



**Monthly News Letter – June 2009
Contracts Part I - Stipulated Sum**

This letter is the first in a four part series regarding construction contracts.

The Stipulated Sum contract is one in which the Contractor performs or constructs according to contract documents for a stipulated amount of money. This is likely the most commonly used contract due to various reasons such as a fixed budget, competitive bidding, a bank's preference, or simply an owner's choice. This contract should be written with the owner's and contractor's interest addressed fairly and requires very accurate supporting documents such as plans and specifications or description of materials. I will only address some of the elements of the contract as well as advantages and disadvantages.

1. The legal description of the property should be identified and an accurate site drawing locating the building on the property may be attached as one of the documents.
2. The scope of the entire project should be identified listing and describing the finished product, such as the foundation, square footage of the house, decks or patios, garages, types of finishes, etc.. The specifications or description of materials will more accurately describe the products and finishes.
3. The price to be paid and the method or sequence of payments should be addressed especially the final payment. The final payment is usually due upon "substantial completion". This indicates the house is ready to occupy (a certificate of occupancy if applicable) however there maybe a few items to supplied or completed. The owner should make a punch list and all the items promptly addressed by the contractor.
4. Change orders should be maintained throughout the work progress with the new contract price listed upon each change order so there is no misunderstanding at the end. This maybe the most important item in the construction process.
5. Insurances should be addressed, workmens comp, general liability, and builders risk. It is important the owner has insurance in place when the job is complete.
6. License, permits, and fees should be clearly addressed. Montana does not license contractors so experience or references should be checked out.
7. Warranty – Most contractors warranty their buildings for one year. The person or persons with phone numbers to contact if there is a problem should be give to the owner upon completion.
8. Lien Release – The owner may want to obtain a lien release from the contractor when the job is complete to be sure all the bills or subcontractors have been paid.

These elements above should be included or addressed in construction contracts but not limited to these either. A good agreement will include these and more. An attorney can be very helpful on the actual agreement but the specifications should be read and re-read to be sure of the content and coverage.

The advantage to this Stipulated Sum contract is total cost in know in the beginning plus any change orders. The contract documents have to be very accurate though. Items omitted or vague can lead to a misunderstanding or dispute. This contract is not as flexible as a "cost plus" or "time and materials". Again, change orders can cause a wreck, so deal with them as they arise and they will. One may want another type of contract if time is of the essence, since the preparation of the documents may be lengthy.

A good construction agreement and documents can make for a more pleasurable building experience for all parties. If you have a construction related question, send me an email david@davidsimpsonconstruction.com and I will do my best to answer it.

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