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### TIPS ON HOME IMPROVEMENT, DESIGN, AND SUB- CONTRACTS; AND AN OVERVIEW OF BUSINESS ENTITIES

*By Brian J. Trowbridge, Trowbridge Law Office*

**Home Improvement Contracts.** You must have a written contract. It is an important tool for marketing your business, establishing the framework for the project, protecting your interests, and maintaining your license.

- Realistic expectations for a compliant Home Improvement Contract:
  - Primary Contract 3-5 pages; Required Notices 5-6 pages; Terms & Conditions vary.
  - See B&P § 7151.2 for definition of “home improvement contract,” B&P § 7159 for most of the required language in such contracts (i.e. contract price, description of work, progress payments, mechanic’s lien warning, three-day right to cancel, insurance, extra work/change orders, etc.).
- Exceptions/exemptions to B&P § 7159 requirements:
  - Contracts that are not “Home Improvement Contracts”; when materials and services amount to less than \$500; and “Service and Repair Contracts” (B&P § 7159.10).
- Important but not statutorily required terms:
  - Dispute resolution (i.e. arbitration), termination/breach, assignment, attorneys’ fees, warranties.

**Design Contracts.** Generally, a designer is not required to have a written contract, but it is a good idea.

- Recommended Contract Provisions: Scope of services, cost of designer’s services including how materials will be charged/marked-up and payment terms, schedule of the work, termination, and dispute resolution. Many other provisions may be relevant depending on the specific services you provide.
- “Certified Interior Designer”: B&P Code § 5800 provides for certain organizations to certify interior designers. If you are a certified interior designer under this section, you must have a written contract (B&P Code § 5807).
- B&P Code § 5807 Requirements: Description of services, payment terms, contact info and certification number of designer, how to deal with additional services, termination, three-day right to rescission (Civil Code § 1688, et seq.), and a written disclosure regarding errors and omissions insurance.

**Subcontracts.** General contractors using subcontractors should have a good Subcontract and subcontractors contracting with general contractors need to read and be mindful of the Subcontract terms.

- For Generals:
  - Annual renewable subcontract agreement for use with subcontractors with whom you work regularly.
  - Important terms: Indemnity, delays, insurance, contract price, warranties, safety, assignment.



- For Subcontractors:
  - Must read and understand the terms of the Subcontract and request modifications if you are not OK with a proposed subcontract.
  - Important terms: Indemnity, delays (including liquidated damages), insurance, warranties, dispute resolution.

**Business Entities.** The principal business entities in the construction industry are Corporations and Sole Proprietorships, but a Limited Liability Company is also available.

- Sole Proprietorship (or Partnership):
  - The individual(s) is/are the entity and has/have personal liability for obligations of the business. In a partnership, each partner has joint and several liability for all obligations of the partnership.
- Corporation:
  - A legal entity that exists separately from its owners, and if maintained properly, can protect the personal assets of its owners. You should consult an attorney before setting up a corporation.
  - Some of the requirements: Must file Articles of Incorporation with the Secretary of State; hold initial meetings and adopt bylaws; file appropriate forms for transfer of securities; file an annual Statement of Information; and maintain the accounts, books, and records (including annual meetings of shareholders and directors, or document actions by unanimous written consent).
- Limited Liability Company (LLC):
  - A legal entity that offers liability protection similar to that of a corporation but is managed and taxed differently. You should consult an attorney before setting up an LLC. Can be more flexible but contractors must obtain extra bonds and may pay more taxes than as a corporation.
  - Some of the requirements: Must file Articles of Organization; adopt an operating agreement; and maintain the accounts, books, and records of the LLC.

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*Brian J. Trowbridge has been a NARI Diablo Valley Chapter Member since 2013. Brian handles transactional and litigation matters relating to the construction industry and general business law. His firm also provides services in other areas of law. The firm's goal is to provide a spectrum of legal services to our clients, who can then, freed from the worry and hassle of legal issues, utilize their time and energy in doing the things they enjoy, such as running their business, spending time with family, or pursuing hobbies.*

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This is a summary discussion only - to simply give you a heads up on various construction related topics. The information contained herein is not legal advice. Each scenario is different and if you need legal advice you should contact an attorney immediately. This is an advertisement of the Trowbridge Law Office on behalf of attorneys Brian J. Trowbridge and Jeffery D. Trowbridge.