

What isn't in your Construction Contract?

By [Melissa Dewey Brumback](#)

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Ever wonder why lawyers like to write contracts that seem to go on, and on, and on? By nature, lawyers are doomsayers. We try to minimize risk, and sometimes that takes the form of a contract that "only a lawyer could love".

Did you know that what is not in your construction contract is *just* as important as what is in there? Many times the heart of a construction dispute stems from confusion or mistaken assumptions about what, exactly, was agreed upon.

In addition to having a very detailed "Scope of Services," in which you specify exactly what you will be doing on a project, you should also develop a standard "Exclusions from Services" list, and that list should be a part of every contract.

Such an exclusion list should include:

- anything you were specifically asked not to perform
- anything the owner indicated was to be provided by others
- anything which involves specific contractor coordination (unless you are providing this service)
- a listing of anything above and beyond normal conditions (for example, "attendance at more than X meetings a month")
- a general "catch all" statement that anything not specifically specified in the Scope of Services is not covered

Of course, what specific things should be listed in your Exclusions list depends on what field of construction you are in. Design professionals need to focus on coordination issues, duties with respect to other design professionals on a large project, duties relating to oversight of contractor work, and related issues. Contractors should focus on their responsibility to work with and/or around other trades as well as related work that the owner does not intend to pay for which can result in scope creep.

While it might seem like wearing belts and suspenders at the same time to write out a Scope of Services and also include an Exclusion from Services list, the minimal extra effort in developing such an Exclusion list will pay you back in volumes should a dispute on the project ever arise.

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