

WHAT'S IN YOUR CONTRACT?

Adam Browser, Esq. / Ruskin Moscou Faltischek, P.C.

In the often-played commercial, Jennifer Garner asks, "What's in your wallet?" While I am no Jennifer Garner, I ask you, "What's in your contract?" You may be surprised by what is in it. You may be more surprised by what is not, and the consequences that can befall your business as a result. Both New York State and many counties mandate certain information and disclosures that must appear in home improvement contracts. The exclusion of some of the required information may lead to no adverse consequences. However, if you fail to comply with some of the requirements, you may be unable to enforce your contract rights. Your company may also be subject to fines or other consequences.

New York's General Business Law section 771 sets forth most, but not all, of the State-imposed contractual requirements. That section imposes more than ten items to include in a home improvement contract. These items are: (1) the name, address, telephone number and license number of the contractor; (2) the approximate or estimated dates when the work will begin and be substantially completed; (3) a statement of any contingencies that would materially change the approximate or estimated completion date; (4) whether or not time is of the essence for the completion date; (5) a description of the work to be performed and materials to be provided, including the make, model number or other identifying information; (6) the price for the work; (7) a schedule for progress payments; (8) a specific statement about the lien law rights of the contractor, any subcontractor or supplier; (9) a statement that the contractor is obligated to deposit payments in accordance with Lien Law section 71-a(4); and (10) a statement about the owner's right to cancel the contract.

The requirement to notify the owner of the lien law rights of the contractor, subcontractor and supplier is very specific. The statute sets forth the precise language the contract must contain to notify the owner of the lien law rights, including that the notice appear in boldface type.

Additional contractual requirements often are imposed by New York City or at the county level. Complying only with New York State's requirements will not immunize

your contract from a legal challenge. These requirements, at both the state and local level, change from time to time. You should review your contract periodically to make sure it is up to date and complies fully with all legal requirements.

The public policy behind all these requirements is consumer protection. While your contract should comply with legal requirements, its prime function is to set forth your rights and obligations, and to do in a way that provides maximum protection for your business. There are many provisions your contract can include to maximize that protection. For example, most contracts set forth the purchaser's or owner's payment obligations. However, few contracts set forth the consequences that will follow when payment is delayed, or not made at all.

Your contract should spell out those consequences explicitly and can include some or all of the following: suspension of work; termination of the contract; late fees; default interest; remobilization fees and assurances of future payment.

Your contract can also impose conditions that make it easier to manage the project. Examples of such conditional contract provisions are:

- (a) specifying the people who can make decisions on behalf of the contractor; (b) specifying that change orders and other decisions must be in writing and signed to be binding; and (c) precluding the owner from interacting directly with subcontractors.

Since every project and every contractual arrangement can potentially go bad, you cannot afford to ignore that possibility in your contract. It should include a dispute resolution clause that covers the manner of dispute resolution (litigation or arbitration), any conditions precedent to dispute resolution, a statute of limitations clause, limits on damages and recovery of attorneys' fees. The protections offered by these types of provisions is not well understood and all too often overlooked. However, like with insurance, they are highly valuable. You may only need to rely on them once or twice, but they can save you tens of thousands of dollars in legal fees or potential damages.

So, what's in your contract?

