

Chapter 11, Contract Administration. Contents, we're gonna talk about general information, administering construction contracts, administering non-construction contracts, contract modifications, contract claims, and contract termination. Contract Administration refers to everything that you do with the contractor. If it's a contractor, it means you have a contract and everything you do to ensure that the work is performed properly, and that you have received everything and that therefore, you can make payments, whether it's an end payment, or it's a phased payment. It's everything you do. When I was young, there was a great song that I really enjoyed. And I call it my contract management song. I'm not gonna sing it. (laughs) I'm gonna rap it. (laughs) No, here we go. Smiling faces sometimes pretend to be your friend. smiling faces show no traces of the evil that lurks within -- undisputed truth.

That's all about contract management. No matter how much you trust a contractor, no matter how much good work in the past, you must check them every step of the way for every job, because contractors sometimes go bad, or contractors sometimes wanna take a little bit of advantage, because they've underbid the project. HUD has required forms that are referenced and put into every contract for construction. It's the 5370, which has requirements in it. For non-construction, it's 5370 C, sections one and section two, depending on the contract type. And for small construction or development, it's a 5370-EZ. Again, I put these in the bid or the quote, so that contractors know what they're gonna have to sign, what they're gonna have to agree to. Administering construction contracts. The contractor is fully responsible for completing work within the time and within the scope of the work. The PHA is responsible for monitoring the contract to ensure that the work is completed as scheduled on budget and within the all of the quality standards, that's your responsibility. Well, Mike, if the contractor don't do it, we do it. Well, that's a problem because that can void your warranties. The contractor has to do the work, you're responsible to make sure they do or you don't pay them. Monitoring and inspections. Typically with construction, we'll have a pre-construction conference. It's after we've decided who's gonna get the award. Sometimes it's after the contract is signed, though I don't recommend it. I recommend at the end of the pre-construction conference is when I'm gonna sign the contract, because we've discussed and agreed to certain terms and conditions so that the notice to proceed can be issued.

We discuss everything, timeframes, when they're gonna start work, when they're gonna complete work. Oh we listed in the bid 120 days, now, maybe the bid got delayed so long that now weather it's gonna affect it, and we may have to change that a little bit. Typically, that's because of our fault, not theirs, maybe, but not always. We're going to as a result of the pre-construction conference issue the notice to proceed. Now remember, a notice to proceed is for construction only. We don't issue notices to proceed for landscaping, annual audit, legal services. In those cases, the contract itself executed is the notice to proceed. 'Cause we write in it, it's gonna start on this date and the other. But we do notices to proceed for construction because many times the construction or rehabilitation work is tied to rent loss, meaning we've got units out of commission so we want a time and date certain to begin work and to end work. Now remember, if we signed a contract today, they're not gonna start construction tomorrow, they need to gear up. That's called mobilization. And sometimes, we do award mobilization, though it is not a deposit. Mobilization is a payment that we can make to the contractor for certain items that he or she may have already delivered to us. For instance, sometimes a bigger job of payment and performance bond may cost six or \$7,000. If they give me the bond, I can pay them for the bond. They can do a draw for the bond. Because I haven't, so I have little or no risk. What am I going to deduct from that payment for the bonds, retainage to retention. I remember once I had a 300 unit complex, it was done, and they had to put a fence up all the way around it to protect the safety and welfare of the public. Everything was gonna be rehabilitated. Another time everything was gonna be demolished. That fence going up cost

them 20-\$30,000. I can pay them for the fence because I have the fence there. And if they walk off the job tomorrow,

