

NEW YEAR'S RESOLUTIONS 2015

The New Year is here and business for contractors continues to improve. In gearing up for 2015, now is the time to conduct a review of your business systems to ensure you are compliant with the various relevant regulations, using good business practices, and adequately protecting your assets and interests. This article will provide a brief summary of several recommended “resolutions.”

CONTRACTS

“In 2015, I vow I will actually look at the damn thing.”

Many of you have heard us go on about contracts. The reasons are obvious - they are absolutely essential to use, and they must be compliant with all the many statutory requirements. A compliant custom contract template can be created for your business so that it can be used for all types of jobs – remodel, new construction, commercial. It is certainly worth the relatively small investment.

A good contract provides two key benefits. First, it clearly identifies the key terms of the deal. This generally prevents disputes. In the event of a dispute, it clearly identifies how to achieve resolution. Second, it keeps you in good standing with the CSLB if a complaint is filed against you (god forbid) and gives you leverage in any matter the CSLB pursues.

Contractors should also have a straightforward subcontractor agreement template, change order template, and current statutory lien waiver and release forms.

BUSINESS ENTITIES

“In 2015, I promise I will take real steps to protect my assets - really.”

Contractors who have not yet incorporated their business should consider doing so. (LLCs are usually impractical because of bond costs.) Corporations, when properly maintained, among other things provide protection of personal assets from liabilities of the corporation. The corporate status can also provide other peripheral benefits, including marketing.

If your business is already incorporated, be sure that you are properly maintaining your corporate documentation. Be sure that you your corporation is in good standing by checking the Secretary of State’s website. It is easy to become a “suspended” corporation – the most common circumstance seems to be failing to mail your annual statement of information to the Secretary of State. There are harsh penalties for suspended corporations, including the inability to sue or defend lawsuits.

Also be sure that you are holding the proper meetings and creating the appropriate records. If your corporation is behind in its basic record keeping, you should address it immediately. (You

are not the only one, believe me.) And it is certainly better to be a bit late than simply not produce the proper records and hope for the best.

BUSINESS PRACTICES AND RECORD KEEPING

“I will move beyond the shoebox school of record keeping.”

One of the most common problems in construction disputes is a lack of good records. Many silverback contractors prefer the “old school” ways of handshakes and simple good work. Those days are long gone. Disputes are inevitable and an unfortunate but real part of the business. When proper records are kept, disputes can often be resolved more quickly and at relatively lesser expense. But when records are lacking, a small dispute can end up becoming extremely costly and time consuming.

The buck stops with the contractor; you are supposed to be the professional.

Documenting the project. It is important to document the project at **all** stages in writing and with photographs. It is also lifesavingly important to obtain **signed/approved** change orders prior to the work being done every time.

Subcontractors and Insurance. Be sure to use licensed subcontractors and have a written subcontractor agreement. Obtain proof of the subcontractor’s insurance and become an Additional Insured. If you haven’t done so recently, you should review your subcontractor agreement with your current general liability insurer or agent to be sure that you are being adequately protected. The various indemnity provisions and applicable codes are complicated, but can be very important from a risk management perspective.

Calendaring and Liens. If you are a subcontractor be sure to have lien procedure that you follow for every job. The timing requirements of the preliminary 20-day notice, recording of the lien, and perfecting the lien are strict and unforgiving. If your company does its own lien notices, be sure that one employee is responsible for checking and maintaining all lien notices and calendaring the deadlines. Don’t spread this important task around. You may also wish to consider an outside company that can manage your lien notices for you.

MARKETING

“I will put into effect those notions of genius I had last year.”

If you have professional marketing services, you are probably in good hands. If you maintain your own marketing efforts, be sure to keep your materials current. Your business name, website, and contact information must be up to date. If you maintain a social media page or blog, be sure that you monitoring it and keeping it current. Lastly, if you have old advertisements or social media presence that may not properly reflect your current information, try to remove or update it so that you have a consistent presence.

Good luck!

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For Bryant's previous articles, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade." They are also available on his website under "Articles," and on Brian's website under "Publications."

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