

Member Communication Experience

The Eight Mistakes I See Most in Construction Contracts

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Construction disputes continue to rise in 2025. Yet the complications that trigger those disputes usually boil down to payment, changes, timelines or schedules, and quality of work.

This is why how a contract is written matters.

On construction projects, the unexpected usually occurs. A properly written contract can eliminate many of the potential areas of dispute by providing a roadmap to resolution. Although most construction contracts are professionally written, a number still contain gaps that open the door to disputes.

By more effectively addressing these gaps, stakeholders can reduce the number of conflicts that emerge as a project progresses. While this isn't legal advice, our experience and research has identified eight of the most common contract mistakes that lead to disputes and litigation.

1) A DETAILED PROCESS FOR COMMUNICATING AND HANDLING CHANGES IS LACKING.

Virtually all projects experience changes during their construction. Contracts should stipulate a formal process for communicating, approving, and making changes that is followed by all and approved by all. When that process is properly followed, it is easier to track where and how things got side-tracked.

2) THE FORCE MAJEURE CLAUSE NEEDS TO BE UPDATED.



In the past, Force Majeure clauses have been crafted to cover catastrophic events, such as floods and earthquakes, most of which have a relatively low probability of occurring. The concept of Force Majeure has evolved to include modern day catastrophes, such as the pandemic, global supply chain interruptions, wars, and other calamities. In modern construction contracts, it is important that Force Majeure clauses are revised to provide for today's realities.

3) PROJECT SCOPE IS NOT WELL-DEFINED, OR THE WORDING IS TOO GENERAL.

For example, instead of writing "install lighting," the scope should include a detailed description of the complete scope and steps for the lighting project. Different people understand

things differently. The best contracts enable all parties to understand the same things the same way.

4) TIMELINES AND DEADLINES ARE MISSING OR POORLY DEFINED.

What defines completion, as well as expectations for the time span needed to complete the tasks? How does the contract identify who is responsible for slowdowns and delays? What are the consequences for missing deadlines? Without properly defining these aspects, it becomes difficult to determine the instigator, action, degree of disruption, and penalty.

5) DEFINITIONS FOR PAYMENT ARE MISSING OR INCOMPLETE.

Specifics regarding what constitutes payment, completion, timeline for payment, and even a process for withholding payment should be detailed and agreed upon.

6) STAKEHOLDERS USE A ONE-SIZE-FITS-ALL CONTRACT.

Every project is unique. Each features distinctive details, descriptions and timelines. That means the contract needs to be unique too. One-size-fits-all contracts tend to be overly general in order to accommodate a wider range of projects. But that's also why they are more likely to open the door to misunderstandings and disputes.

7) THERE'S NO PROCESS FOR HANDLING AND SETTLING DISPUTES.

When disputes arise, it can save a lot of time and money to have an already agreed-upon process for settling disputes that details negotiation, withholding payment, mediation, arbitration, litigation, and other paths to resolution.

8) THE CONTRACT DOESN'T ASSIGN RISK AND RISK DISTRIBUTION.

Care should be taken to define risk and identify who's responsible for delays, defects, interruptions, price increases, and other factors.

Finally, although it may seem obvious, it's important that all parties sign the contract as well as approve all changes and revisions. Without agreement signatures, contracts, and changes may not be binding.

To reduce the number of disputes, project stakeholders need to be proactive. That means anticipating the issues that will arise, in order to more easily prevent them beforehand or mitigate them after the fact.

Instead of waiting until disputes happen, applying a lens to each of these eight areas during the contract development process can be quite valuable. Anticipating disputes and agreeing to methods for resolving them will go a long way toward preventing them, potentially saving significant time and money. 



About the Author

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