I have paid for the fence so I simply call the provider of the fence and say, leave the fence, I'm taking it over. This is very typical and common. They might move trailers onto the site, Porta Potties. They might during the performance of the contract store materials in a safe place. Now for me, I had a warehouse, five acre complex, 30,000 square feet in the building. Outside I had storage areas, 14 foot walls, razor wire, very secure, cameras, roving security, if they bought 300 tub and shower, surrounds, cast iron, the faucets which are very expensive, you know, for tub and shower, and they store them in that site there, I pay him for that. Why? Because if they go out of business, I've got the material. Minus 10%, I've got the 10% hold back too. Appliances, if they bought appliances, I could store them in my warehouse and I can pay them. And by the way, I like them to buy that stuff and store it at my facility because if they go bad, I've got it. See what I mean, I'm that much further along. That's mobilization. So this lady in Georgia, this construction lady the other day, it's been a year, year and a half. She told me, "I want 50% mobilization." And I said, no, we don't do deposits. She goes, "Boy, you don't know how we do stuff in Georgia. "And this is the way we do it. "I want 50%. "I got it from this housing authority, "I got it from that one." We wouldn't do it. Of course not, it's a deposit.

We don't give deposits. We only pay for stuff once it's been received. Got it? Yeah. By the way, you buy new software, they're gonna want 50% down, don't do it. I tell them right up in the bid, we don't do deposits. But we will pay for mobilization. So when I bought a new system, a new computer system with the software, and they said I can't order them, all of the hardware without the money. I said, here's what I'll do. Y'all have it delivered here and I'll have a check ready. And if you come check it all in and verify everything's there while my IT people were standing by, I'll give you the check right there and hand it to you right then. Send me the invoice now. That's what they did, although the supplier told them, we want the check made out to you and to us. They opened an account at Wells Fargo there in just that name, joint venture name. And then they went right down there, they deposited the check and then each of them signed off a disbursement to their company. They had the money immediately. Progress meetings, yes they're gonna happen all the time. Most larger construction projects, how often you're gonna have a progress meeting, weekly. With small projects, how often you'll happen? well, I don't know. Depends on how long it's going on. But what I do know is you're gonna have inspections every day. Every site with construction or major rehab, which is construction, has to have a site visit every day. How long you're there is gonna determine how the work is progressing and what you need to see. I built four high rise buildings.

I'm telling you right now I am not a construction expert. But I built them, I was the Construction Administrator and I volunteered to do it my authority under the guidance of some other people so I could have this experience. And the more I learned, the less I knew. The more I discovered I did not know. Yeah, it was a big job. Now, you're gonna expect the site, some days I would drive by and things are kind of slow and I might get out and walk for 20 minutes and then I go back to my other work. Some days I was there in Vegas, we got a lot of heat. So we would have to do concrete pours 3-4a.m. so the concrete could settle and set and they'd have big lights set up. So I'd have to be there three or four o'clock in the morning to watch it. But the day before, I was there with a laser with my guys teaching me to see if they were crown and the pad. You know, how about crown and the pad is? Yeah, it's where they make the pad the proper thickness in the outside, but they slowly crown it up on the inside, so that they can save money on concrete and give you a shorter pad in the middle. On one occasion, we threw the laser and he was crowning the pad. Where we knew, the guy I was with could cite it, he could see it, he goes, "This pad is crowned. "Let's do some site. "Hey, come over

here," he told the guy, and we started throwing the laser and the guy goes, "Man, I don't know how that happened." Well, we know how it happened. He was hoping we wouldn't do it. We measure the footings. See if the footings are proper. and what am I looking for the next morning in the concrete pour? I'm looking to see if they're shaking the steel, you know the rebar, shaking it to bring it up so that it's in the middle of the pad, and they don't just leave it laying on the bottom, which a lot of lazy contractors do. So we're there on the site at certain times. We might be at their top out times. Just you decide when to be there. What am I also doing completing every inspection?

Construction log, a binder where I wrote all the construction things that they were doing in it right while they were doing it. Each day I would record stuff, including weather. Why weather? Well, they're always looking for rain days, may or may not have given to them, but that's what they're looking for. Remember you smaller agencies, if you hire an architect to do this with you, either you or your maintenance person or your project manager walks with them, so they can learn from them as they're doing it. Just in case they can't come someday, and you need it inspected and a report made. You have labor standards. Again, you have to ensure that you do the on site interviews, you have to ensure that labor standards are all being met. That is your responsibility to, it's their responsibility to pay the rates, but it's your responsibility to follow up. You can make progress payments, we do it with construction. I have some people say not, anything less than 100,000, I'm not gonna pay them at the end, that's not even fair. Contractors have payroll to make and if you hold all payments until the end, they're gonna give you higher bids. Why? 'Cause they gotta go borrow money to make their payments. No, make phased payments to folks, be fair to them. The more you cooperate with contractor on things you can cooperate with, the better work they're gonna do. That's my recommendation. I want to encourage the contractor to perform by being as fair as possible. Remember, they're in business and you need to cooperate with proper business activities.

