

Legal

Cleaning the Slate

by Kevin M. Veler

A short time ago, a remodeler hired me to solve a dispute he had with a customer. He had been building an addition, and when he began framing the walls he discovered that the foundation slab was out of square. The concrete sub owned up to the mistake, and at no charge to the customer fixed the problem by removing and replacing parts of the slab. However, the customer was extremely unhappy with the delay this caused.

Never make a concession without getting the customer to acknowledge — in writing — that the original problem has been completely resolved.

To smooth things over, the remodeler offered to upgrade the appliances and install crown molding in one room for free. The customer seemed satisfied with this arrangement — until later, when there was an unrelated problem with the windows. When the remodeler tried to resolve this new issue, the customer demanded to be compensated for both the windows and the slab. It was as if those free upgrades — which were supposed to “buy the peace” — didn’t exist.

What Went Wrong?

The remodeler got into this situation by doing something I see contractors do all the time: He made a concession without “cleaning the slate” — getting the customer to acknowledge that the problem has been completely resolved.

If the slate isn’t cleaned and a new problem arises, the customer may claim there are two problems to resolve rather than one.

Document the Agreement

I tell clients to address problems head on by asking the customer, “What do we have to agree to, so I can clean the slate with you?” Later, when the matter has been resolved, the customer should acknowledge this resolution and accept the agreed-upon peace offering by signing an agreement.

Get a signature. The agreement that most of my customers use is a simple document that outlines the situation and states that the “customer and contractor have resolved and compromised this matter as set forth above in the resolution section, and the consumer waives, releases, and relinquishes any and all claims from any matters arising up through the date of this document.”

Send an e-mail. Not every contractor feels comfortable presenting a customer with a printed form of this kind. In such cases I recommend cleaning the slate by sending the customer an e-mail clearly referencing the agreement.

The contractor I described above — with the out-of-square slab — did not think he could get his customer to sign a written agreement, so we sent the following e-mail message:

As you know, I regret the problem with your concrete slab. My subcontractor should have caught the error in the formwork prior to the pour. We have since repaired the problem at no charge to you and with a minimum of delay. I know the situation has created a great deal of anger and frustration, but I am glad we were able to resolve these matters. As we agreed, as a compromise and resolution of our claim, Remodeling Inc. will upgrade your appliance group to the “X” series and install type “Y” crown molding in the guest-room suite.

Now, remember our conversation about the clean slate. Since we have agreed to wipe the slate clean between us with this resolution, the entire matter is put to rest; I have attached an invoice to indicate the work being done as part of the resolution at no charge to you. If you have any disagreement with this resolution or if you do not agree that it wipes the slate clean between us, please let me know right away.

By the way, is there anything further we need to discuss for the outdoor fireplace? Let me know and I will give you a call tomorrow between my meetings. I'll check my e-mail in the morning to see if you want me to call.

The last two sentences are very important. The contractor isn't actually concerned about the outdoor fireplace; he asks the question because we want the customer to reply by e-mail, so there will be a record that he received the original message.

Avoid Zero-Dollar Invoices

Some contractors try to document a concession by sending the customer an invoice or change order that states "X work, \$0." But there's a problem with zero-dollar invoices: The "compromise and resolution" terms are not clearly stated and there's no reference to the understanding reached. In the event of a lawsuit, the change order could appear to be a gift. Moreover, if the customer has a change of heart, there's no agreement about the value of the work done for free.

Make it conditional. As a follow-up to the e-mail message described above, the remodeler sent the customer an invoice that stated the following:

X work, \$2,000 value. No Charge to customer: Subject to my e-mail to you dated June 1, 2008, this work was provided as part of our clean-slate arrangement. In the event that our clean slate is breached or there is any dispute as to any of the matters we have resolved as part of this clean slate, you agree that the value of this work should be paid to contractor.

Together, the e-mail and the invoice accomplished most of the objectives of the original form I proposed to the client. The invoice establishes a supportable value for the upgrade accommodation (which may include the contractor's profit and overhead as separate lines) and then shows no charge to the client. The concession is conditional: If the customer tries to ignore the settlement, it's clear he has to pay the contractor for the work.

Since this was a large and complicated project, we assumed there would be additional issues at the end of the job. Sure enough, the customer hired an attorney who brought up the issue of the slab. I forwarded him the clean-slate e-mail and a copy of the invoice. That was the last I heard from him about the slab; our remaining discussions focused on resolving a few minor punch-list items.

An Indirect Approach

Another one of my clients ran into trouble when his cabinet sub dinged the refrigerator. The customer demanded a brand-new fridge, but the contractor convinced him to settle for an upgrade to the cabinetry. None of this was in writing.

Called in after the fact, I told the contractor that he needed to clean the slate. When another problem arose — this time it was damaged crown molding — the contractor resolved the problem by replacing the crown and giving the room a fresh coat of paint. We documented this and the previous resolution in an e-mail message to the customer:

I regret that there was a problem with

the installation of the crown molding. I just wanted to express my appreciation for your understanding. As you know, with regard to the ding to the refrigerator, we have upgraded the cabinetry so that the ding is not visible. We have also corrected the crown molding, and today the room was given a fresh coat of paint as our resolution of this matter with you. I am glad we were able to resolve this in a way that allows us to put these issues behind us and move forward with the remainder of the project.

Will you be available at 1 p.m. tomorrow to do a final punch-list check on the kitchen?

In this case, the contractor doesn't ask the customer to confirm his acceptance. This was not an oversight; given the customer's personality, a request for confirmation would have led to additional demands for compensation. So even though the customer had indicated he was satisfied with the cabinetry upgrade, the acceptance was not completely definitive. The e-mail was our best effort to solidify the clean-slate process.

Two weeks later, when the final punch list was in process, the customer mentioned the problems again and asked for an adjustment in the final payment. When the contractor reminded the customer that they'd resolved these issues and confirmed it by e-mail, the customer let the matter drop.

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