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ATTORNEYS AT LAW

LEGAL ADVOCATES, ADVISORS & CONSULTANTS TO THE CONSTRUCTION INDUSTRY

Key Colorado Construction Law Statutes

&

Tips for Roofing Contractors

Gleaned From 40+ Years Representing Roofing Contractors



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Colorado Statutes of Limitation

CO Code § 13-80-102 (2022) General Limitation of Actions

Two (2) years after the cause of action accrues; includes tort actions for **negligence**, strict liability, wrongful death.



Colorado Statutes of Limitation

CO Code § 13-80-101 (2022)

- Three (3) years after the cause of action accrues for contract.
- Applies to written and oral contracts.



Colorado Statutes of Limitation

CO Code § 13-80-103.5 (2022)

Six (6) years after the cause of action accrues for actions to recover a liquidated debt or an unliquidated, determinable amount of money due the person bringing the action.



COLORADO STATUTES OF LIMITATION & REPOSE DISCOVERY RULE

When does the “cause of action” accrue?

C.R.S.A. § 13-80-104(1)(b)I Claim for relief arises at the time the Claimant or the Claimant’s predecessor in interest **discovers** or in the exercise of reasonable diligence should have discovered the physical manifestation of a defect in the improvement which ultimately causes the injury.



COLORADO STATUTE OF REPOSE

C.R.S.A. § 13-80-104 - Limitation of actions against architects, constructors, builders or builder vendors, engineers, inspectors and others.

- Action must be brought within time provided in § 13-80-102 after the claim for relief arises.
- But in no case more than **6 years after substantial completion** of the improvement to real property, unless the cause of action arises during the 5th or 6th year after substantial completion; then an additional 2 years after the date upon which the cause of action arises.



COLORADO STATUTES OF LIMITATION & REPOSE
CLAIMS FOR INDEMNIFICATION & CONTRIBUTION

C.R.S.A. § 13-80-104(1)(b)II – 90 days after the claim for indemnification or contribution arises; claim for indemnification or contribution arises at the time the third person’s claim against the claimant is settled or at the time of the final judgment; whichever comes first.

Extends 6-year statute of repose. *In re Richard Goodman v. Heritage Builders, Inc.*, 390 P.3d 398, Superior Court of Colorado, February 27, 2017



COLORADO CASE DECISIONS

In re Goodman v. Heritage Builders, 390 P. 3d 398, Colorado Supreme Court, 2017 – General Contractor has 90 days after settlement or judgment to bring claim for indemnification or contribution against subcontractor.



Can You Agree in a Contract to Shorten the Statutes of Limitation and Repose?

In Colorado: **Yes** - In Commercial Contracts
No - In Residential Contracts Covered Under the Homeowner Protection Act portion of Colorado's Construction Defect Reform Act §13-20-806 (7)(a).



Colorado Cases on Shortening Statutes of Limitation

“[P]arties to a contract may require that actions founded on the contract be commenced within a shorter period of time than that prescribed by the applicable statute of limitations.” *Grant Family Farms, Inc. v. Colorado Farm Bureau Mut. Ins. Co.*, 2006 WL 3094051, *2 (Colo.App.). In Colorado such a contractual limitation is enforceable, provided that the period in which the action must be brought is reasonable and that the provision has not been waived. *Hepp v. United Airlines, Inc.*, 36 Colo.App. 350 (Colo.App. 1975).



COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT
C.R.S.A. § 13-20-802, ET SEQ.

- Claimant must send a written notice of claim to construction professional at least 75 days before filing an action and at least 90 days in the case of a commercial property.
- Upon construction professional's written request, claimant shall provide reasonable access to the claimant's property during normal working hours to inspect the property and claim defect. Inspection shall be completed within 30 days of notice of claim.



COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT
C.R.S.A. § 13-20-802, ET SEQ.