That does not mean though that you will approve them for payments that are above. Now, I told you earlier, that if it's a materials receiving slip, I'll do handwritten adjustments to the slip and the invoice. Remember, I told you that. If they said they shipped 20 and I only got 18, I will change the shipping slip to say 18 and then if there gonna be a delay in delivering the other two, I will change the actual invoice. Never do that on construction. Make them redo. No handwritten, make them redo their payment request to make sure that they're exactly properly written the way they're supposed to be. They're required to do the documentation and to do it properly as we talked about. We would always have our retained architects sign off on all pay requests that they also agreed. You've got the form 51, schedule amount for contractor payments, make sure all the paperwork is signed, prior to issuing a payment, look at everything pertaining to it, everything, make sure all the paperwork is done, make sure the work is done. HUD kind of repeats itself during this and so do we, but it's for a reason that the request does not include an amount to retain by the PHA. Now, we always have it listed and it's in a minus. We always have it listed on the on the pay request. That's what I do.

If you have delays and time extensions, if you need them, you can authorize them but make sure that it's actually necessary and that it's appropriate. Their slowing down in the middle of the job does not justify a time extension later, especially if they had other work that they had to go and address. All time extensions must be formalized in a written contract modification. Do this formally, always formally. And both of you sign it. HUD says, that time extension should submit their request 10 days ahead of time. Good luck with that. Yeah, 'cause they're hoping always to be able to catch up. And they just don't. If you get it, a request for a time extension, but you're not yet ready to approve it, just acknowledge receipt, thanks, we'll take a look at this. I'll let you know tomorrow. Consult with all the parties involved before you give extension.

Remember, most delays really are caused by the contractor. However, if we feel that giving them an extension will get the work done and we're not gonna have to fight about stuff we sometimes will approve them. I just wanna get the job done at this point. Completion of work and closing. Contractor will provide written notification in the housing authority, all work is complete. By the way, we conduct the walkthrough and do the punch list. It's not ever always completed. Seldom is it ever completed. I can't remember a time when it was. After they've completed the punch list we'll go and look again. If there are any deficiencies we may write them up again. Well, you know what, if you'll just give me my retention now I promise I'll have it done by next week. Does that work? No. Everything has to be documented in writing, there is nothing verbal on this whole thing.

Final payment is only going to occur when they are fully compliant with everything they were supposed to do. And by the way, you've gotta close everything out 60 days after the end of construction, everything has to be closed out. You must ensure that all payroll reports are in. I had a guy call me a few months ago, a few years ago, and tell me, "Mike, I got a problem. "The guy wants his retention and I have not given it to him "because there is one payroll report from one subcontract "that was never turned in." What was my first thought on that? How'd you let that happen? You ain't supposed to make a payment unless every certified payroll is there. How did you do that? He goes, "Well, we don't know, "it just kind of slipped through." Well, that ain't good. By the way, how much is the retention? \$92,000. My goodness, this is a million dollar bid almost. And he wants it. How long has this been going on? "Well, he finished work about eight months ago." What have you been doing? Tell me how this has progressed. He goes, "We keep asking for the payroll "and he keeps saying he can't get it." You know what I say get your ED and your attorney. Bring them to the phone. I told him, listen, you guys are making your own decisions but my recommendation to you is you self report yourself to HUD. Because you are supposed to close it all out within 60 days. They sent out the man and woman in a suit with badges. They went to the contractor and says, "We want that payroll report." And he goes, "They can't get it." They said, let's go, they went to the subcontractor, said, "We want that payroll report now." And he said, "No problem." And he gave them the payroll report. Why do you think the sub didn't do it? And the guy and the sub says, hey, take me off. The prime paid the sub fully. So therefore, the sub had no motivation to give him everything and he says, he ticked me off. I think he cut some of his pay back and the guy wanted more money or something. You know, the Housing Authority got put on zero threshold with their development stuff for a year. They were lucky they didn't take money away.

