

Should I Use a Written Contract?

Should I use a written contract and, if so, why? We recommend that our clients have a written contract for several reasons, including:

- 1) You do not want a judge or jury, who are generally not familiar with construction practices, determining the scope of your obligations;
- 2) working through a contract at the front end of the project can help ensure that you and your client are 'on the same page' and that your client does not have unreasonable expectations regarding the project (i.e. expecting you to be on site every day without realizing the associated cost);
- 3) the design professional can limit both its exposure as well as the client/owner's exposure for contractor claims through the use of carefully drafted owner/design professional and owner/contractor contracts;
- 4) terms that were the subject of clear oral agreements often become much less clear and the subject of dispute when litigation begins; and
- 5) claims can be avoided or the cost/duration of litigation reduced where there is a written contract clearly defining the parties' obligations to each other.

Design professionals have available to them standard form contracts from the A.I.A and E.J.C.D.C which are a relatively easy way to ensure that a written agreement is put in place. These types of contracts offer the advantages that sophisticated owners are familiar and therefore comfortable with them and a great deal of time and effort has gone into generating them and updating them. They are a great resource. They also have some disadvantages. By virtue of being form agreements, they do not take into account project specific considerations or address specific New York legal issues. Also, these agreements are sometimes modified by owners who are not familiar with the reasons why certain provisions exist and their interaction with other agreements within the family of documents in use on a project. These modifications can be harmful to both the owner and design professional and result in inconsistent contractual provisions, likely to create confusion and misunderstandings between the parties.

The Sugarman Law Firm is always available to assist its clients with contract review and drafting as well as in-house training to familiarize your staff with the contracts that they are using and operating under on a daily basis.