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## **CONSTRUCTION LAW**

### **CAN YOU ENFORCE AN "ORAL" CHANGE ORDER?**

In spite of construction contract language requiring all change orders to be in writing, the hectic pace of actual construction often results in changes to the specifications being made on the spot or too quickly to prepare a written change order. In other cases, the parties just adopt a casual attitude about changes and simply handle them as they come up without reducing them to writing. All is well until there is something wrong with the changed work, or the customer decides not to pay anyway.

Fortunately, if you can establish a course of dealing in accepting verbal change orders in spite of contract language requiring "all change orders must be in writing", you may still be able to get paid, or require correction/completion of the work. The Missouri Court of Appeals said:

"habitual acceptance of work performed on oral change orders and subsequent payment for the work, results in waiver of a contract clause providing that all orders must be signed." See Missouri Department of Transportation etc. v. Safeco Insurance Company et al., No. 79860 (Mo.App.E.D., August 27, 2002).

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