- Within 30 days or 45 days for a commercial property, construction professional may send an offer to settle the claimed by making payment or agreeing to remedy the claimant defect.
- Claimant has 15 days to accept construction professional's offer.
- If no action is made or claimant rejects the offer, claimant can commence the action.



COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT
TOLLING - C.R.S.A. § 13-20-805

If notice of claim is sent per § 13-20-803, within the statutes of limitation and repose, then the statute of limitation or repose is tolled until 60 days after completion of the notice of claim process.



Homeowner Protection Act of 2007

13-20-806 Limitation of Damages

13-20-806. LIMITATION of Damages. (7) (a) IN ORDER TO PRESERVE COLORADO RESIDENTIAL PROPERTY OWNERS' LEGAL RIGHTS AND REMEDIES, IN ANY CIVIL ACTION OR ARBITRATION PROCEEDING DESCRIBED IN SECTION 13-20-805.5 (1), ANY EXPRESS WAIVER OF, OR LIMITATION ON, THE LEGAL RIGHTS, REMEDIES, OR DAMAGES PROVIDED BY THE "CONSTRUCTION DEFECT ACTION REFORM ACT", THIS PART 8, OR PROVIDED BY THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S., AS DESCRIBED IN THIS SECTION, OR ON THE ABILITY TO ENFORCE SUCH LEGAL RIGHTS, REMEDIES, OR DAMAGES WITHIN THE TIME PROVIDED BY APPLICABLE STATUTES OF LIMITATION OR REPOSE, ARE VOID AS AGAINST PUBLIC POLICY.



Homeowner Protection Act

(b) A WAIVER, LIMITATION, OR RELEASE CONTAINED IN A WRITTEN SETTLEMENT OF CLAIMS, AND ANY RECORDED NOTICE OF SUCH SETTLEMENT, BETWEEN A RESIDENTIAL PROPERTY OWNER AND A CONSTRUCTION PROFESSIONAL AFTER SUCH A CLAIM HAS ACCRUED SHALL NOT BE RENDERED VOID BY THIS SUBSECTION (7).



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Homeowner Protection Act

(e) NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO RENDER VOID ANY REQUIREMENT TO PARTICIPATE IN MEDIATION PRIOR TO FILING A SUIT OR ARBITRATION PROCEEDING.



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Colorado Construction Anti-Indemnity Statute

CO Rev Stat § 13-21-111.5 (2016)

(6)(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection (6), any provision in a construction agreement that requires a person to indemnify, insure, or defend in litigation another person against liability for damage arising out of death or bodily injury to persons or damage to property caused by the negligence or fault of the indemnitee or any third party under the control or supervision of the indemnitee is void as against public policy and unenforceable.



Colorado Construction Anti-Indemnity Statute

CO Rev Stat § 13-21-111.5 (2016)

(6)(c) The provisions of this subsection (6) shall not affect any provision in a construction agreement that requires a person to indemnify and insure another person against liability for damage, including but not limited to the reimbursement of attorney fees and costs, if provided for by contract or statute, arising out of death or bodily injury to persons or damage to property, but not for any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor or the indemnitor's agents, representatives, subcontractors, or suppliers.



Colorado Construction Anti-Indemnity Statute

CO Rev Stat § 13-21-111.5 (2016)

(6)(d)(I) This subsection (6) does not apply to contract clauses that require the indemnitor to purchase, maintain, and carry insurance covering the acts or omissions of the indemnitor, nor shall it apply to contract provisions that require the indemnitor to name the indemnitee as an additional insured on the indemnitor's policy of insurance, but only to the extent that such additional insured coverage provides coverage to the indemnitee for liability due to the acts or omissions of the indemnitor. Any provision in a construction agreement that requires the purchase of additional insured coverage for damage arising out of death or bodily injury to persons or damage to property from any acts or omissions that are not caused by the negligence or fault of the party providing such additional insured coverage is void as against public policy.



