

A black and white photograph of a man and a woman in a professional setting, possibly a meeting or a construction site. The man is wearing a dark t-shirt and jeans, and the woman is wearing a light-colored top. They are both looking towards each other.

Residential Contractor's Guide to

PREVENTING & RESOLVING DISPUTES

CONSTRUCTION
CONTRACTORS
BOARD

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How Contractors can avoid problems

Every year the Oregon Construction Contractors Board (CCB) processes thousands of complaints against contractors. Many of these complaints could have been avoided. The following suggestions may help you avoid problems with your customers.

1. Stay legal with the CCB

- **Maintain an active CCB license, and work in the correct license category.** To do remodeling and new home construction, you must be licensed as a General Contractor.
- **If you have employees, you must be licensed as nonexempt with the CCB.** If you do not have employees, or if you use temporary workers from a worker leasing company, you must be classified as “exempt.” Nonexempt means you must carry workers compensation.

2. Residential construction notices

- **Contractors who have entered into a written contract with a property owner, must provide three required residential notices to owners at the time a written contract is signed.** The notices are:

1. Consumer Protection Notice
2. Notice of Procedure
3. Information Notice to Owner About Construction Liens (Required when the contract price is \$1000 or more.)

These notices are not required to be given by subcontractors. Subcontractors and material or equipment suppliers should provide the property owner with a “Notice of Right to Lien,” to preserve their lien rights. Copies of these forms are available on the CCB website by going to “Contractor Forms” then clicking on “Residential Contractor Notices and Forms.”

- **Contractors must maintain proof that the notices were given, for a period of two years after the contract was entered into.** Proof may include any of the following:



1. A signed copy of the notices.
2. A copy of the contract if the notices are fully contained in the contract.
3. The homeowner’s initialed acknowledgment in the contract that they received each notice.

3. Prevent disputes

- **Only bid jobs you have the expertise to do.** If the job is outside your area of expertise, get training in the trade/ craft required, or don’t take the job
- **Pay attention to your gut instincts.** If you get the feeling that this job is going to be more trouble than it’s worth, don’t do it. Contractors sometimes intuitively know from the very beginning there will be problems, but they accept the job anyway. Use foresight rather than hindsight.
- **Start with a clear understanding of what your client’s expectations are,** and the extent and quality of work that will be required to meet those expectations.
 1. Spend time at the front end of a job to work out the gray areas. Too often contractors work out points A and B and decide to handle C later. Work out all the details: work to be performed, payment schedule, etc. **Reach a complete meeting of the minds before you start.**
 2. **Don’t perform work for customers you cannot communicate with.** Some jobs are better left for your competitors.

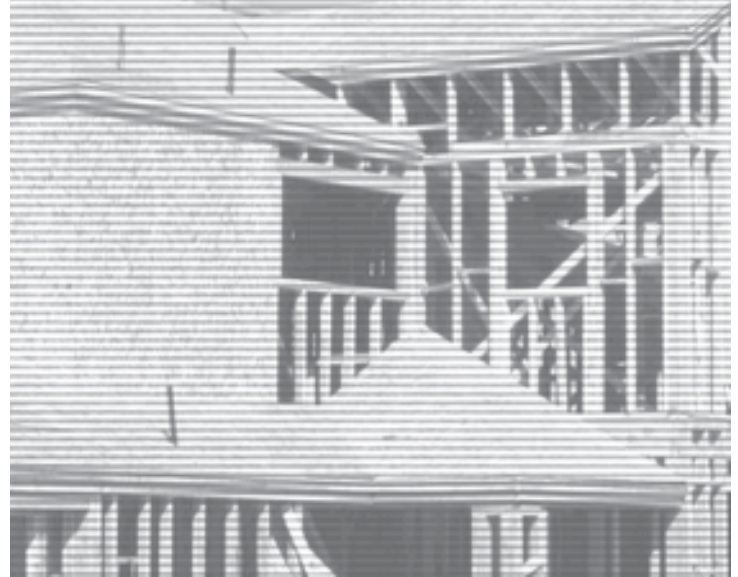
Prepare a detailed, written contract signed by both parties

3. **Don't avoid conversations about potential problems for fear of losing the job.** It's better to lose the job up front, than to take it and lose money in the end. For example:
 - a. If you're remodeling, clarify who will pay if dry rot is found.
 - b. If you're excavating, decide what will be done about hitting an unexpected spring or rock.
 - c. If the cost of materials goes up while financing is being arranged, what happens?
 - d. Explain the effect of any delays to homeowners and agree in writing before starting the job, which of you is to be financially responsible.

