



# Don't Get Burned— Tips on Hiring the Right Contractor

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## Brian Gingrass Background

- Over 13 years experience in commercial real estate
- Specialize in investment real estate
- Over \$200 million in closed transactions
- Overseen many apartment renovations and commercial construction projects
- Member of AASEW, CARW, and WRA



## Eric Meier Background

- Partner at Husch Blackwell
- Father of 4 Boys—Extensive Lego Construction Experience
- More than 20 Trials
- The Best Lawyers in America, Litigation – Construction, 2016-2018
- Construction Lawyers Society of America Fellow



# Get back to the Basics



# Contracts 101

- Verbal vs. Written
  - Verbal can be enforceable, but written is always better
- What are the can't miss, don't miss terms?
  - Scope, cost, schedule, payment process, risk management
- How handle changes?





# What are common problems that could have been avoided at contract formation?

- Remove ambiguity wherever possible
- Create incentives for positive conduct/results
- Have a stick available to use if necessary—e.g. include attorneys' fees language for disputes



# Search for Extra Value

- Try and find partners who can add value beyond their execution of the contract.
- Value engineering
- Simplified communications
- Transparency



# Little Things that Matter

- Basics: years in business, # of employees, website, office?
- Show up on time? Return phone calls/emails/texts in a reasonable amount of time? Is the voicemail full?
- References from recent customers
- Social media: facebook, linkedin for shared connections
- Visit a job site of a current project
- Samples of work...website or pictures
- General contractor vs. jack of all trades
- Too eager?





# Protecting Yourself

- W-9 form should be signed up front before work commences
- Should you give a deposit? Payment schedule should be based on progress
- Does your project require substantial materials up front?
- Set expectations and communicate, be specific
- Visit job site regularly to review work and meet contractor; use tape
- Don't make final payment until at least 1 week after completion



# Protecting Yourself

- CASH IS NOT KING!
- Obtain copies of insurance, make sure policy is still current
- If sub-contractors are involved, get lien waivers signed as the work is completed. Don't be afraid to ask for copies of checks or "paid in full invoice"
- Does the work have warranty? Labor included? In writing?
- Credit Card
- CCAP
- Contractors are interviewing you as well
- Treat contractors with respect



# What to do if a dispute is brewing?

- COMMUNICATION IS KEY
- Make sure you document the problem—pictures, letters etc.
- Know what your contract says for dealing with problems in terms of timing, form of notice, remedies etc.
- Who needs to be put on notice?



# The alternative to a reasonable resolution could be costly litigation

- One way to control litigation costs, time etc. is to have a good dispute resolution clause on the front end
- Make a conscious choice as to whether a dispute would be in arbitration as opposed to litigation
- I strongly encourage mandatory mediation language as a pre-requisite to anyone moving forward with formal dispute



# What if a lien gets filed on your project?

- Confirm details of filing
- Check prior lien waivers exchanged for payments
- What does your contract say relative to liens?
- 5 months, 6 months and 2 years





# Real World Examples

- Interior Door installation: customer had written contract, scope of work, cost, start/end date.
- Tree install/landscape work. Contract in writing with trees warranted for 12 months if they die.



## QUESTIONS?

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