



WORKING WITH CONTRACTORS

What's the Problem?

Several years ago we did an inspection for a couple who were very frustrated that the house they had just built was not as they expected it to be. As we went through the house, we found a number of conditions that were blatantly inconsistent with the owners' expectations. As the owner's engineer, we could provide some assistance to resolve the construction-related problems by providing advice on how it should be done and how to negotiate with a contractor. However, there was little that we could do to help correct those items that simply did not meet their expectations.

The main source of the problem was a contract that had been written in extraordinarily simple language saying, in essence, "I will build you a house with three bedrooms, a living room, a dining room, two bathrooms and a two-car garage." When it came to resolving differences after the home was built, there was little opportunity to use that contract to argue that things had not been done consistent with the original agreement. Needless to say, the contract simply did not provide any basis for discussing what type of kitchen cabinets should have been used, or what kind of windows, or what kind of carpeting, or what kind of flooring in the kitchen, or how many, many things throughout the house should have been handled. All of this left the owners with a home that was very disappointing and frustrating and, worst of all, one which they would be living with for many years...A house? Yes. Their home? No!

This is just one example of many we have seen where the absence of a solid, working relationship with the contractor resulted in a very unsatisfying situation for the owner.

Collapsing foundation walls, leaky basements, collapsing roofs, poor quality woodwork and masonry, totally unsafe electrical systems, swimming pools that cannot be used for risk of electrical shock, serious structural settlement, windows that break and fall out of the house - we have seen them all.

Over the years, we have noticed this to be a recurring problem and one which has frequently resulted in lawsuits that often produce unhappy, frustrated people, and unsatisfactory settlements. Being in the middle, as an expert witness or engineering consultant, we have listened to both sides of the story, the homeowners' and the contractor's; in many cases, it sounded like they were talking about different houses, so great was the gap between them.

As a homeowner, working with contractors can be difficult, uncomfortable and sometimes

frustrating, but you can improve the situation. Above all else, keep in mind that you are the boss. You are the one who is spending the money, you conceived the idea, you will be living with the results and you are providing the opportunity for your contractor to stay in business.

Good contractors, and there are many, understand the relationship and will do a good job, with the right understanding from the outset.

From our more than forty years of working with thousands of homeowners, we believe that your relationship with your contractor can work much more comfortably. What we would like to do here is share our suggestions for a better relationship with your contractor. Keep in mind this is not a problem-free procedure. There will be problems and frustrations. The important point is to understand the source of those problems and deal with them directly and effectively.

Where to Start?

First of all, stop and take a serious look at yourself, your strengths and your weaknesses.

First your strengths:

1. You have a goal and an idea (which probably needs a bit more clarification).
2. You have some money to spend on the project.
3. You have some time to spend (and this is vitally important) to assure that this project comes out the way you want it.
4. You have some experience working with other people - whether it is your job, family, or interaction with other people in your life.

As for your weaknesses:

1. You may not be comfortable managing other people.
2. You may not be comfortable considering yourself the boss.
3. You are probably not familiar with the "ground rules" of the construction/contractor process (We're not sure anyone is!).
4. You are probably unfamiliar with the broad range of alternatives that may be available to you to achieve your particular project. You don't know how others have solved the kinds of problems you are going to run into.

In summary, you are probably uncomfortable with the thought that you may not know what you

need to know to do what you want to do. You are not alone nor are you destined to failure.

The important point is to understand exactly what you do have to work with and to take best advantage of those resources.

Who is Your Partner?

Now let's take a look at the contractor. His or her strengths should include:

1. Solid knowledge of his or her trade (but don't make assumptions, sometimes the road from "carpenter's helper" to "contractor" is a very short one, always check references).
2. An understanding of and access to the resources necessary to complete your project.
3. a desire to run a good business, have a good reputation, be proud of his or her work quality and make a profit.

As for his or her weaknesses:

1. You may be surprised to learn that he or she also has a limited range of alternatives that might apply to your project. If what you want is even slightly unusual or out of the ordinary, be prepared for some resistance.
2. He or she is often impatient with communication and unwilling to spend sufficient time to really understand your ideas, goals and needs.
3. He or she is typically independent, working on his or her own more for the satisfaction of being his or her own boss than for the financial reward that might result from being in his or her own business. Note that well! Being aware of his need for independence may be the key to a successful project.

The Next Step...

Now what are we going to do to get from here to a completed, satisfying project? We know you have an idea, and we know the contractor can convert that idea into reality if he or she clearly understands it. We also know that both of you may be unwilling to communicate thoroughly and that you may be unwilling to take charge of the project (remember, you may be uncomfortable with the fact that you don't know all that you think you need to know).

