



The Essence of Building Repair Contracts

by Terri Chalaire, PE

Building repair projects can be a headache for many involved. There can be frustrations about hiring engineers and contractors, the work phase, dealing with complaints from unit owners about everything under the sun and, of course, making the payments. Headaches and problems during building repair projects can be greatly reduced with good contract documents. The finished project should be beneficial to the association and owners, helping to maintain property values and a nice living environment. If the condominium stays "in the know" and in control of items that they do have control of, with

good contract documents, it can make the necessary experience more manageable, organized, and efficient. The phases of a typical repair project:

A problem is noticed. It could be falling concrete, cracks that are new or getting larger, heaving or uplifting floor tiles, or deteriorated railings, sliding glass door, or windows.

An engineer is hired to investigate the problems. Survey inspections are performed and specifications and a bid package are prepared. The bid package may also include a draft construction contract. The draft contract can be an available standard document or can be prepared by an attorney.

Contractors are invited to bid and bids are received. The engineer can also negotiate pricing with contractors and assist in the interviewing process.

The selected contractor and the association negotiate a contract. The draft contract can be modified directly or with addendums during negotiation. After both parties are in agreement, the contract is signed.

The contractor submits the required permit documents: application, engineering specifications, notice of commencement, Special Inspector affidavit. Typically, the building department is not interested in receiving a copy of the contract. If they do, it is for verifying the estimated value of the project. After receiving the permit, the work proceeds.

During the work, it is the contract documents that

control what work is to be done, the timing for the work, how it is paid for, and all other aspects of the relation between the parties.

The signing of a construction contract is a major step. The construction contract is the Holy Grail, the all powerful controlling document of a project. A contract is an agreement between two parties. The parties can be individuals, associations, or any other business entities. The signing of the contract binds the association and the contractor to everything contained in the contract. Each party's role will be clearly identified. After the contract is signed, the entire project will revolve around it.

Contracts can be complicated. The contract can be just one or two pages, or can be extremely comprehensive with many pages. Between selecting a contractor and signing on the dotted line, time should be spent carefully putting together a good contract. It is always a good idea for the association's attorney to provide the main contract to the association. He or she will be knowledgeable about the type of contract that should be used for a construction project and can be a great help to the association regarding the contract and answering legal questions. It is normally left to the engineer to assemble the contract attachments and components.

Contracts can be very good contracts or they can be flawed. Contracts that leave out details, don't provide for changes, or are missing key components can cause pitfalls and be problematic. Good contracts will encourage both parties to do their part. Good contracts will clarify details of work, pricing, payments, scheduling, and many other details

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of the project. It is similar to playing a board game—the contract is the rule book and explains how to play the game.

The essence of a contract is that each party has to do something. One party does work, one party makes payments. The “work” is normally NOT described in the main contract. The “payments” are normally NOT described in the main contract. There are usually exhibits or appendices added to the contract to provide these details. The engineering specifications are attached as an appendix to describe the “work.” The contractor’s bid sheet and payment schedule are attached as an appendix to describe the “payments.” It is the contract and all of the attachments that make up the entire contract documents. There can be other attachments as well, such as for schedule and insurance requirements.

Typical construction contracts include:

- **Main Text**—This part usually contains details such as who the parties are, how the contract exhibits are included and attached, the duration of the project, responsibilities of the contractor and association, details about the engineer as the association’s representative and authority to do inspections, how invoices will be processed and approved, how the contract can be changed in the future.
- **Engineering Specifications**—usually attached as an exhibit or appendix.
- **Pricing and Payment Schedule**—usually attached as an exhibit or appendix.
- Other attachments such as insurance information, general provisions, warranty samples, or other documents provided by either party.

The engineer will provide the specifications that are attached to the contract. The specifications clarify what work is to be performed and

how the work is to be performed. After contract signing, to remove or add to the scope of work, a change order would be required to include a specifications revision to the contract. When obtaining a permit, the contractor will be required to submit the specifications to the building department. The contractor should use the same specifications that are in the contract. If changes are made to the specifications after the contractor gets a permit, a specifications addendum will be required by the building department.

The contractor’s bid is usually attached to the contract as the pricing and payment schedule. Once the bid becomes an exhibit to the contract, it is no longer a bid, but part of the contract. For building repair projects, unit prices, time and materials, lump sum, or a combination of all three types of pricing are used. For concrete repairs, unit prices for each type of concrete repair are used.

The essence of a contract, the “work” and the “payments” requirements are included in attachments to the main contract, not in the main contract directly. We have seen many times, when during or after the project, there is a major dispute, and we ask for a copy of the construction contract, and we only receive the main contract without any attachments.

Contract Signing

The preferred method for contract signing is a contract signing meeting with both parties. When sitting down to execute a contract, both parties should have had plenty of time in advance to



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review the document, with all of its attachments, in its entirety. Typically, changes, questions, or problems with the contract are taken care of prior to contract signing; however, it is also acceptable to make changes to the contract at the contract signing. The contract text can be lined through or "X"ed out. Any changes that are made should be initialed at the location of the change.

