

Expert commentary from an industry leader

Considerations in building the Arkansas construction contract



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Northwest Arkansas residents know that the construction industry is booming again. New subdivisions, offices, restaurants and shops seem to appear overnight. Construction is a fast-paced industry that often demands

quick decisions. Often these quick decisions are made over handshakes or text messages to ensure a quick turnaround. Most deals finish without a hitch.

However, it just takes that one mishap to cause worry and trouble for a growing company or a residential homeowner. Whether it be a homeowner with a finish date on a house that is repeatedly postponed, a subcontractor who hasn't been paid, or a contractor with subcontractors that are not completing specified work, too many times I have a prospective client walk into my office seeking help with such a situation. That prospective client often has no written contract outlining the obli-

gations of the various parties involved in a project. Or, the prospective client has utilized a form contract found on the internet, without a full understanding of the contractual terms.

While there is no requirement for a written contract in the construction world, having one on the front end can be useful to protect all parties. While the most obvious topics to address in a construction contract include payment obligations, scope of work, and any required lien notices, there are several other things to consider, many of which are often overlooked when drafting a construction contract.

For example, Arkansas implies certain warranties into a contract, including habitability, sound workmanship and proper construction. Often, builders wish to limit the extent of these warranties in an effort to minimize the time for accountability. The extent to which these warranties can be disclaimed or limited is not a settled area of the law in Arkansas. However, providing certain specific and conspicuous language in a contract is strong evi-

dence in the face of any dispute.

Another often overlooked, yet important, construction topic is insurance. There are numerous risks inherent in all construction projects which can impact not only the parties involved but often the entire project. From general liability, flood, workers' compensation and automobile liability, insurance is important to protect all parties involved in the event one of the risks becomes a reality. Notably, Arkansas law requires that some of these topics, including workers' compensation, be covered by the contractor or subcontractor. A contract that specifies who must carry insurance (generally the owner, contractor and architect), and the type secured, can significantly reduce the risks involved and ensure compliance with the law. It is important for the construction contract to clearly identify any insurance requirements, and ensure that said requirements do not conflict with any other provisions in the contract.

Another often overlooked concept is how to resolve any dispute that may

arise between the parties. Choosing on the front end the applicable law and venue to be applied in a dispute, and the method of dispute resolution, can assist the parties in resolving disputes efficiently. For instance, a company may want to require disputes be addressed in arbitration instead of in a lawsuit, which can sometimes provide a less adversarial, informal, more efficient means of settling a dispute. Arkansas law allows parties to include arbitration provisions in construction contracts.

These considerations are only a handful of areas where a written contract can help remedy construction dispute, or provide strong evidence on the chance a dispute winds up in court. Taking the time on the front end to create a contract, or have an attorney review one you have been asked to execute, may help alleviate potential devastating consequences. ▀

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