

CALIFORNIA CONSTRUCTION CONTRACTS

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A written construction contract is a very important document that is overlooked by too many contractors. A contract is the best tool with respect to proving what was agreed upon, especially in the case of a dispute. There is no one-stop construction contract for all projects. What is required and what should be included in a contract will depend on the type of work performed, who the client is, what the amount of the contract is, the parties to the contract, if the contractor has been disciplined, etc. What works for one project or with one contractor, may not work for another.

Given the numerous types of projects and contracts available (home improvement; service and repair; new residential construction; commercial; and residential under \$500; as well as subcontract or master subcontract agreements between contractors), the initial decision a contractor needs to make is what type of contract should be used on a particular project. Please visit our website at www.agrlaw.com for additional information required on contracts.

After determining the type of contract needed, it becomes easy to determine the legally required clauses for that contract. The next determination would be the remaining contract clauses or terms to be incorporated into the contract. The essential terms to any construction contract will include: the names of the parties; the parties addresses; the jobsite address and description; scope of work; contract price; time for performance; and time for payment.

The remaining contract terms can be broken down into a couple of categories:

1. Those required by insurance carriers in the event of a claim, or required to be incorporated by the contract documents.

Most insurance policies require upper-tier contractors to have a written contract with their subcontractor that includes indemnity provisions, which basically shift the defense of every claim and coverage for the claim to the subcontractor, regardless of fault.

Insurance Clauses typically include a requirement to name the contractor and owner as additional insureds, and to bear the risk of loss during construction.

Most direct/prime contracts will require that the subcontracts have the same warranty terms as in the prime contract so that the owner is protected.

2. Those helpful or necessary to govern in the event of a dispute.

These clauses can include clauses governing delay, requiring mediation or arbitration, imposing the right to attorneys fees in a dispute, termination for convenience or cause, increase in material costs, retention, and reservation of rights to name a few.

The dispute resolution clause could turn out to be one of the most important clauses in the contract should a dispute arise because it could save time and money in the long run having the dispute procedures laid out rather than having to go through court to argue how to dispute the matter.

Construction contracts purchased from a professional and knowledgeable source (trade associations or builders' exchanges) or even directly from a construction attorney are your best bet to make sure that you have a contract (or contracts, if needed) that works for you and your business.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman:

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