

THE COMMUNITY BUILDER

Community Projects... Are You Putting the Cart Before the Horse?

This week we received a note from Lee Weintraub, a trusted construction law attorney from Becker & Poliakoff, reminding us of a very serious and potentially costly issue. That is, putting a vendor to work without first negotiating the final terms of the contract under which they are to do the job.

Without the contract - with written terms such as the scope of work to be done - the materials to be used; when the work is to begin; how long each day are the crews to work and which days are they to work; timely completion of the project and what happens when it is not; where are they to mobilize the equipment or supplies needed; where are the workers to eat lunch and use the facilities (yes, that is important), what are the terms of payment, filing the NOC (in Florida), providing proof of insurance (worker's comp, general liability, etc.) - are all extremely important issues. Without a contract, there is only supposition as to these extremely important issues.

As the economy has continued to improve, everyone is anxious to get out there and generate revenue and get the jobs done. But it is equally as critical to have the contract terms negotiated, and the contract actually signed before any work begins. If the worker's start work before all of this happens, sometimes the contract never winds up being signed. Then the question becomes the legal effect of working on a job under those circumstances.

Mr. Weintraub advocates that clear written contracts increase certainty in relationships and the ability to administer the project with clarity and confidence. "In the absence of a written contract, you are deemed to be working under a verbal contract, begging the question exactly which terms govern your relationship with your client. As long as things are going well, this isn't a problem, but as soon as a hiccup appears (change order, delay, non-payment, unforeseen site conditions - the list goes on and on), your rights are uncertain and a lot of money is on the line. If you were negotiating a written contract and never signed it, but you and your client acted in accordance with its terms anyway, you may be deemed to have accepted that written contract even without a signature. Or not.



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Many factors go into this consideration and your relationship becomes too uncertain to assist in any cogent business planning while on the job."

As a Board Member you have a fiduciary duty to ensure that you have considered all of the facts and issues before committing a job to a vendor. Take the necessary steps to ensure the terms of the contract, including payment terms. Make sure your manager is aware of the projects you are considering and committing to so that vendors are set up in the accounting system to facilitate timely payment when the job is completed. It might take a little longer to get the job going, but it is worth it when the job is completed, and everyone is satisfied with the outcome.