■ **Think twice before doing work for friends and family.** The CCB gets a surprising number of complaints involving friends and relatives of contractors. Friends and relatives often expect more for less. If a dispute arises, you risk losing much more than money.

■ **Use a written contract and make it complete.** Put everything in writing!

1. CCB law requires a written contract if the contract amount is \$2,000 or more. If the contract amount starts out less than \$2,000 but goes over for any reason, the job must then be committed to a written contract.
2. Contractors who fail to provide a written contract as required by law, will lose their right to claim a lien.
3. CCB law requires that certain standard terms be included in a contract. Those terms include:
 - a. A statement that the contractor is licensed citing the CCB license number.
 - b. The contractor's name, business address, and phone number as listed in CCB records.
 - c. A summary of the required notices to be given.
 - d. An explanation of the property owner's rights under the contract, including the right to file a complaint with the CCB and the existence of mediation or arbitration provisions in the contract.



4. Use drawings and precise specifications of the job. The more complete your contract documents, the less likely you'll have a disagreement over what was agreed to.
5. You and your customer must both sign the contract.
6. If both parties agree that the job will include or require something other than standard construction practice, write it down. Will you use lower grade materials and not finish the job to cut the owner's costs? Will the owner be responsible for cleaning up the jobsite? Put these kinds of items in a written contract.
7. Any foreseeable developments should be noted in the contract and budgeted for. If a financial responsibility isn't otherwise assigned to the owner, it may be on your shoulders.
8. Be specific about what you will do and what the homeowner will do, if the homeowner is required to do anything.
9. Be sure an attorney reviews any contract form you plan to use (including store-bought forms). If possible, find an attorney who specializes in construction.
10. Put all change orders, no matter how small, in writing. Make sure they are signed by both parties. During a conversation, if you agree to make a change, make notes and have your notes signed by both parties.

Proceed throughout the job in a business-like manner

- **Leave a paper trail of every contact and phone call with the client.** Take notes of all phone calls and transactions with customers. Keep a job journal. Virtually every contact with a client should be documented, including the subject of the conversation and the date. In a hearing or courtroom, complete documentation can be critical. It makes you look more competent, professional, and credible.
- **Talk to your customers throughout the project.** Maintain good communication. Return client phone calls. Although it may be tempting to ignore a phone call from an angry customer, return it anyway. The problem won't go away, and could get worse the longer you wait.
- **Follow the manufacturer's instructions.** There are many new technologies in building materials that involve very specific instructions on how to store, handle, install, and finish the materials. Understand and follow them.
- **Do what you agreed to do.** As a professional, it's your duty to do exactly what you said you'd do, even if you lose money. It is not uncommon for inexperienced contractors to discover that they have underbid a project. They may try to adjust the rest of the job to salvage a profit, but this only compounds the problem. In the end, you will lose customers as well as money.
- **Build a good, healthy profit into your jobs.** Incoming cash flow is different from profit. Remember that a lot of the money coming in, is owed to material suppliers, subs, and others.
- **General Contractors: when you find good subcontractors, keep them.** Don't necessarily take the lowest bid from a sub – it may cost you considerably more if the sub doesn't perform. General contractors should not suggest that the homeowner deal with subcontractors. A general contractor is responsible for correcting any problems created by subcontractors.
- **Take out building permits in a timely manner.** Work with the local building codes department. Understand what building permits are required for the project. Begin the job only after permits have been issued.



