

Getting Paid for Change Orders

by Gary Ransone

Every experienced contractor knows that the owner who tells you on Monday to finish the extra work at all costs (“Just get it done, whatever it takes!”) may not feel the same way about paying for the extra work when he gets your invoice.

In my experience, the most common owner-contractor dispute is over change orders. Change order disputes often result in the contractor losing money, as well as the trust and confidence of the owner (and sometimes his subs). And if there have been other areas of dispute with the owner, disagreeing about change orders often pushes the contractor to the brink of litigation.

The best way to avoid disputes over change orders is to establish a clear policy in your construction agreement on what amounts to “extra work,” “additional work,” or “change order” work and how that work will be identified, carried out, and paid for when it is encountered during the project.

Your agreement should call for extra work to be written up as a change order and approved in writing by the owner before you do it. Occasionally, you may do some work before the owner signs the change order — just to keep the job moving — but 95 percent of the time, it's possible to get that signature first. A signed change order will almost entirely eliminate arguments over the owner's obligation to pay for the work, whereas owners often challenge claims of verbal change orders in litigation or arbitration.

Make It Simple

To make it easier to implement a good written change order system, keep

blank change order forms with you on the job site. You can make up duplicate or triplicate carbon sets of the change order form shown on the next page. Carry them in your truck or briefcase at all times.

When you're on a job and need to write a change order right away, you'll have the forms with you and can do it right there. Then you can get the owner's signature on the spot, or leave a copy for him to sign so you can pick it up before you start the extra work.

You can take it back to your office to fill in the “Accounting Summary” portion either before or after it's signed. Send a copy of the signed change order with the accounting summary information to the owner for his or her records.

Tracking Change Orders

Having and using change orders won't do you much good if you don't have an organized system for identifying which change order is for what work, how many change orders have been generated on a certain job, and whether the owner has signed a given change order.

My method of tracking change orders is to have a subdirectory for them in my computer. When a change order comes up, I copy the blank change order to a new file with a few letters of the owner's name and the number and date of the change order. For example, the file name “Smith1.515” means it's the first change order for the Smith job, and the date is 5/15.

Once you have made a copy of the blank change order or master, fill it in and print two copies. Stamp one copy

“AFTER REVIEWING PLEASE SIGN THIS COPY AND RETURN TO CONTRACTOR” and give it to the owner for signature. Keep the second, unstamped copy in your project file until you get the signed one back from the owner.

For Smith change order #2, follow the same procedure except, rather than copying a blank change order form, copy the file “Smith1.515” and relabel it “Smith2” and the current date. This system has worked well for me. It's convenient to have all your change orders stored in the computer.

On each change order, be sure to move your contract completion date ahead so that the owner doesn't think you're behind when you're actually right on schedule.

If you can't get a signature on the change order before starting the additional work, keep a phone log of the date and time of the conversation in which the owner authorized the additional work. Then, follow up the verbal approval with a written change order ASAP! Fax machines usually make it possible to get a written change order signed before or within a day or two of beginning change order work.

Educating the Client

I always provide the owner with a sample of my change order form at the time of contract signing. We review the form, and I explain that some change orders are to be expected on practically every job.

I also give the owner a form letter, printed on company letterhead, that explains what leads to change orders and how they can be kept to a mini-

DATE: June 16, 2001

CONSTRUCTION CHANGE ORDER # 3

I. GENERAL SCOPE OF WORK DESCRIPTION

Pursuant to the Construction Agreement between Contractor and Owner dated May 14, 2001, Contractor agrees to perform the following additional work:

1. Provide excavation, framing, and materials for foundation and subframing of new redwood deck per plans by Art Architect, dated June 10, 2001.
2. Install owner-supplied 2x6 redwood decking after contractor sands, applies edge treatment, and acid washes this owner-supplied redwood decking.
3. Furnish materials and labor for stairs and stair pad per plans (no handrail or guardrail on deck or stairs; no deck sealer).

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LUMP SUM PRICE FOR ALL WORK ABOVE: \$ 1,780

* Additional time needed to complete project as a result of this Change Order: 7 Days. (Add to completion date in Construction Agreement.)

II. ACCOUNTING SUMMARY

A. Original Contract Amount: <u>(5/14/01)</u>	\$ <u>27,713</u>
B. Net Change by all prior Change Orders:	\$ <u>9,864</u>
C. Adjusted Gross Contract Amount prior to this Change Order:	\$ <u>37,577</u>
D. Amount of this Change Order:	\$ <u>1,780</u>
E. Adjusted Gross Contract Amount including this Change Order:	\$ <u>39,357</u>

III. GENERAL CONDITIONS

A. PAYMENT

Payment for this Change Order is due upon completion of this Change Order work and submittal of invoice by Contractor.

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B. INCORPORATION

This Change Order, by agreement of Owner and Contractor, is incorporated by reference into the Construction Agreement between Owner and Contractor. All terms and conditions in the "General Conditions" section of the Construction Agreement between Owner and Contractor apply to this Change Order.

I have read and understood the Change Order above, and I agree to all of its terms.

Date: 6/16/01 CHARLIE CONTRACTOR, PRESIDENT
CHARLIE CONTRACTOR, PRESIDENT
CHARLIE CONTRACTOR CONSTRUCTION, INC.

Date: 6/16/01 Harry Homeowner
HARRY HOMEOWNER

mum. The letter distinguishes between owner-requested changes and contractor-requested changes and gives examples of each. It stresses the importance of submitting a complete and detailed set of construction drawings that include such information as:

- accurate as-built drawings;
- all structural details and connections;

- electrical, plumbing, and mechanical plans (including the location of all phone and cable jacks and heat ducts);
- accurate door, window, and hardware schedules;
- finish plumbing and electrical fixture list;
- elevations showing all details in


kitchen, bathrooms, and other rooms with cabinetry;

- any exterior concrete flat work, decks, landings, irrigation and landscaping plans;
- finish floor schedule;
- appliance schedule, countertop schedule, and so forth.

The letter also recommends that the owner set aside some money, a "change order contingency fund," to budget for change orders.

Before typing in the customer's name on this letter, make your best effort to guesstimate the amount of change orders that could arise on his or her job. Fill in the percentage of the job that you think change orders will amount to. I often see 5% to 15% in change orders on a typical remodeling job. With a complicated job that has inadequate plans or the potential for considerable concealed conditions, that percentage could, of course, be much higher.

Be sure to explain to the owner that your figure is only a guesstimate, but that it should help in budgeting for the overall cost of the project. Tell the owner that each change order form provides a detailed accounting summary so that he or she will know the adjusted gross contract amount at any point during the construction.

An owner who is troubled by talk of change orders before the job begins probably has little construction experience. Most owners will appreciate you taking the time to educate them, and will help you avoid later misunderstandings. 

Gary Ransone is a practicing construction attorney, licensed general contractor, and the author of The Contractor's Legal Kit.