

THE LEGAL SIDE OF HOUSING: TRADING IN THE HANDSHAKE FOR A WELL-WRITTEN CONTRACT

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In thinking about the article I would write for the September issue of *Blueprint*, my thoughts quickly turned to September's Tour of Remodeled Homes and all of the great remodelers in the HBA. One [construction law](#) topic that I often speak about to remodelers is the benefits of having a well-written contract with their owner-clients; though, of course, new home builders benefit from a well-written contract with their owner-clients just as much as remodelers. In my [construction law](#) practice, I have counseled many remodelers and builders that detailed contracts not only help when disputes arise, but they are actually an asset from the beginning to the end of every construction or remodeling project.

The benefits to builders and remodelers of having a well-written contract include the following:

- **Communication:** The preparation and negotiation of a contract assists with clear communication.
- **Expectations:** A contract can ensure the owner-client has responsible expectations.
- **Accuracy & Preventing Disputes:** A contract is the best recordation of the understandings and agreements between the parties, which can prevent disputes in the future.
- **Strengthening A Company's Legal Position:** Below, I have set forth just a few of the many types of contract provisions that strengthen a company's legal position when a dispute or lawsuit arises.
- **Relevance to [Mechanic's Lien Rights](#):** A contract should include the required "[Owner Notice](#)."
- **Adaptability:** A well-written contract should be able to be used and adapted for years to come.

There are a countless number of contractual provisions that accomplish one or more of these benefits. Herein, I will name just a few. For example, a detailed warranty provision sets forth exactly what is and is not included within the warranty. Desirable provisions related to lawsuits and disputes can include a requirement of arbitration or litigation, payment of attorney's fees by the owner-client, and a requirement of mediation prior to an owner suit, as well as provisions that kick in when there is a claimed default by either party (including notice and period to cure provisions). In addition, certain contract provisions can reduce or eliminate a contractor's liability and spell out the owner-client's payment responsibilities for certain events. A "differing site conditions" provision can establish an owner's payment responsibility for a contractor having to deal with unknown site conditions. Also, a contract can extinguish a contractor's liability when its work is delayed for reasons behind their control. Payment provisions relating to allowances, change orders, and extras are helpful in setting expectations. Finally, certain contract provisions can prevent headaches for contractors during the construction process, such as provisions prohibiting owner-performed/directed work and setting forth the contractor's commitment in terms of spending time with the owner on design and selection decisions. While construction and remodeling projects were once done on a handshake, today's world requires the use of contracts.



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