

## 6 Ways for Homeowners to Avoid Disputes with their Contractors

By Magnus R. Andersson

Disputes happen. Especially in construction, and especially in residential construction. More often than not, the dispute could have been avoided, or at least minimized, if the parties had ironed out the details in their contract before work began. That doesn't tend to happen, however. There's often excitement before work starts, and most conversations are about the finished product, the price, and when work will start and finish. The nitty-gritty details of the written contract are often forgotten. That's perfectly understandable, and those conversations about how great the home will look when finished obviously needs to take place, but most homeowners would do well to stop and consider the following questions before they sign on the dotted line.

**1. Changes.** Very few construction projects to go from start to finish without any changes. Sometimes, the change is because the homeowner wants to do something different. Other times, the change is because the conditions are different from what the contractor expected before work began. If a change happens during construction, there may not be time for the homeowner and contractor to iron out how to price the change or what it means for the schedule. Therein lies a great number of disputes. The time to address this is at the contract stage, before work begins. The contract should spell out a process for dealing with any changes that comes up, including how to price them and how the schedule will be adjusted to account for the change.

**2. Payments.** Progress payments is another main area of disputes. The typical dispute involves a homeowner refusing to pay a payment application in the middle of construction because the level of progress doesn't match what the homeowner has paid for to date. Most of these disputes can be avoided by a well-written payment provision that spells out what the contractor has to give the homeowner as part of requesting payment. The goal should be to give the homeowner enough information to be able to tell what is being paid for at any given time.

**3. Retainage.** Homeowners should consider holding back a percentage of the contract price until the work is completely done. In most cases, 5 to 10% is enough. This is called "retainage", and it gives the homeowner some assurance that the contractor will fully complete the job before moving on to the next project. In order to be able to hold back retainage, however, the contract must give the homeowner that right.

**4. Liens.** Many disputes involving residential construction are not between the homeowner and the contractor they hired, but between the homeowner and someone their contractor hired as part of doing the job, such as a subcontractor or supplier. Typically, it involves a subcontractor or supplier who wasn't paid, even though the homeowner paid the contractor. By law, subcontractors and suppliers have the right to lien the home for unpaid work and materials, and the fact that the homeowner paid their contractor is not a defense. In other words, the homeowner could end up paying twice for the same work or materials. Homeowners can protect against that by including a provision in the construction contract requiring their contractor to provide lien waivers or releases from subcontractors and suppliers above a certain dollar amount.

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**5. Termination.** It may seem odd to talk about termination before the contract is even signed, but giving both sides an out if things go sideways could be a way to avoid or minimize disputes. By the time a dispute arises, the relationship between the homeowner and contractor is often beyond salvage. Negotiating a way out under those circumstances could be hard, if not impossible. More often than not, the homeowner ends up firing the contractor, or the contractor walks off the job, which tends to escalate the dispute and end in a lawsuit. A contract provision that allows either side to terminate the contract under certain circumstances may be a way to avoid disputes down the road.

**6. Warranties.** Many residential contractors offer warranties. Also, many material suppliers have their own manufacturer's warranties for items such as roof tiles, decking, or HVAC equipment. These warranties can be invaluable if something goes wrong a couple of years after the project is completed. But they only have value if the homeowner knows who to contact or what the warranty covers. Tracking down that information from a contractor years after the job was complete can be difficult to impossible, so the time to get this information is before the contractor moves on to the next project. Homeowners can ensure that happens by making final payment conditioned on the contractor first delivering all relevant warranty information to the homeowner.

One final thing homeowners should consider before they sign on the dotted line: Hire an experienced attorney to review the contract. In most cases, the cost of an attorney's review will be less than 1% of the construction costs. That review could avoid a dispute that could cost thousands, if not tens of thousands of dollars, in attorney fees and take months to resolve.

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