

A.: A construction contract is an agreement between the owner of a parcel of property and a contractor by which the contractor is engaged to build improvements on the owner's land. Because of the complications involved in the construction of buildings or other improvements, the large sums of money that usually are involved, and the statutory requirements for construction contracts, most construction agreements are reduced to writing. With certain exceptions (contracts for residential construction, home roofing warranties, landscape architect contracts, etc.), however, a construction contract need not be embodied into a formal written document.

Pursuant to Business & Professions Code section 7164, all contracts (including any modifications), between a contractor and an owner of a single-family dwelling that the owner intends to retain for at least one year, must be in writing and signed by both parties. Among other things, the writing must contain the contractor's name, address, and license number, the approximate start and completion dates, and a legal description of the location where the work will be done. The writing may also include any other items of agreement and should describe other documents incorporated into the contract. The contractor must furnish a signed copy of the contract to the owner prior to commencing work.

Among other things, a contractor and the owner of a parcel of property can be "protected" by adding an attorney's clause to the construction contract. This clause provides for the award of reasonable attorney's fees and costs to the prevailing party, if a court action is commenced to enforce the terms of the construction contract. Recently, I was able to obtain a favorable decision for a general contractor client, following trial, which included not only an award of the principal amount owed (plus interest), but also my client's attorney's fees and costs (the award of attorney's fees and costs exceeded the outstanding amount owed). Protect yourself, and add this clause.