

Legal

Making Change Orders Work for You

by Gary Ransone

Many of the costly owner/contractor disputes I see in my legal practice involve change orders — or the lack thereof. I know of innumerable residential contractors who, having failed to obtain signed change orders, have eaten hundreds or even thousands

of dollars of legitimate extra work at the end of a job just so they could get the homeowner to release that final check.

Contractors who make this mistake end up providing lots of work for attorneys. Or, to express it mathematically: (No change orders) × (hundreds of thousands of contractors doing work every year) = a full employment act for construction attorneys.

It doesn't have to be that way. No matter how much you dislike paperwork, it's crucial that you get in the habit of obtaining signed, written change orders before you do any extra work. That's the only way to make sure you get paid for those extras.

Start With Good Forms

A good change-order form does more than authorize the extra work — it updates the owner and your company on how the change will affect the project budget and timetable. Nothing shakes a homeowner's confidence — or your bottom line — quite like not knowing the project's current total cost, including change orders. That's why I strongly recommend that contractors have a place to record this information on their standard change-order form.

For example, the form at left includes an accounting summary showing how this and all previous change orders have affected the project's bottom line and project schedule. It provides places to record the original contract amount, the total amount of all change orders to date, and the adjusted gross contract amount after all change orders are tallied. When filling out the form, you should combine profit and overhead with the direct costs to show just one total price for each change order. If a change order has more than one item of extra work, show a total price for each line item.

Including such an accounting summary ensures that you and the owners always know how much work is currently under contract, as well as how much the bottom line has been adjusted up or

CHANGE ORDER FORM AND ACCOUNTING SUMMARY

CONTRACTOR'S NAME: _____
ADDRESS: _____
PHONE: _____ FAX: _____
E-MAIL: _____
LIC #: _____
DATE: _____

OWNER'S NAME: _____
ADDRESS: _____
PROJECT ADDRESS: _____

CONSTRUCTION CHANGE ORDER # _____

I. GENERAL SCOPE OF WORK DESCRIPTION
Pursuant to the Construction Agreement between Contractor and Owner dated _____, 20____, Contractor agrees to perform the following additional work: _____

LUMP SUM PRICE FOR ALL WORK ABOVE: \$ _____
* Additional time needed to complete project as a result of this Change Order: _____ Days.
(Add to completion date in Construction Agreement.)

II. ACCOUNTING SUMMARY

A. Original Contract Amount:	\$ _____
B. Net Change by all prior Change Orders:	\$ _____
C. Adjusted Gross Contract Amount prior to this Change Order:	\$ _____
D. Amount of this Change Order:	\$ _____
E. Adjusted Gross Contract Amount including this Change Order:	\$ _____

III. GENERAL CONDITIONS

A. PAYMENT
Payment for this Change Order is due upon completion of this Change Order work and submittal of invoice by Contractor.

B. INCORPORATION
This Change Order, by agreement of Owner and Contractor, is incorporated by reference into the Construction Agreement between Owner and Contractor. All terms and conditions in the "General Conditions" section of the Construction Agreement between Owner and Contractor apply to this Change Order.

I have read and understood the Change Order above, and I agree to all of its terms.

Date: _____ CONTRACTOR'S SIGNATURE _____
Date: _____ OWNER'S SIGNATURE _____
Date: _____ OWNER'S SIGNATURE _____

Contractor Owner Owner

A good change-order form includes an account summary showing the impact of the change — and of all previous changes — on the project's total cost and schedule.

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down over the course of the project. Keeping this information current will save you time, money, and aggravation. It will also make you look more professional. The owners will have greater confidence in your ability to run the project when they see that you pay attention to basic accounting, and that you properly — and fairly — execute change orders before doing the work.

I recommend that each change order indicate the time that will be required to complete it. If you fail to include the extra time on the form, the owners may think you're behind when you're actually right on schedule. Adjusting contract-completion dates with each change order will alleviate this problem and reduce your legal and financial liability.

Get Organized

Having and using change orders won't do much good without an organized system for identifying which one is for what work, how many have been generated on a certain job, and whether they're signed by the owner.

It's easy to track change orders with a change-order folder in your computer. When a change comes up, just copy the blank change order to a new file, using the owner's name plus the date and number of the change order for the file name. For example, "Smith1.415.07" would be the file name for the Smith job's No. 1 change order, entered April 15, 2007.

Once you've created the new file, enter all the information. (If you filled out a change order on the job site, transfer the information to this file.) Then print two copies: one for the homeowner to sign, and the other for your project file until you receive the signed version.

If the change was authorized by phone and you can't get a signature on the form before starting the work, keep a log of the time and date of the conversation in

which the owner authorized it. Then follow up with a written change order as soon as you can — preferably within a day or two — noting that the owner verbally authorized the work to proceed.

Remember: It's very important that all change orders have dates and numbers. And be sure to include some type of reference to the original or primary contract between you and the owner. The scope-of-work description should be fairly detailed so there's no question about the exact nature of each additional work item.

Be Prepared

To make a change-order system truly effective, you should keep blank forms on the job site for cases where there's not time to generate a change order on your computer before the work must done. Have a printer make you up some three-part NCR forms and keep them in the truck. Fill them out and submit one copy to the owner for signature whenever extra work arises that has to be done immediately.

Over the long run, following this system will bring you more work. If a contractor's presentation looks professional and it's clear that he or she is organized and on top of things, homeowners will be more likely to approve additional work. And the likelihood of being paid for those changes — often the most contentious part of the project — will be much greater.

Hence, you will be taking one giant step toward both increasing your revenues and reducing the number of times you have to call your lawyer — or eat unpaid extra work.

Gary Ransone is an attorney and contractor based in Soquel, Calif. This column was adapted from his book The Contractor's Legal Kit.