and the owner is merely stiffing your brother contractor, take a pass.

### Ask to See the Previous Contract

This is a corollary to the above point. As part of your due diligence, ask for a copy of the first agreement and read it. This will help you find out if your deal is the same — or not. If it's not the same, figure out what's different and why.

### Plans vs. Work

Compare the plans to the actual work. This might sound like General Contracting 101, but I've seen contractors pay a price for ignoring this simple, commonsense rule. Just last week, a client of mine was looking at a job and discovered that the framing had been done with a different, inferior grade of lumber than was specified in the blueprints. The substitute lumber would not support the copious tile and granite also found in the blueprints. My client wisely took a pass on the job.

### Architect Involvement

Ask whether there's an architect on the project. This is not a silly question — these are the days of design-build and frequently there is no architect involved. If there is, you need to meet with him. Get a read on his competence and personality. Two contractor clients of mine had serious problems resulting in expensive mediations because the architects were old-school Frank Lloyd Wright genius types (insufferable).

### Create a Record

If you conclude that the problem was with the first contractor and wish to take the job, don't buy into the first contractor's work (and problems). Create a comprehensive and definitive record of the crime scene before you start. This would include video and photographs, lots of them.

And *look* at them immediately — it's amazing how these can turn out not to be the great records you thought they were when you look at them for the first time months later. In a recent case of mine, none of the photographs came out, but my contractor client didn't know that until the eve of his mediation. As a consequence, we spent a lot of time scrambling to reconstruct records that we hoped would pass muster in their place.

### Before You Agree . . .

- ✓ Find out why the first contractor left
- ✓ Learn whether there is an ongoing legal dispute
- ✓ Ask to see the original contract
- ✓ Compare the work done thus far to the plans
- ✓ Find out whether an architect is involved
- ✓ Create a written and photo record of the existing job
- ✓ Change your own contract as needed to protect yourself from being drawn into the original dispute
- ✓ Consult your attorney
- ✓ Consult your insurance carrier

### **Amend Your Contract**


Your contract should include specific provisions to protect you in the event you are drawn into a dispute between the first contractor and the client. It should provide that you are adequately compensated for your time and trouble if you are required (by subpoena or otherwise) to give testimony at the future mediation, arbitration, or trial; to produce records; or to be otherwise involved with the dispute. In some circumstances, you can spend days getting hammered in deposition or trial and not get paid for your time unless you have contractually protected yourself.

### **Check With Your Attorney**

It goes without saying that you should inform your attorney of what you are doing so that he or she may be in the loop and perhaps suggest further ways you can protect yourself.

### **Talk With Your Insurance Carrier**

You should also inform your insurance agent of what's going on. Surprisingly wise things sometimes come from the mouths of insurance agents or brokers. In California, for example, many urban contractors are insured for remodel and renovation work but not new construction. Thus, a contractor who is taking over a new

construction project would have to get different coverage. The cost of such coverage should be plugged in as part of the job cost. But these are tough times in the insurance marketplace, and the cost of this new coverage might be so high as to be prohibitive. This is important information to have *before* the contract is signed. 

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