

## SETTLING WITH THE UNHAPPY CLIENT

The good news that the economy has substantially rebounded. The bad news is that there are still disputes; a small percentage of projects will almost certainly go south. I have had three of these damn things in the last several months.

**The Client Who Couldn't Make Up His Mind.** The first instance was a client who simply could not make up its mind during the job and/or constantly changed the scope of work. The final straw for my contractor client was its client stopping the job midway to reconsider the whole thing.

**The Stinky Client.** In this case, the client seemed to have some legitimate complaints, but when discussions and negotiations floundered, the homeowner forced the matter to the next level by refusing to make the substantial final payment. The final payment was well in excess of the dispute's scope, the amount needed to fix any problems.

**The Sinister Client.** In this particular case, the client seemingly had been planning to blow up the project from the very start of the job. The client insisted on terms and conditions that made a dispute more than likely. This homeowner was a sophisticated businessperson, had substantial previous remodel experience, and in fact had pulled this kind of trick on another contractor years before.

**How It Happens.** Even though each case is sui generis (legal/Latin for "unique"), there is a pattern to these things. These are clients who usually are uncommonly tough when negotiating the contract. Also, once the job starts, they are slow to pay the invoice, or pay in part. Further, these clients will maintain a drumbeat of demanding emails stating a litany of complaints. In hindsight, it would seem that they are trying to creating a record favorable for themselves for the dispute to come.

**When Resolved, These Disputes Need a Written Settlement Agreement.** The vast majority of these problematic situations are resolved shy of mediation, litigation, or binding arbitration. And while I recognize that there are always two sides to these things, it seems to me that to do so the contractor usually must leave something larger than his/her fair share on the table to get the situation resolved. Such is the uncertain life of a contractor.

When the matter is resolved, it is essential that the final agreement be reduced to writing. (This is ironic considering that often the origin of the problem is lack of a written record, such as change orders.) These settlement agreements are somewhat formulaic. They should include a brief recital of the facts; it seems to be emotionally important to the parties that each side's version of the facts be stated in black and white. Also, the settlement typically is not to be considered an admission of liability by either party.

The agreement should also include very specific terms of the settlement, in terms of money and schedule of payments, and whether there is any work that needs to be completed.

**Termination Provision Also?** If the dispute and resolution of the dispute occurs prior to completion of a project, this needs to be specifically stated. The settlement needs to clearly so state and include a description of the progress at time of the termination.

From a practical point of view, the contractor should do a thorough job of creating a photographic record of the status of the work at the time he/she stopped. Therefore, if after the job is completed by the next contractor and there are problems, he/she hopefully will be able to establish what he/she did, and more importantly, what he/she did not do.

**Anti-Disparagement Clause.** This is exactly what it sounds like – each party agrees not to engage in unkind words (to say the least) about the other in social media. An example of such language is as follows:

“The parties further agree to not make any statements/complaints, written or verbal, that may defame, disparage, criticize or otherwise be construed to be damaging to the reputation of the other party to anyone. This includes but is not limited to communications with any consumer reporting agency, business or organization, social media outlet, or any other medium that may result in the dissemination of such statements or complaints and which can reasonably be expected to lead to unfavorable opinion and/or unwanted publicity.”

This seems to be much more important to contractors for the obvious reason that a bad Yelp review can seemingly besmirch an otherwise spotless reputation.

**Conclusion.** When it comes time to part ways with a client because of a dispute there needs be a written agreement describing the terms of the separation. If the termination comes before completion, that fact should be specifically noted and the contractor should be sure that he has a good written and photographic record of what happened and especially the status at the end.

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