

Change Orders Protect Your Profits

by Diana Hanson

Despite the best intentions of deck builders and homeowners alike, changes to the original deck project are sometimes necessary even after the work has begun. They can originate with the homeowners, who might decide to add lighting or to substitute a snazzy new railing system for the one you already ordered. Other times, the scope of the project may change because of unexpected soil conditions or scary problems under the siding that must be addressed before the original project can continue. Sometimes specified materials become unavailable, and sometimes it just rains.

To protect both the deck builder and the homeowner, no material change in a project should be made without a change order signed by both parties. Failing to memorialize the change in writing leaves you open to “he said, she said” arguments. You will likely lose money and time, and gain only aggravation.

Because change orders should be made part of the original contract for a deck project, any article about change orders needs to start with a brief discussion of contracts. Odds are, you already use a contract in your business and generally know what belongs in one, so I’ll just touch on the main points.

Contract Overview

Contracts, like change orders, protect you from “he said, she said” arguments. They must include the names of the parties (you and the homeowner); the consideration (you promise to build a deck, the home-

owner promises to pay you); a description of the project and the services and materials to be provided, usually with drawings attached; the dates you expect to start and finish; and the dates you expect to be paid. These basics are followed by clauses related to “when things go wrong,” covering such topics as mediation or arbitration, severability of clauses (so one bad clause doesn’t ruin the whole contract), choice of law and venue (what state you prefer to sue or be sued in), and so on.

Laws in different states vary widely with respect to what a construction contract must contain. For example, some states have specific rules about the amount of the deposit you can take from a homeowner. Also, a commonly held misconception is that everyone has three days to back out of a contract, but that actually depends on state law. Be sure to have a lawyer check your contract out; you don’t want a contract you can’t enforce or, just as bad, one that gets you in trouble.

Put Your Change Order Procedure in the Contract

Neither you nor the homeowner has any inherent right to change any of the terms and conditions of the contract unless it specifically allows for changes. Clearly, a contract that doesn’t allow for changes due to certain circumstances arising during construction would be impractical. But in addition to allowing changes, contracts should spell out the procedure for making changes.

Including a procedure in the

contract for making change orders not only takes care of legal issues, it helps to manage customer expectations. Have you ever done something like casually quote an extra set of steps at \$400, only to have the homeowner recall, when it comes time to pay up, that you indicated \$200? If the homeowner knows up front you have a change order procedure in your contract, he or she can’t expect that a casual conversation at the job site means a contract change has been made. No change order; no change.

Sample language in your contract might go something like this (you should run any contract language by your attorney): “Change Order Procedure. In the event the parties desire to make a change to the construction project described in this instrument, then the parties shall complete a Change Order form, copy attached as Exhibit ___, outlining the changes desired. Any and all such Change Orders shall be signed by both parties to this agreement. Change Orders signed by both parties become part of this agreement and therefore subject to the terms and conditions expressed herein. The parties understand and agree that no changes will be undertaken except by the procedure outlined in this paragraph.”

What Change Orders Should Cover

A good change order will detail the modification — including changes to services, materials, and designs — that you and the homeowner have mutually agreed upon. It should note

any additional charges and when they will be paid. It should indicate how many extra days, if any, will be added to the duration of the project. Last, the change order needs to stipulate that the change becomes a part of the original contract. Here is a list of some of the details that change orders should address:

1. What is to be changed. Be as specific and detailed as you were in the original agreement. Provide new drawings if necessary. Change orders should be at least detailed enough for someone to order materials based on the information. For example, instead of writing “add 12-volt lighting along the south railing,” write something like “install X brand, style Y lighting on the south railing, approximately six lights.” Also, phrases like “match existing finish” are better stated as “match existing finish as closely as possible from local supply source; homeowner to sign off.”

2. Price changes. Decide what to charge for the change to the contract and list it on the change order. In the event the price doesn't change, but only the materials change or the time to perform the services changes, indicating “contract price unchanged” on the change order leaves no doubts.

3. Increase or decrease in time of completion. Changes in the contract time should be agreed to and entered on a change order form. It is important that you do not leave the time section blank, because that could result in a dispute. The homeowner could interpret it to mean there is no change, while you may take the blank to mean “to be determined later.” If there is no change in time then the change order should state “no change to contract time.”

4. New permitting requirements. If the change is going to mean going back to the building department or

ordering another inspection, note it on the change order. Avoid ambiguity and use language like “change order contingent upon obtaining modified building permit.”

5. Incorporation into the original agreement. Indicate somewhere on the change order form that the signing of it by both parties incorporates it into the terms of the original agreement. After the change order is signed by both you and the homeowner, each of you should retain a signed copy. The original contract with the change order now comprises the “contract.”

Important: Only the original signer of the contract should sign a change order. You don't want to be in a nightmare situation where the husband signed the original contract and the wife signed the change order, but the two never spoke about them.

You may need to do more than one change order before you are done with the job, so number them Change Order #1, Change Order #2, ... Change Order #13 (let's hope you never hit that number!).

Change Orders Drive Professionalism

Having a change order procedure will make you a better business person. If you include a sample change order in your sales pitch, potential customers will see your professionalism and the attention to detail you provide. This also will give you the opportunity to talk about how unforeseen problems (like discovering “mystery” cable lines where you expected to dig post holes) will require a change order to do the additional work.

Incorporating a change order procedure into your business practices is only part of the battle — you need to instruct your crew as well. If the homeowner talks to your crew about doing something extra or different,

they can simply and politely say that it might be a brilliant idea, but it would require a change order and the homeowner needs to talk to the boss (or the salesperson, as the case may be).

Without a change order procedure, you may find yourself at the mercy of a confused homeowner when it's time to collect. That's never a good thing. With signed change orders as back up for additional fees or for visible differences from what was originally planned, you can be assured of an easier walk-through on the finished project. ❖

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