So far, we seem destined to failure. But the truth is, most projects start out exactly this way. And we mean most projects, from small homes to major skyscrapers. Big or small, manage the strengths, capitalize on the skills, be confident in your ability to work with the weaknesses, and always take advantage of all the resources available.

Define What You Want To Do

Before you talk with a contractor, sit down (husband and wife, everyone concerned) and write down, as best you can (it won't be perfect), a description of what you want to do. For small projects involving appliance repairs or the installation of a small piece of equipment, this will be quite simple. Even then, do it: getting your thoughts together before you talk to someone is perhaps the most valuable step in this entire process.

For a bigger project involving renovation or expansion, be as specific as you can. Don't worry what it looks like, how it sounds - just get down your thoughts. Answer questions like:

1. What is it you are going to do?
2. Why are you going to do it?
3. How big does it need to be?
4. Generally what should it look like?
5. What should it match?
6. How is the inside going to be treated?
7. How is the outside going to be treated?
8. What does on the roof?
9. what goes on the sides?
10. What goes on the floors?
11. What goes on the walls?
12. What is your budget?
13. How soon can you start?

Where possible, if you have seen pictures in magazines of something similar, attach these right to your notes. You would do well to even spend some time in the library reviewing the "Home and Garden" variety magazines. Some articles may be superficial but they will provide ideas to start you off on the right foot.

Discuss the Project with Contractors

Locate at least three contractors who work in your area. The best way is by talking with neighbors who have had work done. There are other sources, including building supply outlets, attorneys, appraisers, architects, engineers, and banks.

Take some time (evenings and weekends are probably the best for most contractors) to talk with each contractor about your project. At this point you are talking, not making commitments, not asking for prices, just simply discussing the project. Ask them questions about what they think, and what ideas they might have. Spend an hour or more with each contractor, simply discussing the project. No commitments, just discussion.

Define Every Detail of the Project

Now that you have discussed the project with the contractors, go back on your own (and with your family), and go through step #1 again. Be as specific as you possibly can, define everything that is important to you in the project. Here are just some questions to ask.

- What is the budget? (How much are you willing to spend on the total project?)
- What is the schedule? (By when do you want the project done?)
- What hours of the day are you willing to have work going on in your house?
- Do you expect the project to be cleaned up every night?
- Is there painting to be done by the contractor (or will you do that)?
- Do you want a special interior trim? Should it match the existing?
- What kind of landscaping is involved?
- Is a special kind of window important to you?
- What kind of lighting?
- How many electrical outlets?
- Is there heating required? Cooling? Special environmental considerations?
- What other costs will be involved besides what you have to spend on the contractor, such as finish painting, interior decorating, etc.?
- What will you need to do to prepare the project for the contractor to start, such as moving furniture, choosing materials, etc.?
- What kind of carpeting or flooring is required?
- Is there a particular kind of shelving or cabinet that is important to you?
- Are there any plumbing fixtures involved? If so, what kind do you want? what color? What kind of faucets and hardware?
- What sort of doors do you want? Hollow core? Solid core? Should there be special locks on the doors? What kind of hardware is important to you for the doors?
- Are the walls to be insulated?
- Do you want any outside electrical fixtures or lighting?

Don't stop until you have exhausted every possible thought that you and your family can come up with in terms of the things that are important to you in this project, and, again, wherever possible, include pictures, sketches, and any other thing that comes to mind which will help to define the project. Don't worry about what it looks like, just get your thoughts down to express as well as possible what is of concern to you.

Consult with an Engineer or Architect

Most projects will benefit from a few hours of consultation with an engineer or an architect who can help you focus your thoughts. You can look in the Yellow Pages under Building Inspection Services, Consulting Engineers, and Architects. To select a consultant to work with, you should consider the following:

1. Call the consultant you are considering, describe your project and the fact that you would like to spend a couple of hours talking with them about it. Be clear that their assistance would be limited to just that few hours of discussion.
2. Ask them if they have specific experience in residential construction.
3. Ask them if they are willing to spend just a couple of hours discussing your project without becoming an ongoing consultant (who may expect large fees).
4. Ask them what their qualifications are, how much experience they have and if they are a registered engineer or architect in your state.
5. Ask for at least three references of people who have worked with them in similar situations. When you do get references, check them out! Find out as much as you can about who you are going to be working with.

When you first sit down with a consultant, you should expect him or her to listen. If they start by telling you all the things that you should do, they're not the ones you want to work with. The best consultant is one who will spend a good deal of time listening to you first to understand fully your needs, to help you clarify your own ideas, and then to suggest the best directions for you to pursue.

