



[Construction Change Order Provisions- Sword and Shield?](#)



A recent case brought to my attention by Melissa Brumback (@melissabrumback) of the [Construction Law in North Carolina Blog](#) reminded me of the necessity to both include change order provisions in your construction contracts and to follow them. In the case of *Artistic Stone v. Safeco* in the Norfolk, VA Federal Court (linked from and thoroughly discussed in Melissa's [great post here](#)), the court refused to let a claim for extra work proceed where the plaintiff failed to properly follow the written change order requirements of the

contract.

I look at the Artistic Stone case as a good reminder [to read and follow the provisions](#) of the construction contract documents governing the construction project on which you are working. It is also a reminder that courts in the Commonwealth of Virginia will [strictly construe and enforce](#) those written provisions. The assistance of an [experienced construction attorney](#) can help you assure that these written contract provisions are properly drafted.

The Virginia courts' strict enforcement of written contracts is not all bad. In fact, when construction professionals acknowledge that [gentleman's agreements and unwritten "deals" are not the way to go](#) and that they can make their own law in their written documents, certainty and a better project can follow. Written change order provisions are great tools to assure that everyone knows the scope, timing and price of any change order prior to work being performed. Such provisions (despite their seemingly adding an unnecessary layer to an already paperwork heavy project) allow for all parties to know their rights and obligations.

These provisions cut both ways. A general contractor that requires written change orders will know what it is paying for. A subcontractor will know what it needs to do to get paid. Granted, on the fly decisions will have to be made at times that can go outside of the normal change order process. However, in the days of blackberries, I-Phones and e-mail, at the very least an e-mail exchange (followed by a formal change order request)

should acknowledge the scope and price to be paid for any change in work. Absent even this minimal amount of paperwork, the subcontractor risks non-payment and the general contractor risks paying for an uncertain scope of work. In either case, the Virginia courts will not have any sympathy for the aggrieved party should it have to go to court to enforce the rights it thought it had.

In sum, make sure your construction contracts have written change order provisions and that these provisions, and the other written provisions of your contract, are followed in practice at the job site. Failure to do so can result in disaster. . . just ask Artistic Stone.

Image via [Wikipedia](#)

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.