

GET IT IN WRITING: IT'S THE LAW

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Some contractors believe that having a written contract with the owner that clearly states the terms of their agreement is beneficial but not necessary. They may also believe that getting change orders in writing is optional. However, neither of these items is optional; they are necessary. Rule 33 of the Michigan Administrative Code relating to residential builders and maintenance and alteration contractors provides that:

- A builder or contractor shall deliver to his customer fully executed copies of all agreements between them, including specifications, and when construction is involved, both plans and specifications. (A different rule applies to spec homes).
- He shall make certain that all such writings are definite in their terms and sufficient to express the intent of the parties with regard to the transaction, the type and amount of work to be done, and the type and quality of materials to be used;
- Changes in the agreement shall be in writing, dated and initialed by the parties to be bound; and
- The parties shall adhere to applicable building, housing, and zoning regulations.

Failure to comply with this rule can subject the contractor to punishment that includes suspension or revocation of the contractor's license.

Based on this rule and principles of good drafting, every residential contract should include the following, at a minimum, to express the intent of the parties:

- Plans and specifications
- Type and amount of work to be done
- Type and quality of materials to be used

Since in virtually every case, the parties will intend for the contractor to be paid a certain amount for his work, the contract should also state the price for the work and how and when the contractor will be paid. These are the minimum provisions that every contract must contain to comply with Rule 33. Additional provisions are often necessary to fully express the intent of the parties.

The requirement of a written contract that clearly sets out the agreement of the parties is not only a requirement of Rule 33, it is a requirement of the Michigan Construction Lien Act which requires the following for a residential contractor's lien to be valid:

- The contract and all additions must be in writing;

- The contract must state that builder is licensed (if required to be licensed) and contain its license number; and
- The contract must contain specific language re: trade licenses, i.e.“(a) That a residential builder or a residential maintenance and alteration contractor is required to be licensed under article 24 of Act 299 of the Public Acts of 1980, as amended, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws. That an electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being sections 338.881 to 338.892 of the Michigan Compiled Laws. That a plumber is required to be licensed under Act No. 266 of the Public Acts of 1929, as amended, being sections 338.901 to 338.917 of the Michigan Compiled Laws.

Note that in both Rule 33 and in the Construction Lien Act, any change or addition to the contract must be in writing. While there is a tendency for contractors and owners to want to trust each other and not be overly legalistic - at least while things are going fine on the project - if the relationship breaks down, failure to comply with these obligations can cause significant problems for the contractor. Getting the contract and changes in writing is a good and professional business practice that you should develop regardless how much you like a particular customer. Now that you know that getting it in writing is required by Michigan law, you have a completely defensible reason for requiring a writing to which no reasonable owner should object.