Colorado Construction Anti-Indemnity Statute

CO Rev Stat § 13-21-111.5 (2016)

(6)(d)(II) This subsection (6) also does not apply to builder's risk insurance.



Colorado Construction Anti-Indemnity Statute

CO Rev Stat § 13-21-111.5 (2016)

(6)(e)(I) As used in this subsection (6) and except as otherwise provided in subparagraph (II) of this paragraph (e), “construction agreement” means a contract, subcontract or agreement for materials or labor for the construction, alteration, renovation, repair, maintenance, design, planning, supervision, inspection, testing, or observation of any building, building site, structure, highway, street, roadway bridge, viaduct, water or sewer system, gas or other distribution system, or other work dealing with construction or for any moving, demolition, or excavation connected with such construction.



Colorado Construction Anti-Indemnity Statute

CO Rev Stat § 13-21-111.5 (2016)

(6)(g) Choice of law. Notwithstanding any contractual provision to the contrary, the laws of the state of Colorado shall apply to every construction agreement affecting improvements to real property within the state of Colorado.



Additional Insured

Recommended Provision to Insert in Contracts

Naming Contractor, Owner and others as additional insureds on Roofing Contractor's liability insurance policy and making that coverage primary is intended to apply only to the extent that a negligent act or omission by Roofing Contractor causes a claim to be asserted or a loss to be sustained by an additional insured. The additional insured endorsement is not intended and shall not be construed to cause Roofing Contractor's insurer to be liable either to defend or to indemnify an additional insured for claims against or losses sustained by the additional insured that are not due to the fault of Roofing Contractor.



Additional Insured Provision

AIA Document A101-2017 Exhibit A

§ A.3.1.3 Additional Insured Obligations

Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and with respect to the Architect and the Architect's consultants, CG 20 32 07 04.



Colorado Mechanic's Lien Statute

CO Rev Stat § 38-22-109 (3)

Notice of intent to file a lien statement must be served upon the owner at least ten (10) days before the time of filing the lien statement with county clerk and recorder.



Colorado Mechanic's Lien Statute

CO Rev Stat § 38-22-109 (5)

Generally, liens must be filed at anytime with four (4) months after the day on which the last labor is performed or the last laborers or materials are furnished by the lien claimant.



Colorado Mechanic's Lien Statute

CO Rev Stat § 38-22-110

No lien shall hold the property longer than six (6) months after completion, unless an action to foreclose is commenced within that time.



TIPS FOR ROOFING CONTRACTORS



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ROOF PERFORMANCE



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ROOF PERFORMANCE

1. Install products and systems that have a solid track record of good performance for a reasonable period of time and can be routinely successfully installed per specifications by your personnel.
 - a. Avoid marginal/questionable specifications.



ROOF PERFORMANCE

2. Invest in very competent roofing foremen and superintendents.



ROOF PERFORMANCE

3. Evaluate the roofing specification for technical accuracy and thoroughness sufficiently in advance of the date proposals or bids are due. Use pre-bid meetings and pre-bid inquiries to address errors, provisions that do not apply, and ambiguities in plans and specifications.



ROOF PERFORMANCE

4. Workmanship Issue - Adhesion. Put in place quality control procedures, including redundant checking, to ensure that adhesion of roof components is proper, in compliance with project specifications and manufacturer's requirements.
 - a. Correct number and placement of fasteners.
 - b. Check and document asphalt temperature including EVT, at point of application. Is asphalt too cold? Is there excess frothing and bubbling?
 - c. Are seams well-adhered? Documented?



ROOF PERFORMANCE

5. Workmanship Issue – Tie-ins Check to be sure that are well done and secure and document same.



ROOF PERFORMANCE

6. Wind-Uplift – Work with your customer and manufacturer to install a roof assembly that qualifies for and obtain an enhanced wind speed warranty from the manufacturer. No code is satisfied by a roof assembly that can only be warranted for wind speeds up to 55 mph.
 - a. Pre-job testing of fastener pull-out resistance provided by the deck, especially when dealing with potentially problematic decks such as OSB.