At this time, make no commitments beyond a couple of hours worth of discussion. Remember, you are the one running the show. What you are doing is simply taking advantage of the resources available to you in order to best achieve your goals.

Check References

Obtain references (at least three from each) from the three contractors you spoke with, customers who have had similar work done within the last year. Also, get two references from each contractor for work he or she completed three to five years ago. Check the references, and be thorough in your questions. Ask the individuals who have been provided as references if they were comfortable working with the contractor, if the work was done neatly and completed on time, if the final cost was what they expected, if the quality was what they expected.

Select a Proposal

Now, with the project defined, go back to at least two of the original contractors to obtain a specific proposal from them defining:

- The total price,
- Their method of billing,
- When they expect to be paid,
- Specifically who will be working on your project,

- What their daily work schedule will be,
- What their clean-up procedures are,
- Exactly what they plan to do to complete your project.

Their proposal should cover at least all of the details you have requested. They should be providing still more detail to help clarify exactly what work is going to be done. When you receive their proposal, review it carefully, ask questions, suggest additions or changes, and, ultimately, be convinced that they understand what it is you want done.

Associated General Contractors (AGC), a national contractor organization, and the National Association of Home Builders (NAHB) both provide standard forms for construction contracts and proposals. You may want to suggest that your contractors provide their proposal on these forms or something similar so that they will be compatible and relatively easy to compare.

Remember, you are in a situation where you are uncomfortable, you may not know everything that you need to know. The more you specifically define things, the more questions will come to mind. The more questions you ask, the more you will know. The more you know, the more comfortable you will be.

Trust Your Intuition

Now, what about the intangibles?

Call it Karma, call it good vibes, call it what you will, but in your initial discussions, you will have been more "comfortable" with some of the contractors than the others. Those that you are most comfortable with are those that should have the opportunity to present a proposal to you. Keep in mind that you are going to be dealing with this person constantly during the course of your project, and comfortableness in working with them is a vital part of the ultimate success. Feeling uncomfortable is almost a guarantee that the relationship will get worse and put the entire project and your ultimate satisfaction in jeopardy.

Keep in mind, you will not completely or perfectly define the project. The important thing is that you are establishing a solid relationship with the contractor that lets him know that you are interested in working with him.

Questions will come up, and even some problems, but now you have a sound base to work from, you have minimized the frustration potential of anything that will come up later on.

Don't forget that if you feel particularly confused by something and are not comfortable with the answers you're getting, your consultant (architect or engineer) can help. a few minutes on the phone may put your concerns to rest.

Now, based on criteria important to you, pick one of the contractors. It doesn't necessarily have to be the one with the lowest price, perhaps his work procedures or ideas for the project are most important.

Sign an Agreement

After you have picked a contractor, ask him or her to compile a summary of your agreement. It should include (at least by reference) all of the descriptions you have used up to this point, along with all the discussions that you have had about who is going to be working on the project, what payments, what schedules, etc., etc.

It does not have to be fancy or formal, it doesn't have to be prepared by an attorney (although you may want to), just make it as detailed as you possibly can and both of you should sign it, acknowledging the fact that this is a reasonable representation of the project you intend to complete.

It should include at least the following:

- When the contractor is going to start,
- When they are going to finish,
- Who will be working on the project,
- What will be daily arrival and departure times,
- What is the detailed description of the project itself,
- What materials are going to be used,
- Who paints,
- what the total cost will be,
- What insurance coverage will be provided by the contractor.

The American Institute of Architects (AIA), the American Consulting Engineers Council (ACEC), the Associated General Contractors (AGC), the National Association of Home Builders (NAHB), all provide standard forms for construction contracts. Most of these have a number of blanks that can be filled in that assure that everything is being covered adequately. Many of these forms are available through your local building supply outlets, stationery stores, architects or engineers.

Also, your state may have a required contract form to use, check with the Secretary of State.

Always be sure the contractor is providing all necessary public liability and workmen's compensation insurance. You should obtain actual copies of his or her insurance certificates to be sure this coverage is in force. This is a common request to a contractor and should not be a problem for him or her. If you have any doubts about insurance coverage, you should also discuss the project with your own insurance agent to be sure that you are not vulnerable.

As a general rule, we also recommend that you include in the contract a retainer clause that allows

you to retain about 10% of the total project cost for a period of 15 to 30 days after substantial completion. This gives you an opportunity to live with the project for a while to be sure that you are completely satisfied. And be fair, be sure to make the final payment within the prescribed time or explain why not. Don't take advantage of this clause to make changes that were not part of the original agreement.