When signing the contract, both parties should fully execute the contract. This means that the parties should verify that the contract is dated, usually at the beginning of the contract, and then sign the end of the text portion of the contract. Also, pages should not be missing. All exhibits should be labeled, and all pages of the contract, including all exhibits, should be initialed by both parties at the bottom right hand corner. This includes all pages, specs, pricing page, and any other documents that are part of the contract. All of these items make up the contract documents and become binding. It is common to bring two copies of the draft contract to the contract signing, so the parties can execute two copies and each have an original. Or, copies of a single executed contract can be provided to all parties later.

Unsigned draft contracts and proposal documents are not contracts. There can be many changes during the negotiation process and only after signing by both parties does a contract exist. The essence of the contract, the "work" and the "payments,"

are agreed to in writing. We have seen many times, when during or after the project, there is a major dispute, and we ask for a copy of a construction contract, we only receive unsigned documents or proposals for work.

The Engineer's Role During the Construction Phase

An engineer can provide as little assistance as the association wants. At a minimum, the engineer performs the minimum amount of inspections to comply with building department requirements. Remember the building departments weren't too interested in a copy of the contract, except for estimated value. The building department doesn't care if the contract requirements are met. The building department only cares about building code and statute requirements. If the code requires galvanized nails, but the contract requires stainless steel screws, the building department will not enforce the contract requirements, but may require only a change in the specifications that were submitted. For a building over three stories, these types of inspections are called "Threshold Building Special Inspections." The engineer ensures that the contractor complies with the permitted specifications with regard to shoring, safety, minimum standards, and codes for quality of repairs.

An engineer can provide as much assistance as the association wants. Typically, the engineer performs additional inspections and services to verify "contract compliance" and help with controlling project schedule and costs. This includes verification of work quality and completion, verification of work quantities for invoice approvals, providing technical guidance and coaching to the contractor during repairs, and project closeout and punch list inspections. Tracking quantities of repair areas and tracking quality of work is important so that when it comes time for



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the contractor to submit his invoices, the association can be assured that only the amount of repairs actually performed correctly will be approved for payment. This relieves the association's employees from the responsibility of knowing how much and when to pay the contractor.

Contracts normally provide for the engineer as the association's representative to perform contract compliance inspections. All the work will be subject to the approval of the engineer, based on quality and quantity. The engineer will be the one who decides if the work is being done properly. The engineer will use the contract documents to make decisions about the work and payment requirement.

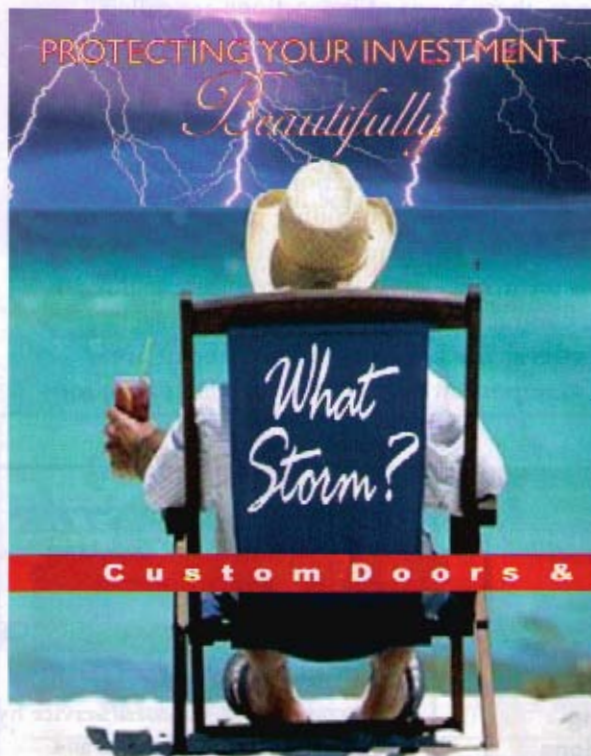
Contracts normally provide for the engineer to review and approve change order documents. The engineer can provide a recommendation to the association regarding the change order, and using that information, the

association can make an informed decision. Change orders are meant only for unanticipated additional work or added work that the association wants to add during the course of the project. Some contractors send many proposed change orders, some valid, some not. This can be confusing and intimidating. A change order becomes part of the contract documents ONLY if it is signed by both parties. Sometimes the change order is unnecessary because the contract had errors or flaws and needs to be corrected.

The essence of a contract, the "work" and the "payments" requirements are included in signed contract documents, including all its attachments, addendums and change orders. We have seen many times when later there is a major dispute, the construction contract doesn't have the work or payment schedules adequately described or agreed to in writing.

There are many details that can be included as part of a good construction contract. Having a good construction contract can reduce problems later. A construction contract should refer specifically to the engineer's specifications, allow for work to be subject to engineer approval, provide for unanticipated work, and include many other details that will ensure the protection of both parties. It will be a better contract than a one or two pager that is lacking detail and clarity. Spending time on the construction contract before it is signed is worth it in the long run.

Terri Chalaire, PE is owner of Chalaire & Associates, Inc. ■



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