ROOF PERFORMANCE

7. Check for proper protection of materials prior to installation, including checking to see that you have not received wet or green materials.



ROOF PERFORMANCE

8. Know the building code requirements applicable to the project.
 - a. Notify the design professional and upstream parties if there is a question whether the prescribed specification or an existing building where you will be working is not compliant with the building code.



ROOF PERFORMANCE

9. On re-roofing projects, have the Owner retain a qualified engineer to review the existing roof drainage for adequacy, enhancement and current code compliance. Do not install retrofit drains or perform any work that reduces drainage.



ROOF PERFORMANCE

10. Ponding – take affirmative steps to avoid liability for ponding on the roof.
 - a. Notify upstream parties if ponding is likely due to existing conditions or the specification.
 - b. Work with upstream parties to take steps to provide positive drainage avoid ponding.
 - c. Disclaim liability for ponding if not due to a workmanship defect by you.



EXECUTIVE MANAGEMENT



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EXECUTIVE MANAGEMENT

11. Be an active participant in the industry. Be knowledgeable regarding technical issues. Stay current.
 - a. If you are not inclined to delve into and stay current on roofing technical issues, designate someone in your organization who is very technical savvy and whose job it is to stay current on technical issues, including best workmanship practices.



EXECUTIVE MANAGEMENT

12. Become engaged in industry associations and activities.



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EXECUTIVE MANAGEMENT

13. Work diligently to develop strong relationships with your customers based on your company's demonstrated competence, integrity, expertise, reliability and cooperation.



EXECUTIVE MANAGEMENT

14. Exercise judgement and discretion with whom you contract. What is the reputation of the owner or general contractor?



EXECUTIVE MANAGEMENT

15. Evaluate the roofing competence and reputation of the architect or roof or building envelope consultant before deciding to embark on a roofing project.



EXECUTIVE MANAGEMENT

16. Develop long-term and trusted relationships with manufacturers and distributors.



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EXECUTIVE MANAGEMENT

17. Get along with people. Work hard to develop good working relationships. Communicate. Be a good listener. Understand the concerns of the individuals representing other companies engaged in the project.



EXECUTIVE MANAGEMENT

18. Establish trusted relationships with well-qualified construction savvy professionals who know and care about you and your business.
- a. A construction lawyer who understands your business . Consult with the attorney early to try to steer clear of a potential problem before it becomes a problem or a bigger problem or dispute.
 - b. An insurance broker who knows construction insurance and will be your advocate when an insurance coverage issue arises.
 - c. A bonding agent who will be your advocate. Can you get on a plan to avoid a personal indemnification obligation to your surety?



EXECUTIVE MANAGEMENT

19. Know and comply with the deadlines and requirements pertaining to liens in the state where the project is located.
 - a. Liens are the most reliable means to secure payment. Do not knowingly or inadvertently waive or lose lien rights.
 - b. Know if preliminary notices are required.
 - c. Know how many days you have to file a lien.
 - d. Know how to condition a lien waiver form.
 - e. Implement procedures within your company to preserve and utilize your lien rights.



EXECUTIVE MANAGEMENT

20. Make your organization detail oriented.



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EXECUTIVE MANAGEMENT

21. Don't grow so quickly that you lose organizational control of day-to-day operations. One bad job can have devastating consequences.



EXECUTIVE MANAGEMENT

22. Form your own group of four roofing contractors from outside your geographical area with whom you meet with periodically to share experiences, successful business practices, problems encountered, and solutions reached in operating their businesses, learn from each other in addition to developing friendships.



CONTRACT DOCUMENTS



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CONTRACT DOCUMENTS

23. Develop and regularly use your own proposal/contract form with a comprehensive set of terms and conditions particularly for re-roofing project when you are submitting a proposal / contract directly to the building owner.



