

# CONSTRUCTION CONTRACT LAW

**Under Construction**



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# TYPES OF CONTRACTS

- Fixed Price
  - Best suited to projects with few variables or unknown factors
- Cost plus
  - Best suited to projects where there are a large number of unknowns, e.g., renovation of an older home
  - Cost plus a fixed fee
  - Cost plus a percentage (%)
- Hybrid
  - Fixed price on “known” items + allowance on variable items
    - Fixed, e.g., new roof as part of renovation
    - Variable, e.g., kitchen appliances or bathroom fixtures

# SCOPE OF PROJECT

- Plans incorporated by reference
- Pictures of finished project, e.g., what the bathroom or porch will look like when complete (commonly known as “cut sheets”)
- Specifications, e.g., what type of paint is going to be used, what kind of ceramic tiles are going to be installed on outdoor patio
- Materials
- MORE DEFINITION IS BETTER, LEADS TO LESS ARGUMENTS

# Cost of the Work - definition

- All costs reasonably incurred in performing the work
  - cost of materials, supplies, and equipment incorporated or consumed in the work
  - cost of subcontracts, cost of temporary facilities and tools consumed in the work
  - reasonable equipment rental whether equipment is owned by, or rented to Builder
  - wages, payroll taxes, contributions for unemployment, social security, disability, and similar payments paid for direct labor at jobsite or elsewhere for work needed to perform this contract

# Cost of the Work – definition (cont'd)

- travel and subsistence, power, utility, and telephone charges, permit fees, sales and use taxes incurred, premiums for bonds and insurance
- professional fees of consultants engaged by Builder to facilitate work
- all other costs properly and reasonably incurred in the performance of the work
- Prior to final payment, Builder shall provide Buyer with copies of invoices or other proof of the Cost of Work.

# CHANGE ORDERS

- PRICE
- TIME
- PRICE + TIME
- Voluntary (most residential projects)  
vs. Mandatory (commercial)
  
- Devil is in the details –
- how are changes priced?



# BREACH OF CONTRACT

- By Owner
  - Non-payment or slow payment
  - Interference with subcontractors/suppliers
  - Failure to make timely choices of materials, and allowances







- By Builder

- Non-payment of subcontractors/suppliers = liens
- Non-performance by builder, e.g., excessive delay, or goes out of business
- Defective performance by builder, e.g.,
  - Poor workmanship
  - Failure to follow plans or directions of owner
- Subcontractor non-performance + failure to adequately supervise subcontractors
- Cost Plus – Failure to control costs (Contractor who is simply a “pass through” conduit is not doing his/her job)

# REMEDIES

- NORA
- Mediation (or conciliation) – non binding (consider PRIVATE without mediators or court supervised – face to face meeting)
- Arbitration (binding, except for RARE exceptions)
- Litigation
- Mechanics Lien enforcement
  - Owner can file bond to release lien
- Violation of building codes – attorney fees awarded by statute

