



# CONSTRUCTION SUCCESS

BY JACK GARSON

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When it comes to construction projects, all too often people start out with pretty drawings and end up with shouting matches or – worse – expensive lawsuits. Your project may be steel and concrete. But even a “minor” mistake, like using the wrong waterproofing caulk, can turn it into a leaky, moldy mess that’s ready for the wrecking ball – or at least a multi-million dollar rehab. So, whether you’re constructing an apartment building, the alterations for your new office space or a custom home, learn from the painful lessons of others.

**Lesson #1: Do Your Due Diligence.** I’ve got three cases on my desk where project owners are struggling with potentially massive re-design and repair costs because they failed to do their due diligence. In one case, the soil is like pudding – and can’t support the building without the addition of an expensive stabilizing foundation made of “helical screws.” I know: the owner, staring at the unexpected invoice, thinks the building is not the only one getting helically screwed. This situation may have been rare, but overlooking potential problems is common. Some owners buy buildings with plans to renovate, only to discover the building is loaded with lead paint, asbestos, and PCBs. Businesses rent space and have grand designs for the look and feel of their new Taj Mahal only to find out they need an emergency exit where their high-tech conference room was supposed to go. Mom-and-pop homeowners buy fixer-uppers only to discover the septic field is shot, the well has run dry and the house is one wolf-huff-and-puff from collapse. The list of potential problems is endless. But the solution is simple. Don’t buy, design or put a shovel in the ground without hiring the right experts—like engineers and architects—to investigate the feasibility of your project. Every project presents different and sometimes hidden, challenges. Do your homework before you do anything else.

**Lesson #2: You Need a Good Contract to Build a Great Project.** When people constructing projects think about contracts, the words that come to mind are “standard,” “boilerplate,” “boring,” and “who reads this stuff anyway?” Paint colors get more attention. Then disaster strikes. A contractor delays ordering the lumber, a shortage hits, and the price skyrockets. The balconies on a few hundred apartments don’t comply with code and have to be ripped out and replaced. The survey was wrong and part of the foundation was poured on the adjacent property. Ouch! That’s gotta hurt. In an instant, these contracts become judge and jury and decide whether you or someone else must write a large check to make the problem go away. That contract’s not so boring now. Actually, it’s quite the cliffhanger. But you wish that you had read that contract BEFORE you signed it. Better still, you would have liked to decide what it says. So, let’s start over. Don’t assume any contract is appropriate, even if it is widely used or if the other side says “everyone signs it” (I am sure your mother mentioned something about

everyone else jumping off bridges). If you're in the construction business, create your own form contracts. However, if you are working with the other side's contract, get an expert to read and negotiate it. If that negotiated contract helps you avoid just one significant problem in a dozen deals, it's all worthwhile.

**Lesson #3: When Hiring a Contractor, Go for Quality.** Don't simply pick the cheapest contractor. All too often, the cheapest contractor does lousy work and creates a lot of other problems. In fact, in the right light (this often comes from the holes they leave in your roof), you can see that the low bidder can be the most expensive, once you add the extra time and money you'll spend to finally get the job done right. So, investigate each potential contractor to see who will give you the best overall value. For example, I represent contractors that will fix work that is not even part of their responsibility just to leave behind a satisfied client and protect their reputation. To find them, get recommendations from people you trust. Also, use a contractor with an established reputation for quality. They didn't get that reputation by doing bad work. And they are much more likely to invest in getting your project done correctly to keep you happy and protect their brand.

**Lesson #4: Respect the Legalities.** Construction projects are increasingly being bombarded with regulations and lawsuits. Designs must comply with accessibility requirements. Wages on numerous projects are mandated by government regulations – and the hourly rates for certain skilled trades are shockingly high. If subcontractors and suppliers are not paid, they can lien your project. Flaws in construction can lead to lawsuits from purchasers, especially in condo projects where a dispute-free project is as rare as a unicorn or bipartisanship on the Hill. And the Owners often face risk regardless of who causes the problem. Again, some of the best protection comes from using experienced and knowledgeable contractors that value quality. But you may need additional protection. Make sure your contract clearly spells out who does what and what happens if they don't. For significant projects, consider requiring bonds, especially for critical components of the work. Then, monitor performance throughout the job. It is much easier to fix a problem when it begins than it is to tear down a building and start over.

**Lesson #5: Get the Right Insurance.** At construction sites, people get hurt and property gets damaged. In addition to making sure the design and construction team has the right insurance, you need to make sure you're covered. Make your deal team get the right insurance. Confirm that this insurance also protects you. Also, get your own insurance to fill in the gaps and provide coverage where your team's insurance does not protect you. You'll want expert advice regarding the exact insurance requirements to impose. Put these requirements in each of the applicable contracts. Most important of all, get evidence – certificates, endorsements and policies – of the insurance that everyone is supposed to buy. Also, some insurance should be kept in effect for years. For example, insurance for certain defective work – covered by “completed operations insurance” – should remain in effect for many years after the job is done. An old proverb says that “for want of a nail, a kingdom was lost.” Many construction problems snowball into nightmarishly costly and time-consuming messes because people overlook those critical “nails.” Follow these lessons to ensure an on time, on-budget success.

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