

Design Professional Newsletter



Contractor deviates from design: What can you do?

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As we continue our series on common claim situations arising from specific project types, we must discuss projects where the general contractor deviates from design plans. It is a tale as old as time: contractors blaming design professionals when issues arise, and design professionals blaming the contracting team for the same problems. This battle encompasses almost every project on the horizon.

Lately, a popular project that has fallen victim to design deviation is single-family homes. Based on recent claim activity, this is a growing trend, as there are fewer “eyes” on a single-family residential project compared to a commercial structure with more participants. Additionally, the client is often a homeowner who may be less sophisticated than a larger developer. Economic issues can also play a role, as contractors often promise homeowners a cheaper project with a faster turnaround if they take shortcuts. What homeowner doesn’t want to save money and time on their new home or renovation project?

Most claims arise when the design professional discovers the deviation after the project’s substantial completion. For example, the design professional may receive a call from their homeowner client advising that they are experiencing water intrusion issues from a leaking roof, or they discover floor deflections or cracks in the walls. When the design professional returns to the project site, they may immediately discover that their plans were not followed. In other cases, it may take time and money to understand why certain issues exist, only to later find out that the contractor used the wrong materials.

Remember, it is essential to keep the lines of communication open between you, your client, and all other project participants. If your client takes issue with a certain aspect of the design or construction and you provide any type of recommendation or advice, ensure that this is followed up in writing and sent to all involved. Documentation will be critical to your defense should a claim be made.

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If your contract includes construction administration services, ensure that you are upholding your end of the bargain and visiting the site as often as your contract dictates. Similarly, stick to your scope of services. If you are on-site and provide general direction or answer any questions outside your scope of services, this can be detrimental to a potential defense if a claim arises. Finally, if possible, ensure the general contractor is reputable and has experience with the project at hand.

There are many reasons, some reasonable and some not, that cause projects to take a different direction than initially anticipated. If you note a deviation from the project's initial design, it does not necessarily need to develop into an adversarial situation. It is recommended that you do the following:

1. **Identify the Deviation:** Document the specific deviations from the design, including photographs, notes, and any other relevant evidence.
2. **Review Contract Documents:** Review the contract documents, including the drawings and specifications, to confirm that the contractor's work does not comply with the agreed-upon design.
3. **Communicate with the Contractor:** Have a direct conversation with the contractor to discuss the deviations. Clear communication is essential to understand the contractor's perspective and the reasons behind the changes.
4. **Issue a Site Instruction or RFI:** If the deviation is significant, issue a formal instruction or request for information (RFI) to address the issue. This document should outline the specific concerns and request clarification or corrective action.
5. **Assess Impact:** Assess the impact of the deviation on the overall project, including any potential effects on aesthetics, functionality, safety, and compliance with building codes.

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6. **Propose Solutions:** Suggest solutions to bring the work back in line with the design. This may involve reworking certain elements, providing alternative materials, or adjusting the construction methods.
7. **Monitor Progress:** Once a solution is agreed upon, continue to monitor the contractor's work to ensure compliance with the revised instructions.
8. **Document Everything:** Maintain thorough documentation of all communications, decisions, and changes made to the project. This is crucial for legal protection and future reference.
9. **Involve Other Stakeholders:** If necessary, involve other stakeholders, such as the owner or project manager, to resolve the issue collaboratively.
10. **Legal Considerations:** If the contractor refuses to comply or if the deviations are severe, consult legal counsel to understand the implications and potential next steps, which could include formal dispute resolution processes.