They were lucky that HUD didn't punish them further. And by the way, I got a call from him six months later, and they said, "We've been really working hard "to do everything right in line and HUD released us "after six months and said, never again." They all got closed out, but eight months, no, no, no. Final payment, you're gonna have a certificate of occupancy if applicable. You're gonna have a notarized statement that all bills been paid, you're gonna have lien releases, you're gonna have all that paperwork done. But remember, if paid wages, there's no outstanding claim for unpaid wages, there's gotta be no outstanding claims. Everything has to be in order, you have to have all your lien releases. And remember, federal property cannot be liened, but the lien release is an indication that when the subs are releasing the prime and the Housing Authority, that they've received all their money. Usually with construction, we're gonna get a one year warranty. Remember, equipment is typically gonna be longer, but that warranty comes mostly from the manufacturer anyway, though the contractor may have some responsibilities or work to do pertaining to it. Prior to any warranty expiration, you're gonna do an inspection and make sure everybody's in agreement that everything's okay. It is the contractors responsibility to address any faulty equipment or poor workmanship. But again, if you wait for a period of time, it's problematic and you may have waived your right to be able to

go against the contractor. And here's the other issue, what if the contractor is out of business, then you only have the equipment warranty to fall back on. Or perhaps you could make a claim against their performance bond, perhaps, but probably not 'cause you waited too long. Non-construction contracts are administered in basically the same way as construction.

You gotta walk the site for lawn cutters. For pest control, you gotta have people accompany them. You've got to ensure all the work has been done. Non-construction is done in basically the same way, just not so organized. For instance, when we started with new lawn cutters, my people would go inspect the sites, the first four or five times with them, walk with them, when they were done till we got things in order. And if we walk the site and they didn't trim the North fence line, these walks weren't cleaned, we do a notice to cure, even if they say, I'll do it. We do a written notice, which is simply an email to them that says, in all caps in the subject line, notice to cure, all caps. And then we detail out everything that they were gonna do and when they're gonna have it done by. Start it right away. If you let it go and let it go, and let it go, you're gonna get into a problem. I got a Housing Authority who had the pest control contractor who kept missing dates for pest for doing it, and the staff weren't even informing the housing authorities and suddenly they're getting complaints from residents, and the staff said, "You hire crummy contractors, they're not showing up." Purchasing manager said, "Did you ever tell me?" Well, they didn't. With email, all they have to do is send email say, they didn't show up today. See what I mean? Jump on that stuff right away. You may do a great bid, carefully planned solicitation but if you're not doing the contract administration, you're gonna run into problems. For non-construction contracts we don't have a pre-construction conference we have a post-award conference. However, let me tell you when I do this, when I'm going to execute the contract with them, and actually, I had an administrative assistant who did a lot of this. We will sit with them go over the contract one more time, see is everything in order. Typically, they wanna get this contract signed, so they say yes, and then we signed the contract at the end. For lawn cutting, my lawn cutting was \$250,000 a year up to five years. We could do this post award conference in 30, or 40 minutes, but it gives them one last chance to talk about anything they're in. Of course, if they ask for changes, they're putting their contract award in danger.

