

## Top 5 Things You Should Consider When Renovating Property

**Y**ou might have a client seeking advice from you on their home renovation project, or you may be wanting to remodel your own home. More times than not, when a client calls you with contractor problems, the project is already spiraling down and a dispute is imminent. This article will provide you and/or your clients with some preliminary tips and advice on remodeling their homes.

**1. Contractor Selection** – Contractor selection is key. Most renovation projects are extensive and require the property to be occupied during the project. Once you identify a contractor, make sure you are hiring a properly licensed contractor. Certified General Contractor (CGC), Certified Building Contractor (CBC) and Certified Residential Contractor (CRC) are the three license types qualified to renovate any residential property. Once you verify the license type, ask for and seek references from the contractor's prior clients. Google searches can be useful for prior customer satisfaction. Conduct an interview with the contractor and ask them to see work on prior projects. Do they have any ongoing project that you can visit? Ask. You will also want to know what subcontractors will be used for the renovation project. The subcontractors do most of the actual work and you will want to review their qualifications and references if possible.

**2. Contract Review and Pricing** – Review your client's proposed renovation contract carefully. There are many factors to consider when reviewing a construction agreement. Particular attention should be paid to the pricing structure set out in the contract (i.e. lump sum, cost plus, etc.). You should consider having a guaranteed

maximum price or "GMP" to hold the contractor accountable for cost overruns. Do not ever agree to anything more than 10% deposit and make sure your client is holding retainage of at least 10% on each payment. Contractors many times look to front load their payment applications early in the project so make sure you base the payment schedule on clearly identifiable project milestones like "completion of the slab", "dry in" or "passing final inspection". Schedule release of the retainage to the contractor on occupancy of the property. Additionally, make sure the contractor selected for the project is properly insured. Many lenders will require a Builders Risk insurance policy for the duration of the project. Discuss the insurance coverages with your client to ensure they are adequately protected.

**3. Contract Administration During the Project** – If your client has a lender handling the draw payments, then the lender will typically handle the gathering of lien releases from all the trades. Review the construction loan documents to ensure they comply with all inspections and fund the draws properly. However, having a lender does not obviate the need to stay on top of lien releases. Your client will receive Notices to Owner during the project. It is merely a notice that the contractor has engaged a subcontractor to do work. Do not authorize any payment to the contractor without first receiving a release from the sub. Failure to obtain the release from the subcontractor can result in your client paying twice for the work.

**4. Allowances and Change Orders** – This is the single most disputed part of any construction renovation project. Many initial bids for residential projects have line items which are

based on an allowance. For example, "Cabinet allowance is \$20,000". Make sure your client pays attention to the allowances. If they ultimately select cabinets that are double the allowance, they are responsible for funding the allowance cost overrun. Think of the allowance as a mere placeholder that will be reconciled at the completion of the work. Busting the allowance can dramatically increase the project cost and provide owners with significant sticker-shock. Change orders are like-wise a source of dispute. Lump Sum pricing and/or a GMP can limit your exposure to excessive change orders. Be wary of the contractor with the lowest bid, because they can sometimes make up for the low bid with change orders. Have a clearly identified process addressing the presentation and acceptance of change orders.

**5. Dispute Resolution** – For residential renovation projects, forget about arbitration. It is too expensive and uncertain. The filing fees are high and the parties need to pay fees associated with the arbitrator's time. Furthermore, there is no (or very limited) appeal rights to a binding arbitration proceeding. Instead, disputes should be determined in the court system with a requirement to engage in pre-suit mediation. Do not waive your right to a jury trial either. Unscrupulous contractors do not look good in front of juries so make sure your client's right to a jury trial remains intact. Do not agree to another venue other than where the project is located. And finally, make sure that your client has a contractual right to recover attorney fees if they prevail in the dispute.

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