



## A Monthly Message From Your Attorney

### Home Remodeling Jobs: Don't Forget to Upgrade Your Contract Too

**SCENARIO 1:** *You're a week into a long-awaited kitchen renovation. To minimize costs, you ripped out the countertop and stripped the linoleum and wallpaper yourself. The contractor finally returns your call and tells you he's still on another job and can't start work until next month.*

**SCENARIO 2:** *It's been a tough year as a self-employed contractor, and the converted master bedroom job is a nightmare. You bid the job low with a fixed price. Now the owners won't pay restocking fees after requesting new light fixtures. In addition, the resulting delays mean you'll need to pay overtime wages to finish the work ASAP.*

Although the ongoing recession continues to hamper new home sales, renovation work is still going strong. Whether you are a homeowner or a contractor, the chances of having problems like these can be reduced by using good contracts. A legally binding contract can range from a handwritten bid to multiple pages of 8-point type. At a minimum, however, an effective construction contract should cover four points: scope of work, price, schedule and changes.

#### Scope of Work

What is to be done and who will do it? Does the homeowner expect the contractor to get more than one bid for materials? Does the contractor expect the homeowner to specify fixtures? Whether the job is redoing a downstairs bathroom or adding an entire new wing, the

#### Do We Really Need a Law for This?

We've got some real stunners on the books!



#### **Oregon Revised Statute 811.025 Failure to yield to pedestrian on sidewalk**

(1) The driver of a vehicle commits the offense of failure to yield to a pedestrian on a sidewalk if the driver does not yield the right of way to any pedestrian on a sidewalk.

**Oh, good! I didn't get that before.**

#### **Oregon Revised Statute 811.205 Carrying child on external part of vehicle**

(1) A person commits the offense of carrying a child on an external part of a motor vehicle if the person carries any child upon the hood, fender, running board or other external part of any motor vehicle that is upon a highway.

**So it's ok to drive downtown with the kid on the roof? If you say so!**

contract needs to specify what the job entails. For a simple project, the scope of work may be a short description. For more involved projects, the scope of work may include architectural drawings, plans, schedules and detailed specifications for every material and fixture.

### Price

A good contract must explicitly spell out costs. For example, is the price a fixed sum, a not-to-exceed, or an open-ended time and materials bid? Will the contractor mark up material or labor costs? Will the contractor charge extra for rental equipment? Many disputes about price can be reduced or eliminated completely by simply putting the terms in writing before the work starts.

### Timing of Work and Payment

A contract should state when the work will be completed. If a remodel must be finished by a certain date, the owner should write that date into the contract. Likewise, if the contractor uses “working days” to estimate timelines, the contract should define a working day so the owner understands how long the job will take. Some contracts also include financial incentives to reward early completion or penalties to discourage delays.

The price terms also should say how and when the contractor gets paid. Unless the job is very small, most contractors want a deposit before starting work, plus progress payments as the job is completed. When requesting progress payments, contractors should be able to document the work they have performed.



## What the \$#@% Does That Mean?

### Translating Legal Jargon into Plain English

#### Waiver

A “waiver” refers to the giving up of a legal right. A waiver can occur in a written statement, such as a contract provision that says, “By signing this agreement, I hereby waive all claims against XYZ Company.” In addition, a waiver can occur through action, or more specifically, inaction. For example, a landlord who fails to invoke a “no pets” rule for six months after learning that a tenant has a dog may not be able to enforce that clause in the future.

Waiver issues often arise if a party seeking to enforce a contract has not followed all the necessary steps. If a lender that issued a mortgage fails to give proper notice of default after the homeowner misses a payment, the lender may have waived its right to foreclose on the mortgage and will have to re-start the foreclosure process.

Likewise, it is common to see “non-waiver” clauses in contracts. A non-waiver clause says that the failure of a party to enforce a particular right at one point in time does not waive its rights to enforce the same right, or any other rights, at a later time. So, if the lease in our example above had contained a non-waiver clause, the landlord could have initially turned a blind eye to the dog, but still enforced the no pets rule afterwards.

## Change Orders

Despite best intentions, almost every remodeling job has unforeseen circumstances. An effective contract lets both parties address those changes when they arise. The most common is the written change order, which allows the contract price to be adjusted up or down. Change orders also can adjust the completion date.

Sometimes a contractor and owner will disagree on whether a particular task involves new work that justifies a price adjustment. If that occurs, the contractor should document the costs of that work so there is a clear record available to resolve the dispute later on.

## Measure Twice, Cut Once

The bottom line for contractors and owners alike is that good contracts, like good remodel jobs, result from careful planning. The time spent up front can often save many hours of aggravation and delay later.

## About the Firm

James M. Hillas, P.C. is a law firm specializing in the day to day needs of small businesses. Whether you're a startup in a garage or a well-established company, Jim Hillas provides high quality, cost-effective representation to help you protect your investment and run your business more profitably.

Special areas of expertise include business entity formation, employment matters, drawing up contracts, bringing in new investors, incentivizing slow pay accounts, as well as succession planning and risk management strategies. The firm also maintains an excellent referral network of lawyers, which allows for outstanding representation in other areas of law.

Learn more about how James M. Hillas, P.C. can help your business at [www.hillaslaw.com](http://www.hillaslaw.com)."

## Smart Business Tip of the Month

### **Invest in your strengths.**

Effective leaders don't try to be great at everything. They focus on what they do best and surround themselves with talented people who achieve greatness in other areas. Likewise, companies that focus on and invest in employee strengths, experience far greater engagement from their workforce than those that criticize employee weaknesses.

In their book, Strengths Based Leadership, authors Tom Rath and Barry Conchie explain four areas of leadership strength, and show how to create well-rounded teams that focus on giving people the opportunity to do what they do best every day



If you're a top salesperson who always closes the deal, but can't stand the paperwork, your team will benefit from a detail-oriented administrator who does the follow-up to make things happen.

If you prefer to practice your craft instead of marketing, you'll have more success if you partner with an outgoing networker who loves finding opportunities to sell your services.

Check out [Strengths Based Leadership](#) on Amazon.com.

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