But typically, I have word I use when they're asking for changes. No, should have all been brought up way back when. Well, you know, we'd really like to negotiate now and I'd like to be president. It's not gonna happen. If you wanna negotiate now I'm gonna go to the next rated firm. I'm doing this in Alabama, the Housing Authority now, we just told them, that's it we're leaving. They didn't believe we would do it. In fact, they said as well, we understand and we really want these changes. So we sent them a notice of termination of award. And we signed the other contractors 'cause they were ready to go and this other people said, you know, a couple of days later, they said, "You know, we decided we're gonna let go that, "that's their negotiation." We go well, we already terminated your award. "I can't believe you did that." Well, we did. I Guess they learned, didn't they? Any changes to a contract must be authorized by the contracting officer and documented in writing, and a formal modification, we've talked about it number of times. During contract execution, we know that we're gonna have a system for receiving whatever we got. We'll talk about it, how we're gonna monitor, we always let them know how we're gonna enforce everything, the work to be done. Monitoring, inspecting supplies and services. Monitoring, inspecting supplies and services. My receiving report is typically the purchase order combined with the shipping slip, or in the case of ongoing services, such as lawn cutting, it's their invoice and whether I sign it or not. Their invoice must have the contractor P.O number, description of what's been done, the dates, the receiving official goes on it by signature and the date that it goes on. They're also signing for the inspection official. And if we are rejecting it, I will many times write that in an email to attach if

there's any partial exceptions, where I'm going to reject anything, I do the receiving report by email. You must always monitor contractors, even as you're making face payments, don't be lulled into they've done great before, it must be okay now. You must enforce all of the requirements of the contract You must enforce all of the requirements of the contract including the scope of work. You have the right to inspect.

Of course, you have the right, it's your site. You can at any point reject any amount of the work, require a correction, conditionally accept, but remember, if you reject or require correction or conditionally accept, you're not gonna pay them till it's all done. If you do not inspect, if you just pay, then your acceptance of the work is assumed and it's gonna be very Difficult to correct afterwards. Contract modifications are two types, unilateral or bilateral. Uni means one, bilateral means two. Between one signature ours and two signatures ours and theirs, which is the preferred method, bilateral correct, I want both people to sign it. Now, if they refuse, you have the right to issue a unilateral. Do not allow a contractor to strike that right from your contract. In my contract form, we have a right to issue unilateral. This contractor says, "I'm not gonna agree to that." I said, then you're not gonna get the contract. He goes, "Well, if you got it, I need the right "to issue contract change orders to you "and you have no right to reject." I go, no you don't. He said, "Why?" I go, 'cause it's the golden rule. I got the gold, you want the gold, you're gonna go by my terms and conditions as written in the bid in the contract or you're not gonna get it at all. And by the way, when this contractor got that aggressive, the executive director afterwards says, I don't wanna award to these folks. "He's trying to dictate to us how we're gonna do our job." And because of a different issue we eventually did not.

Remember, change orders must be in writing, must be described the change in full, whether there's a value or not, must make references to the specifications and drawings. You must tell everybody the story, everything that's occurring and why it's being done. Time breakdown, price, everything. One time I wanted to close out a contract, however, the contractor says, "I have some claims, "I'm making claims." And he turned in a list of claims that added up to, I'm gonna guess \$33,000. Now investigating, and I have to investigate this right away, and investigating the claims I found out that my construction administration area did several verbal change orders without documenting them. And we ascertained that those came up to, I'm gonna make a guess, \$18,000. And we had to do it because the work was done, it was all there, all the claim was there, work was done. We reprimanded the folks you know, warn them, give them written warnings. But I had to pay 18,000. However, the other 15,000, I could not find or justify. He says, "I want that money, I did that too." I said it was part of the work or something like that. And he says, "No, I want that money "and I'm not gonna accept \$18,000. Well, we have to do this in 60 days concluded, and he did not accept it. That's fine. I issued a complete written response to his, said what we agreed to and why, and what we did not agree to the 15,000 and why and I sent him the checks certified mail for \$18,000. And it said at the bottom payment in full. So he was mad. He took that check, he scratched out the payment in full and wrote "No, we're still in dispute for 15,000," and he cashed the check. Now, hold on, he changed the check, that's fine. I now know that he is upset about the 15,000. How's he gonna get that 15,000? Sue me, because we're done. Project's complete. Did he sue? No, would cost him more money, and frankly, he was just trying to get money. It was all covered otherwise. You must have in the file a modification registered for every contract, whether you've issued any modifications or not. If you've issued no modifications, it will be blank. If you have issued modifications, it will have them listed. Woe to you if you don't have PHA as a modification register. Woe to you if you have one it's blank and you did modifications, 'cause you'll open up an audit seeing what else you're hiding. Construction modifications are very problematic,

okay? Contract claims. Anytime somebody is upset with you, they may make a claim. The claim may or may not involve money.

