

Death of a Contractor

by Quenda Behler Story

The wife of a builder recently asked me what her business obligations would be if her husband died in the middle of a construction project. That's a good question, one that needs to be asked before someone dies.

To make this discussion less complicated, let's assume that the builder's wife inherits everything. If the builder was a sole proprietor, his death makes it impossible for him to fulfill the contracts he signed with customers and suppliers. Even if the work was underway, he now has — no joke — the legal excuse of impossibility. His wife doesn't have to complete those contracts if she doesn't want to, and she can't be sued for breach of contract.

Cancellation of Contracts

However, just because a project *could* be canceled because of the builder's death doesn't mean it *must* be canceled. In most states, the wife can choose to complete the project. But if she decides to complete the project or arranges for someone else to complete it, all of the contract terms, including the work schedule, are as binding on her as they were on the builder before his death.

If the builder's wife decides to complete the project, she needs to have a builder's license of her own, or she must make an arrangement with someone who has a license to do the remaining work. In almost every state, death has the effect of automatically and immediately canceling a builder's license. You cannot inherit a builder's license.

Customers and Subcontractors

But if the wife chooses not to, or can't, complete her husband's projects, that doesn't mean she is free to walk away. If she decides not to complete an outstanding project, she still has some obligations toward the parties. If some

of the customer's advance money is left in the builder's account, she — or the executor of the estate — will have to figure out how much of it is for work that has been completed and return the rest to the customer. Money for work the builder hasn't done yet does not belong to his estate. If the builder did work for which he had not yet been paid, his estate can collect only what is owed for the completed portion of the work.

If there are materials on the job site that were paid for with the customer's money, those materials belong to the customer. If the contractor paid for the materials himself without advance money from the customer, then the materials belong to his estate and could be returned for credit.

Don't forget about those outstanding subcontractor invoices. Money the customer has advanced for paying subcontractors does not belong to the builder, and if it isn't used to pay the subs, it must be returned to the customer. (Employee income tax withholding money in the builder's account is also not the property of the estate. There's a special form for sending it to the IRS.)

Planning Ahead


If you want to make sure that these sorts of decisions and tasks are as simple and straightforward for your wife as possible in the event of your death, you must plan ahead.

Besides a will and life insurance, you should have an estate plan that addresses the problem of how your wife can preserve the value of your business assets. You should figure out who could finish your work if you can't. You should also keep an accurate record of how far along each of your projects is, as well as how much money has come in and gone out and for what. A pile of

receipts and invoices stacked on the pickup dashboard is the kind of thing you want to avoid. You should keep records of every change order so that the executor of your estate can determine the status of any outstanding contracts. And you should keep a complete and up-to-date inventory of your assets.

If you are a sole proprietor, you might want to look at the possibility of incorporating, which would make it so much easier to sell the company. But even if you're incorporated, if you're a small, one-man corporation, you will need to do many of the same things the sole proprietor needs to do to arrange for your estate. You'll still need to find someone with a builder's license to complete your projects, for example, because a corporation (at least in Michigan, where I work) cannot hold a license of its own.

You should also consult with your insurance agent about how a good insurance package could smooth out some of the hurdles. This goes beyond buying life insurance to leave your spouse something to live on. A sole proprietor should consider buying a "key man" policy. The proceeds of such a policy are meant to be used to keep the business going or to cover the costs of shutting it down. The premiums of this type of policy are deductible to the business.

If you do it right, you can leave your wife with a business that she could sell or continue to operate herself. If you don't do it right, you can leave her with a big headache at a time in her life when she really doesn't need it. 

Quenda Behler Story has practiced and taught law for over 25 years and is the author of The Contractor's Plain-English Legal Guide (www.craftsman-book.com).