CONTRACT DOCUMENTS

24. Develop and regularly use your own warranty or guarantee form.

- Seek to limit to repair of leaks due to your workmanship.
- Seek to make your warranty or guarantee the exclusive remedy for an alleged deficiency in your work.
- Include an arbitration clause.
- Include a time period (deadline) in which a suit or arbitration demand must be filed.



CONTRACT DOCUMENTS

25. Develop and regularly use a purchase order form that includes key terms and conditions for use when purchasing materials and other services.

- Materials must meet specifications (provide the specifications)
- Indemnification if there is a claim against you based on an alleged deficiency with the materials.



CONTRACT DOCUMENTS

26. Develop and regularly use your own Master Subcontract and Subcontract with a comprehensive set of terms.
 - a. Be sure you and others whom you are required to name as additional insureds are made additional insureds on your subcontractor's liability policies on a primary and non-contributory basis.
 - b. Include a provision in your Master Subcontract or individual subcontract with your subcontractors requiring the subcontractor to submit to you their insurance policies when requested.



CONTRACT DOCUMENTS

27. When submitting a proposal, particularly to a General Contractor, state on your proposal that the proposal is based on execution of a standard American Institute of Architects (AIA) contract.



CONTRACT DOCUMENTS

28. Always try to use a standard AIA construction contract in lieu of a general contractor-drafted or owner-drafted construction contract.



CONTRACT DOCUMENTS

29. Routinely carefully review contracts you are asked to sign and modify contracts to manage risk and reduce liability to items within your control.
- Retain a construction attorney or designate someone in your office who has expertise in reviewing and drafting revisions to contracts.
 - Develop expertise yourself or within your organization to negotiate contracts and propose revisions.



CONTRACT DOCUMENTS

30. Personal Guarantees - Look out for and delete a provision that is a personal guarantee.



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CONTRACT DOCUMENTS

31. Indemnification Obligations - Scrutinize all contracts you are asked to sign for indemnity provisions. **Always limit your indemnification obligation to the extent a claim, loss, accident or damage is due to your negligence or the negligence of someone for whose acts you are responsible.**



CONTRACT DOCUMENTS

32. Provisions to include, modify or delete in your construction contracts:

- a. Delete or modify a provision stating that you agree to waive lien rights. You could insert language stating: provided Roof Contractor is paid to a lien waiver provision.
- b. Delete or modify a provision stating that you bear the full risk of any loss (due to whatever cause) until final acceptance.
- c. Add a provision stating that you will notify upstream parties if you discover a design deficiency, including a building code violation and that you are not responsible for design.



CONTRACT DOCUMENTS

32. Provisions to include, modify or delete in your construction contracts:

- d. Delete one-way provisions that allow the other party to recover attorney's fees if they are successful in prosecuting a legal claim or modify to state that the prevailing party is entitled to receive the reasonable attorney's fees.
- e. Insert an arbitration provision as the dispute resolution procedure. If using a standard AIA contract, be sure to check the box designating arbitration as the dispute resolution procedure.
- f. Provide for interest and costs of collection, including attorney's fees, and a right to stop work if you are not paid.



CONTRACT DOCUMENTS

33. Provisions to consider including in your contracts for re-roofing projects:
- a. You are not responsible for damages or leaks due to existing conditions or existing sources of leakage.
 - b. If a tear-off of existing roofing, you are not responsible for fireproofing that may detach, fall or spall from the underside of the roof deck or structural members, including costs of clean-up and replacement of fireproofing.
 - c. Disclaim liability for drainage and recommend that a qualified engineer review the existing roof for sufficiency of drainage.



