

What If the Owner Wants to Hire a Sub?

by Quenda Behler Story

You're a general contractor building an addition for a property owner. Not long after the addition is framed and drywalled, the property owner says, "Hey, an uncle of mine is in the hardwood flooring business, and he'll install the prefinished flooring for half the money you're charging me." What do you do?

Legally speaking, you're the G.C., and you don't have to let the uncle do anything. After all, you have the contract for the work, and it doesn't include the uncle. But you want to be a nice guy, so you allow the uncle to do the work. After the floor is in, the owner asks, "What are you going to do about all those dings in the baseboard and scratched pieces of flooring?" You point out that the uncle dinged the trim and made the scratches. It's the uncle's responsibility to fix them, right?

An Unintended Contract

The good news is that it is indeed the uncle's responsibility. The bad news is that it's also your responsibility. You can ask him to fix his work, you can even sue him, but legally speaking, the uncle is your subcontractor because you allowed him to do work that you contracted to do. By allowing him to do work that's in your contract you've created a contractual relationship with him. It doesn't matter that you didn't intend to make him your sub and didn't put anything in writing. Legally, he's your sub, so if he does something wrong, you're ultimately responsible for fixing it.

(It would be different if the scope of work in your contract didn't include the floor. Then, if the uncle did the floor, he would not be doing work that was in your contract. Fixing those

dings and scratches would not be your responsibility because the only contractual relationship would be between the owner and his uncle.)

There are other ways this arrangement with the uncle can go wrong. Suppose the uncle shows up a week late and delays the completion of the job. If he's your subcontractor, the delay is your problem.

Or suppose it's time to settle up, and the owner says, "Let's see, I paid my uncle directly. The floor was about 30% of the job, so that means I only owe you 70% of the contract price." You respond by saying, "Hey, that floor didn't amount to 30%, and what about my overhead costs? Besides, you didn't pay 30% of the contract price to your uncle. You paid him less than what I was going to charge."

What's the answer? Unfortunately, I don't have one. If you didn't work this out before you let the uncle on site, you opened yourself up to the possibility of a lot of bad outcomes. What you can collect will depend on the owner's good will, the kind of payment terms you had in your contract, and how sympathetic a judge or arbitrator will be.

Owner's Agent

Suppose you want to accommodate the owner's request, but want to make sure you're protected as well. Here's what you could do in this situation. If the conversation about the uncle takes place before you sign the contract, include a clause that sets up the deductions the owner will get from the contract price if he supplies his own tradespeople. The contract should also include language that says the owner's tradespeople are not your subs. They work for the owner, and

your only relationship with them is as the owner's agent. As the owner's agent, it's your job to supervise the tradespeople for the owner, but you do not have a contractor-subcontractor relationship with them. Don't forget to charge a fee for acting as the owner's agent.

If you have already signed the contract when the property owner says he wants to bring in his relatives, write a change order that establishes any change in your contract price. The change order should include language that says the property owner, not you, is contracting with the tradespeople. The change order could also state that to the extent that you have any relationship to the tradespeople at all, it's as the owner's agent. This way, if the uncle does something that causes delay or damage to the property, it's legally the same as if the owner caused the damage or delay himself. If you can't finish by the contract completion date because the owner brought in his deadbeat uncle, it's the owner's problem, not yours. What's more, if you suffer additional costs because of the uncle, you can recover those costs from the owner.

Safety Your Responsibility

Even with this protection, certain legal obligations will always remain, no matter who brings the tradespeople onto the job. You will still have a legal duty to maintain a safe job site so that the uncle doesn't get hurt. You also have a duty to supervise him and see to it that he doesn't hurt anybody else. 

Quenda Behler Story has practiced and taught law for over 25 years and is the author of The Contractor's Plain-English Legal Guide (www.craftsman-book.com).