- **If a customer asks you to build without permits or to use materials that do not meet code, walk away!** Do not assume that you will be shielded from consequences because you did what the customer wanted. Even if you win a complaint, you could still be subject to penalties from the CCB or the Building Codes Division.
- **Walk through the final project and do a signed punch list (checklist).** Good contractors will see things a customer doesn't see and will agree to fix them. This is a great way to maintain good business relationships. If your project is for a couple or partnership, ask that all parties attend the walk-through.
- **If you make a mistake, admit it.** Too often, contractors get defensive when the homeowner complains. If this happens, give a little: offer compensation or repairs. Apologize, create a plan to correct the problem, and do it without delay. Turn a potentially unhappy client into someone who recommends you to other customers. Everyone gets complaints. Successful contractors respond to them.
- **If you build a spec house and sell it through a real estate agent, read the earnest money agreement prepared by the agent.** Make sure it says what you want it to say, including the boilerplate. Many preprinted agreements are suitable for the sale of pre-owned homes but not newly constructed homes.

Put yourself in your client's shoes when problems arise

4. Resolving disputes with informal negotiation and mediation

■ **The most powerful tool to resolve disputes between two parties is direct negotiation.**

Contractors who are good at working out problems as they arise are the ones who are successful over time.

1. Put yourself in the shoes of others and look at the issue from their perspective.
2. It is critical to be able to set aside your pride, anger, and personal feelings. Get the focus off the problem and onto solutions that work for both of you. Start by asking, "How do we fix this?"

■ **Mediation is an extension of negotiation. When tempers have flared and progress has stopped, you need a third party to help out.**

An outside mediator is disinterested in the outcome of your dispute and often can see solutions that you and your customer may not. A mediator can be a catalyst to get both parties back on track.

1. A mediator can be anyone both of you trust.
2. In CCB mediation, Dispute Analysts and Investigator/Mediators resolve about 30 percent of all disputes through telephone, jobsite mediations, and follow-up.
3. Check the telephone Yellow Pages to find mediators who provide mediation services for a fee. You may also contact mediation associations. Search on the web for "Oregon mediation."

5. Resolving disputes with formal, "third party" decision-makers

■ **Formal dispute resolution is time-consuming and expensive.**

When you get to this stage, someone else is determining your fate. Don't get so caught up in the injustice of the situation and the rightness of your position, that you forget that a judge or an arbitrator may see everything in a completely different way. You may lose in a formal, third party dispute resolution.



■ **Using Arbitration: Many contractors have an arbitration clause in their contract.**

Arbitration is usually quicker, less formal, and less expensive than other formal judicial procedures. However, the arbitrator makes the decision with virtually no chance for you to appeal. Professional arbitration services require a substantial fee and you will probably need an attorney to present your case before the arbitrator.

■ **CCB arbitration:** You may want to consider asking the CCB to arbitrate the dispute, if the other party agrees. You must call the CCB to request an arbitration packet.

■ **Small claims court:** The current maximum recovery of damages you can take to Small Claims Court is \$10,000. The filing fee, which may be returned to you if you win your case, is between \$100 and \$150. You are likely to get a judge who is a generalist and knows little or nothing about construction. If you win, you get a judgment from the court ordering the other party to pay. If they don't pay, you must figure out a way to find your opponent's assets and collect the judgment.

■ **Civil action (Court trial):** Sometimes this is a good, but potentially expensive, alternative. Always check with your attorney.

■ **Contested case hearings.** This process is available if a complaint is filed with the CCB. This is similar to a court proceeding in terms of time. It

Work out any problems as they arise to prevent serious disputes

is, however, less formal. Even if you are represented by an attorney, this is often less costly than a lawsuit. Decisions are made by administrative law judges from the Office of Administrative Hearings. These judges are construction dispute specialists.

- **Filing liens: If you have never filed a lien, get an attorney – this is not an area for amateurs.** Use a lien notice filing service to serve the initial notices and bring in an attorney for the lien filing. Otherwise, consult an attorney from the beginning.

For basic information about liens, go to the CCB website (www.oregon.gov/ccb) and under Contractor Help, click on Contractor Forms and Publications, then select the publication, “Construction Liens” or call our offices at 503-378-4621.

6. Be committed to preventing problems

- **Remember, disagreements are not entirely avoidable in the construction industry.** Contractors who are willing to use proven dispute prevention techniques up front, will reduce the risk of disputes.
- **Develop your negotiation skills and respond quickly to prevent disagreements from growing into full-fledged disputes.** If a dispute arises, don’t wait too long to seek legal advice from an attorney who is skilled in construction law.



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