

## Five Steps To Keep Change Orders From Becoming Disputes

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Subcontractors often must balance the demands of owners, government agencies, and general contractors, all while trying to make a profit.

But the construction industry is also rife with defects, change order disputes and project delays. When these issues arise, a subcontractor is often faced with the choice of “getting the work done” while trying to preserve the chance of “getting more work.”

A single setback can create a domino effect leading to delayed payments, compounding costs, and significant legal ramifications – consequences that are particularly challenging for subcontractors to navigate.

### Change Order Disputes

One challenge subcontractors routinely face are change order disputes.

Under almost all construction agreements, the change order process typically begins when either the owner, general contractor, or subcontractor requests a change to the contract, scope of work and/or schedule.

If the parties agree to the request, a formal written change order is prepared, and written authorization to perform the work is provided. The general contractor or subcontractor is then free to proceed with the new, agreed-upon work.

At least that’s what’s *supposed* to happen.

Under field conditions, where issues arise unexpectedly, approval is often verbal, and there is pressure to remain on



schedule. Contractors and subs often proceed without first securing written authorization from the owner. As a result, construction change orders are often the subject of litigation.

### Hard choices

A sub in this position faces several difficult options, none of them good:

- » Threaten to stop or suspend the work.
- » Risk waiving the ability to collect payment for not following the contractual requirements.
- » Be terminated from the project for not completing the work.

These options often cascade into project delays, additional costs for all parties, and potential litigation.

## What's A Sub To Do?

To avoid this situation, subs should be proactive entering when entering into contracts to negotiate clear and fair terms. Here are five ways to do that.

### 1. Define scope and the process upfront

Defining the construction project scope clearly and in detail in the design documents can minimize change order disputes.

All entities should agree on a realistic and equitable change order process before signing the contract. Often times, many large general contractors, owners, and developers push for one-sided contracts that limit their liability regarding payment for changes, which is why subcontractors should negotiate contract provisions that are equitable and clear.

Subcontractors should also include a provision that provides an alternative procedure that permits secondary authorization should the need for a time-sensitive change order arise. Including this type of provision will help ensure the subcontractor's payment and minimize the potential for excessive costs for other parties involved.

### 2. Don't Rely On Handshake Agreements

During a construction project, change orders are commonly initiated via verbal approval on the jobsite. While long existing relationships may cause subcontractors to put faith in handshake agreements, verbal agreements do not always hold up in court.

Instead of relying on good faith, before implementing any change, review the contract and familiarize yourself with all requirements for change orders, including time constraints, format, content, and approval process. This may result in pausing the construction project for an hour or two, but a slight delay in the short term can dramatically decrease an expensive change order dispute at the end of the project.

### 3. Document Digitally

Proper documentation is a key part to compliance and ensuring project quality. It's important to maintain a manageable system of record keeping that provides easy access and up-to-date versions of construction documents. Implementing cloud-based construction project management software allows contractors to automate and document the change order process.

### 4. Open lines of communication

Collaboration is key in any successful construction project. Stakeholder meetings should be scheduled and organized at the beginning, throughout the duration of the project, and at the end to ensure all team members are working on the same page.


### 5. Legal Tools

Changes are going to happen on nearly every construction project and sometimes change order disputes are unavoidable. Subcontractors have a number of legal options at their disposal, including mechanic's liens, which put a legal claim on the property to ensure payment for completed work.

Other options include a stop work notice, a bond, or warranty claim, provided they're done within the required time periods. Subcontracts should also include dispute resolution provisions, which may require participation in mediation before the parties can move to arbitration or commence a lawsuit.

## Conclusion

A change order is the primary means to modify a construction contract and provide flexibility to address the unforeseen conditions.

But the flexibility comes at a cost – often in the form of project delays, additional costs, and potential litigation. Implementing a few best practices can help avoid change order disputes to ensure subcontractors can “get the work done” while preserving the chance of “getting more work.” 



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### About the Author

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