Another thought about the contract: if the project is big enough (\$10,000 or more), it may be to your advantage to spend a few minutes with your attorney.

However, don't overdo legal review. The most important point is that your contract (agreement) is specific about what you expect the project to be. An attorney will make certain that a contract includes the necessary clauses to assure reasonable recourse if something goes wrong. We prefer the more positive approach that a contract should first of all sufficiently define the work that is going to be done and the agreement between the two parties. The need for recourse, although still important, should be minimized.

Monitor the Progress of the Project

Hey, we're not done yet!

Now that you have selected the contractor, it is up to the two of you to get the project done. Yes, it is up to the two of you. The contractor has skills, you have goals, and, remember, at the outset we said that you have time.

If you are going to be an effective manager of your project, you need to be involved. Whether the project is going to last two days or three months, you should be there regularly. Always have a clipboard with you and take notes about what is going on at that time. Jot down questions, take note of the answers you receive and keep a daily activity log. Let the contractor know you're interested and concerned about a quality product, and let him or her know where you can be reached. A 5-minute phone call could prevent a wasted working day. Remember, you are maintaining a very important relationship.

When you are on site, never offer to "help out." This can be an insurance problem and can lead to a good deal of misunderstanding should some problem arise later on.

Sometimes the contractor will be uncomfortable when you ask questions, other times he or she will truly appreciate the fact that you notice something he or she has done. The point is - be involved, and if something doesn't seem like it's going the way you want it, talk about it. Wherever possible, avoid saying "I don't like your work," use comments like, "that's not what I expected," or "that's not my preference." Avoid challenges like, "you didn't do it right."

Keep in mind that you are typically dealing with an independent person who doesn't like to be directly confronted or criticized. Also, you are still a bit unsure of whether you know everything

you need to know to be running this job. Therefore, criticism should be handled tactfully. Whenever possible, express your thoughts and concerns as your preferences for what is important to you. This approach will be received much better than outright criticism that suggests that the contractor is not doing a good job.

Also, whenever appropriate, compliment the work. Everyone appreciates sincere recognition of their work.

Resolve Any Problems

There are going to be problems. There are going to be things that don't seem to be going the way they should. There are going to be delays, there may even be some cost overruns. You have built a solid relationship to avoid most of these, but sometimes things just don't work.

The important thing is, the minute something doesn't seem to be going the way you want it to, start talking about it.

And be flexible. While you do have ideals and goals and objectives and are the boss, the contractor also has limitations and constraints with which he must work. Your first goal should be to try to understand exactly what it is he or she intends to do and what limitations he or she may be working with. After that, it is up to you to decide whether or not a compromise is acceptable. But keep in mind that **YOU ARE THE BOSS**. If you don't like something, change it. You are the one who will live with the results. Just be fair, some things may require extra time or extra money to change them to the way you want them.

Accept the Project Formally

There is a point in the project when you should (by letter or perhaps by a note on your final check) acknowledge that you have accepted the project as complete and satisfactory according to your agreement with the contractor. You have been the boss, you have been involved, you have established a good relationship, you have had to make some compromises along the way, and here you are at the end. The contractor deserves to know that you are now satisfied that the work has been completed consistent with the original intent of the project. If you changed your mind during the project, it is not fair to say that the contractor did not do what you asked him to do. On the other hand, if you were very clear at the beginning and the contractor went off in some other direction, you have every right to demand that it be completed before any final payments are made. You're the boss, you did it, congratulations!!

Avoid Litigation

At all costs, avoid litigation. It is almost never worth it. No one wins. The cost (in time, irritation,

and money) is usually far higher than any potential settlement.

Professionals - engineers, attorneys, accountants - all cost money. And they may not necessarily agree with you. Litigation is, at best, a last resort and should only be considered when all other avenues have been exhausted, or where injury or catastrophe are involved.

In our experience, most litigation grows out of a lack of clarification at the outset of the project and an unwillingness to deal with disagreements that come up. There is simply no substitute for taking the time at the beginning of the project and (fumbling as you may, we all do - contractors, owners, builders, engineers alike) pushing yourself to define the project and to satisfy yourself that the contractor knows clearly what it is that you expect. You are the boss, you have the dollars to spend, you are giving him the opportunity stay in business. He is interested in understanding your project and doing a good job for you. It is communications - even if it sometimes seems like you're speaking different languages - that will assure a successful and satisfactory project. The frustrations along the way will be more than offset by the end results.

Conclusion

Define your project, do your homework, manage your project and communicate regularly and thoroughly. You are on your way to a successful project!