

Guarantee Your Completion Dates

by Paul Eldrenkamp

The thought of voluntarily adding a penalty clause to your construction contract may seem like heresy, but it can actually make good business sense. In legalese, it is called a “liquidated damages” clause and allows the homeowner to deduct a preset amount from the final payment for each day the work extends beyond the completion date. The dollar amount of the damages approximates the value of out-of-pocket expenses incurred by the client because of the delay.

While most contractors will wince at the thought of having to pay a predetermined amount of money if a job runs over schedule, without such a clause a bad situation can quickly take a turn for the worse. For example, let’s say that you’re a week late finishing a kitchen. The clients could reasonably argue that they incurred additional expenses by having to eat seven restaurant dinners. They could, in fact, dine at a very expensive restaurant each of those nights, invite friends and family along, too, and submit a claim for \$500 per day against the final payment.

Such a claim might not hold up in court, but it could take many expensive legal hours to get them to back down. A liquidated damages clause in your contract, on the other hand, would cap the amount you would have to pay out at much less — say, \$100 per day.

Service Guarantee

A liquidated damages clause is even more valuable when I present it as a service guarantee and employ it as a sales tool. This service guarantee is more than a mere promise that I will complete the job on time, because it carries a penalty if I break my word. After all, it’s easy to say I’ll be done by the end of the month, but if nothing happens should I miss that date, what good is the promise?

This lack of consequences helps fuel the general hilarity with which the public responds to construction schedules.

Imagine, though, the power of making a voluntary promise regarding your performance on a job, and backing it up with real consequences. Imagine telling a client: “I acknowledge that time is a valuable commodity to us all, and I want you to know that we will be done by July 31 or we will be deducting \$100 a day from our final bill.” You’ll have the client’s full attention, and you’ll have a competitive advantage over contractors with more elusive completion dates.

Does this strategy really work? Some industries that have used service guarantees to good effect were profiled by Christopher Hart in a July 1988 *Harvard Business Review* article. In the most outstanding example, if you are a customer of BBBK, a pest exterminator in Miami, Fla., you don’t pay for anything until all the pests are gone. On top of that, if you are ever dissatisfied with the company’s service, BBBK refunds your money and pays a competitor of your choice to take over the job for the next year. That’s not all: If your facility is closed down by the Board of Health because BBBK was unable to eradicate the pests, the company pays all fines, all lost profits, and an extra \$5,000 on top.

What does BBBK get in return? They get to charge up to ten times more than any other exterminator in the area, and they still get the biggest share of their market. In 1986, the company paid out \$120,000 in self-imposed “fines” on sales of \$33 million. For small remodelers doing a volume of \$500,000, that works out to around \$1,800 — possibly the most effective advertising and marketing money you’ll ever spend.

Designing the Agreement

Before you put a completion date on

the table, you need to pay attention to how well your schedules run now, and what can be done to improve your timeliness before you can turn it into a competitive advantage.

Know your track record. Monitor how long it takes you to do a variety of projects. Be sure to stick to facts, and don’t let wishful thinking get in your way. I can do a complete kitchen remodel in ten weeks, and a complete bathroom takes five weeks. Could I do the work faster? Maybe, but the fact is, I don’t. Don’t make a judgment, just report the historical data.

Completion vs. substantial completion. Be careful which of these terms you use. Completion means entirely done and out of there, with no return trips for missing items. Substantial completion means the space is usable for its intended purpose, but some work may be unfinished. For example, the kitchen is usable, but the cabinet handles aren’t installed yet because they were ordered in the wrong color.

I recommend starting with the term “substantial completion” because it leaves you more wiggle room. But it also dilutes the selling power of the guarantee, so you may want to change to “completion” after you’ve had a chance to see how the service guarantee works.

Under-promise and over-deliver. If the job will take eight weeks, I put the substantial completion date twelve weeks out. I don’t want the job to be open-ended, but I need to leave enough time to do a good job, even if something screws up. Clients will remember the date you list as the completion date, as well as whether or not you hit it. They usually forget that you padded the schedule a little.

Contract Language

Although Christopher Hart believes

effective service guarantees should be unconditional, I think you need to include some common-sense measures so that you are not at risk from a client's failure to perform. Circumstances that can extend or waive the substantial completion date include:

- **Changes in the scope of the project.** Extra work takes additional time to complete. Every change order should note specifically the new completion date. To make sure I don't forget to factor in an extension of time, I include a "Revised Completion Date" line on my change-order forms.
- **Product selections.** It's easy to blame clients and their indecisiveness, but it's your job to inform clients of the consequences of their indecision. "Take as long as you need to choose that light fixture, but I need to remind you of two things: We'll still complete our end of the agreement within 15 days of having the fixture on site, but the electrician quoted the

job based on installing everything at the same time. I'll need to charge you extra to have him install one later, and extend the completion date by three weeks." This can be hard to say, but it's something that needs to be pointed out in crystal clear terms.


- **Fire, theft, and vandalism.** These are circumstances beyond your control.
- **Acts of God.** This refers to blizzards, floods, lightning strikes, plagues of locusts, and other events over which you have no control. (A better paying project on the other side of town will not fly as an Act of God.) I suggest that you meticulously document every such act — in my 17 years of business, I have yet to encounter one that affected a completion date, but there is still time.

Money Well Spent

In his article, Christopher Hart also stated that if you never pay out any money against your guarantee, it's too weak to really be a guarantee. In about

ten years of including liquidated damages in my contracts, I've paid out about \$1,500. Maybe it's time to raise the bar a little. It's a good use of marketing money and I budget it that way.

I've also talked with contractors who believe that if your client insists on a liquidated damage clause, you should insist on a bonus clause. If you're a day late, they get \$100; if you're early, you get \$100. I think this strategy only serves to eliminate the value of the service guarantee. Because you set the schedule, there's no credibility — you could rig it in your favor every time.

A liquidated damages clause is not something to fear; in fact, including such a clause in your contract shows clients that you take customer service seriously, and that you back up the talk with real consequences. 

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