CONTRACT DOCUMENTS

33. Provisions to consider including in your contracts for re-roofing projects:

- d. Include a contract provision dealing with fumes emitted from roofing operations. Discuss steps to reduce the likelihood of a personal injury claim from a building occupant – perhaps a change in materials or work hours.
- e. Include a provision calling on the building owner or property manager to inform you of any areas of questionable structural sufficiency, deteriorated decking, prolonged leakage or other conditions that may present a risk to your personnel working on the roof.
- f. Add a provision stating that your price is based upon there not being electrical conduit or other materials embedded within the existing roof assembly or attached or located directly underneath or on top of the roof deck upon which you will be installing the new roofing materials.



CONTRACT DOCUMENTS

34. Provisions to consider including in your contracts with general contractors:

- Add provision stating that your commencement of work or acceptance of the deck or contiguous or adjacent work indicates only that the surface of the deck appears satisfactory to install roof materials and that you are not responsible for construction, slope, moisture content, undulations or structural sufficiency of the roof deck of other trades' work or design.
- Add a provision stating the minimum number of workdays with conditions suitable to perform roofing work you shall be afforded to obtain substantial completion.



CONTRACT DOCUMENTS

34. Provisions to consider including in your contracts with general contractors:

- Add a provision stating that the General Contractor will back charge trades who damage your work and you will be paid to make repairs or re-do work due to damage by other trades.
- Modify a provision that allows the general contractor to decide upon the dispute resolution procedure in its discretion.
- Add a provision stating that you have the same rights and remedies toward the general contractor as the general contractor has toward the owner.



CONTRACT DOCUMENTS

35. Review and modify applicator agreements. Consider and modify or add provisions to deal with such issues as:

- Changes in price of materials after you have received a quote and submitted a binding proposal or executed a contract with your customer.
- Indemnity obligation running to you if there is a claim against you due to defects in the materials, materials do not perform as represented by the manufacturer, manufacturer's specifications are defective, or manufacturer does not honor its warranty obligations.
- Include an unambiguous provision establishing the duration of the contractor's liability.
- A reasonable dispute resolution provision so that a dispute involving multiple parties (e.g. owner, general contractor, roofing contractor, architect, and manufacturer) can be resolved in one consolidated proceeding.



CONTRACT DOCUMENTS

36. Have employment contracts drafted and regularly reviewed by employment law counsel for compliance with current state law restrictions.



CONTRACT DOCUMENTS

37. Delete language in specifications and contracts that states: **fully** adhere; modify to state that you will be installing an adhered system.



CLAIMS, PROBLEMS AND DISPUTES



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CLAIMS, PROBLEMS AND DISPUTES

38. Document, document and document.

Writings make all the difference when dealing with claims. Always have a written response to claims made against you.



CLAIMS, PROBLEMS AND DISPUTES

39. Prior to submitting a final proposal or signing a contract, check all the current drawings, particularly the mechanical plans, for additional roof penetrations that may not have been shown on the architectural roof plans, particularly on buildings that are likely to have numerous penetrations.
- a. Document and state specifically in your contract the number and type of penetrations upon which your contract price is based.
 - b. If your price is based solely on review of the roofing specifications and architectural roof plans, delete the references to other drawings and specifications in the contract.



CLAIMS, PROBLEMS AND DISPUTES

40. Examine and document interior conditions for signs of prior leakage and damages with the building property manager or custodian prior to commencing work.
 - a. Gym floors - examine and document the condition of the gym floor prior to starting any work over a gym



CLAIMS, PROBLEMS AND DISPUTES

41. Act quickly in the event of leakage to reduce and manage damages
 - a. Try to have input on clean-up and restoration activities. If not done under your management, monitor the restoration work and seek to avoid excessive and unrelated charges.



CLAIMS, PROBLEMS AND DISPUTES

42. Know and comply with **notice requirements**, especially regarding claims and requests for change orders.
- a. Review the construction contract for all notice provisions.
 - b. Be sure your Project Manager has in place a procedure prior to the start of the job to give timely notice of potential claims and continue to comply with notice requirements per the contract requirements.



