

Contract Provisions Florida Homebuilders Should Revisit in a Rising-Cost Environment

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Over the past few years, the math has changed when it comes to building homes. Lumber prices may have retreated from their pandemic peaks, but concrete, roofing materials, impact-rated windows, and skilled labor remain stubbornly expensive and unpredictable. Meanwhile, buyers are rate-sensitive, margins are thinner, and the window between contract execution and closing can stretch long enough for an entire cost structure to shift underneath you.

The fallout from these pressures often results in disputes that could have been prevented. The common thread is almost always the same: contract language that was written for a more stable market and never updated. Below are some of the provisions Florida builders should revisit now, before the next cost spike turns a good project into a contested one. Some of these points may seem obvious, even self-evident, but they are nonetheless frequently left out of the contracts where they matter most.

1. Escalation and Price Adjustment Clauses

A fixed-price contract with no escalation mechanism is a bet that costs will hold steady. In today's Florida market, that is a bet you are likely to lose. Yet many builder contracts still lack a clear, enforceable price adjustment clause, and those that contain one tend to be so vaguely worded that they invite a fight.

Effective escalation clauses should identify a specific triggering event (a defined percentage increase in a named material index, for example), a transparent calculation methodology, and a clear notice procedure. Avoid open-ended language like "prices subject to change." Buyers and their counsel are likely to challenge such language, and a court may not enforce it. The more precise the mechanism, the more defensible it is.

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2. Force Majeure Provisions

Post-hurricane, post-pandemic, Florida builders understand force majeure intuitively, but their contracts often do not reflect that understanding. Many force majeure clauses are boilerplate holdovers that fail to account for supply chain disruptions, labor shortages, or extended permitting delays caused by local government backlogs.

Review your force majeure provision to confirm that it covers the events most likely to affect your projects. Equally important, make sure it provides a meaningful remedy: an extension of time, a right to adjust pricing, or both. A clause that gives you extra time but locks you into a fixed price during a six-month materials shortage is only doing half the job.

3. Allowance Structures

Allowances are a perennial source of buyer disputes, and cost volatility makes them worse. When an allowance set twelve months ago no longer covers the actual cost of the specified finish, someone absorbs the difference, and the contract should make clear who that is.

Build in language that explicitly requires buyer acknowledgment when the cost of selections exceeds the stated allowance, and specify the process and timing for collecting overages. Ambiguity here breeds change-order disputes and closing delays.

4. Subcontractor Pass-Through Risk

Your subcontracts and your buyer contracts need to speak to each other. If your subcontractor agreement permits price increases under certain conditions, but your buyer contract does not, you are absorbing that delta. Align the risk allocation in both directions: ensure that the conditions triggering a cost adjustment in your trade contracts are mirrored in your purchase agreements.

Pay particular attention to indemnification and warranty provisions as well. A warranty you make to a buyer that exceeds what your subcontractor has warranted to you creates an unfunded exposure that can surface years after closing.

The Takeaway: Review Before You Need To

The best time to fix contract language is before a dispute forces you to read it carefully for the first time. Florida's construction market is not getting simpler; between insurance volatility, evolving building codes, and an unpredictable cost environment, the pressure on margins and timelines will continue.

Every builder should sit down with counsel, pull out the template contracts you are using today, and pressure-test them against the market you are operating in right now. The cost of that review is a fraction of the cost of a single avoidable dispute.

If you have questions about how rising costs may affect your construction contracts or would like assistance reviewing your existing agreements, please contact **Jessica McGinnis** at jessica.mcginis@lowndes-law.com or 407.418.6240.