CLAIMS, PROBLEMS AND DISPUTES

43. When submitting and executing a change order for additional compensation for extra or changed work, include a request for additional time.



CLAIMS, PROBLEMS AND DISPUTES

44. Do everything you can to avoid litigation.

Civil litigation and arbitration are too expensive and a drain on your time and resources. Try to settle all disputes, generally at the earliest possible stage. A begrudging agreement to settle is far more likely to be more cost effective and less disruptive of your business than a victory in litigation or arbitration.



CLAIMS, PROBLEMS AND DISPUTES

45. Always seek to include an arbitration clause so that disputes that can't resolved by negotiation will be heard and decided by a qualified construction professional(s) who knows construction and construction law and is interested in hearing your dispute.



CLAIMS, PROBLEMS AND DISPUTES

46. Try mediation. But be sure to retain a skilled, experienced and tough mediator if you want to get the dispute settled. Schedule the mediation at a point in the dispute resolution process when the chances of a successful mediation are favorable.



INSURANCE



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INSURANCE

47. Purchase and maintain continuously an errors and omissions insurance policy that covers claims alleging defective workmanship.



INSURANCE

48. Check to see if there is a builder's risk insurance policy in effect on every job you do before you sign a contract.
 - a. If not feasible, be sure you have an installation floater policy, ideally with an existing structure endorsement.



INSURANCE

49. Incorporate the standard AIA contract provision regarding builder's risk insurance if you are not using a standard AIA contract: Owner is to obtain the builder's risk policy and there is to be a mutual waiver of subrogation applicable to all claims covered under the builder's risk policy.



INSURANCE

50. Maintain a pollution liability policy. Take steps to try to avoid an alleged personal injury claim due to exposure to fumes emitted from application of roofing products when working on an occupied building.



INSURANCE

51. Be sure you are made an additional insured on all of your subcontractors' liability policies.
 - a. In addition to reviewing your subcontractor's insurance policies, have your insurance advisor review the additional insured endorsement used by your subcontractor.



INSURANCE

52. Include a contract provision limiting the scope of your additional insured obligation to claims against or losses sustained by the additional insured to the extent caused by your negligence or the negligence of someone for whose acts you are responsible.
- a. Do not agree that your additional insured obligations is based on ISO Additional Insured Endorsement form 20 10 11 85 or equivalent. This form is much too broad.



INSURANCE

53. Work with a construction savvy insurance broker who will be your claims advocate.



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INSURANCE

54. Routinely obtain and have your insurance adviser review insurance policies provided by your subcontractors.

- Especially check for non-standard exclusions: open-roof, hot applied, habitational



INSURANCE

55. Actively participate in and monitor the legal defense that is being provided by your insurer. The attorney selected by your insurer has a legal obligation to be **your attorney in defending you**, not the insurer.



INSURANCE

56. When you are engaged in a legal dispute - litigation or arbitration- where an expert witness will be needed, identify and recommend to your insurer an individual who is well qualified to be the expert in that case.
- a. Do not necessarily use the individual or firm that the insurer has selected without confirming yourself that the individual is very qualified to serve as the expert on the issues involved in your case.



INSURANCE

57. Affirmatively respond and reject a provision in a reservation of rights letter that allows the insurer to recover attorney fees it incurred in defending your company if the insurer decides to withdraw its defense during the course of the legal proceeding.



PERFORMANCE AND PAYMENT BONDS



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PERFORMANCE AND PAYMENT BONDS

58. Bonding agent – work with a construction experienced bonding agent who is willing to search and advocate aggressively for you, particularly with regard to a plan to avoid personal guarantees.



PERFORMANCE AND PAYMENT BONDS

59. General Agreement of Indemnity with your bonding company - highest priority and objective is to avoid personal guarantees. It can be done. Depends on the financial health of your company, retained earnings, your bonding agent and the surety.



PERFORMANCE AND PAYMENT BONDS

60. General Agreement of Indemnity with your bonding company – very difficult to negotiate revisions, but some modest modifications can be made

- If bid bond is issued, the surety is to provide performance and payment bonds unless there has been a substantial change in your financial condition and no security is available to the surety.



PERFORMANCE AND PAYMENT BONDS

61. Be certain to include a time limitation in performance bonds. Don't agree to execute general contractor-drafted performance bonds.



PERFORMANCE AND PAYMENT BONDS

62. Scrutinize labor and material payment bonds for the range of persons and parties who can recover on your payment bond and check to be sure there is a time limitation for a suit on the bond to be commenced.



PERFORMANCE AND PAYMENT BONDS

63. Communicate early with your bonding company if there is a problem that is likely to be reported to your surety. Provide assurance to your bonding company that you are handling the problem properly and communicate regularly with your surety.



SAFETY



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SAFETY

64. Make it truly the culture of your company. Make it the highest priority on every job, including 2-person repair crews. Have a passionate safety officer who is well-respected by your crews and effectively communicates with your personnel.



SAFETY

65. On new construction projects, have an experienced safety knowledgeable person examine the deck for safety hazards each day, especially checking for openings for mechanical equipment that may not be properly covered, secured and labeled, before you allow crew members to get on the roof.



SAFETY

66. Skylights - Have and maintain a ridiculously strict policy to prevent falls through skylights: take affirmative measures to keep workers away from skylights. For workers working around and with skylights, 100% tie-off.



SAFETY

67. On re-roofing projects, be sure a thorough evaluation of the condition of the deck and deck supporting structure is made before you place men and equipment on the roof.



SAFETY

68. On re-roofing projects, ascertain if there has been a history of leakage, in what areas, rusting or deterioration of any areas of decking, areas of tectum or gypsum decking – any conditions that may be a fall hazard.
- If there are any areas where deck is going to be replaced or there is suspect decking, require 100% tie-off in all areas whenever on the roof.



SAFETY

69. Perimeter fall protection: don't rely on warning lines and safety monitors. Implement positive fall protection on all jobs.



SAFETY

70. Emphasize ladder safety.



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SAFETY

71. If you must do torching, be sure you follow a regimen to prevent smoldering and fires.
- a. Know what materials are behind where your personnel are torching.
 - b. Do not torch on or to combustible materials or surfaces
 - c. Be sure all your personnel are CERTA-trained and follow-CERTA procedures.
 - d. Be sure you have a procedure in place to check for smoldering and to prevent smoldering from becoming a larger fire.



SAFETY

72. Have an effective disciplinary policy. You should always be able to vacate an OSHA citation based on unforeseeable employee misconduct if you:

- a. Regularly conduct and document safety training for all employees, including temporary workers from staffing agencies, on the most common OSHA citations issued to roofing contractors.
- b. Regularly conduct job site inspections to check that all safety procedures and OSHA requirements are being met.
- c. Enforce your disciplinary policy whenever a violation of your company's safety policy or an OSHA standard is seen so that the policy is effective.



ESTIMATING, BIDDING AND BID MISTAKES



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ESTIMATING, BIDDING AND BID MISTAKES

73. Employ an estimator who is thorough, diligent , meticulous ... and have another well-qualified individual review the bid or proposal prior to submission.



ESTIMATING, BIDDING AND BID MISTAKES

74. If you get a call after submitting a bid or after a bid opening, asking you to confirm your bid, do not instantly confirm the bid. Check and double check your bid to be sure you have not missed something. If bids have already been opened, compare your bid to others. You don't want to be obligated to a bid with a mistake.



ESTIMATING, BIDDING AND BID MISTAKES

75. Act quickly on bid mistakes. Make known to the upstream party there has been a bid mistake prior to the award of a contract.



- BE A PROFESSIONAL
- TAKE PRIDE IN WHAT YOU ARE DOING
- ENJOY WHAT YOU ARE DOING





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