However, the claim means, I wanna be released from these conditions, I don't agree with these conditions, whatever. Whatever people write, even if you think it's funny, even if you think, excuse me, silly, you have to address it. And when you address it, I wouldn't say, well, it was silly, I would say, we do not agree with your claim. You know what I mean? The main thing is, everything has to be addressed. You're required to have procedure, if you will, in your policy, a section that addresses how you will handle disputes and claims. I have that in mine. It's a rather short section. It's in each contract that I do. It's not very long. Whenever possible, you want to handle these things informally. I'll give you an example of informal. Informal is they write something on an email to me, and I write the email back and tell them what we're gonna do or why we're gonna do something. Just I address the issue. And if they say there is nothing more about it, that was an informal handling. Sometimes people write stuff to me that might be critical, even insulting, you know, rather arrogant or whatever. Let me tell you how I handle those informally, I don't say a thing, I leave them alone. Yeah, I've handled it. I don't know what I'd say if I went to court, I'd probably say, well, I just didn't feel it was something I want to address. What I'm saying is, you handle them informally by responding by email. If they still press their claims, you may get to the point where you need to send a certified return receipt letter, you know, where you say, this is how we're addressing this, we're done. Just remember, you're in charge of your contracts, not them. Contractors are not in charge of us. We're in charge of our contract and our work. So you decide how you're gonna do those things. My one point about disputes and claims is don't ignore them, conclude them. You might even ignore individual points and not respond to it but overall, you're gonna respond to the claim for the points that you wanna make to them, this is what it's going to be. Contract claims continued. The contracting officer is responsible to ensure that you have a process for reviewing and addressing such claims. Your final decision will be sent back to them, unlike anything else that we do, you'll do something along the lines of repeat the description of the claim. Remember the claim that the person made for \$33,000?

Yeah, I repeated his description of all the claims and why he was making them. I referenced the pertinent contract clauses. Now in the case of we were agreeing with him on some of the verbal change orders, I just said we agree. Those should have been addressed and here's what we've decided on those issues, and here's your money. For the items that we did not agree with, I would probably reference some contract clauses saying, you should have brought this up before, that would have been the proper procedure, we've inspected this and we can't find anything to support your claim. But I do it all in detail. So that what's done is, I don't want to use phrases such as, we have decided it's in our best interest not to pay that. No, you have to explain why. No, people do that, because they don't like conflict. And they think that that will decrease conflict by not telling them fully what they want. You know, the reasoning? No, you tell them, it creates more conflict. Statement, any factual errors of agreement or disagreement, your decision with supporting rationale, and remind them of their right to appeal. But usually I'm done. I mean, this is our final decision. You maintain records for three years, You maintain records for three years, all records of everything, including all relevant correspondence, including notes to the file. Remember I talked about notes on Post-it. Notes are just loose pieces of paper, you write stuff on, that goes in the file. Make sure any notes you have are always dated. And time, date and time. You can write the date and time. My Linda, she would have a left hand column on her form that she put in the file, sometimes it's just a legal pad, and she put the date and time, who she talked to and what was discussed. She's got those one after the other. Sometimes I come in and say, Linda, have we had any correspondence with this contractor? She may say I think so, but she would reach over to her file, pull out that

contract, go to her notes write about, oh, yes, I remember now I talked to them. Written notes are invaluable, invaluable for that. And you know, right now in the all the silliness that's been going on for the past three years, there's a lot of people, former FBI directors and everything that are referring to their written notes. Those are invaluable. Problem is, if you actually write the written notes when you write them, that's good.

But if you try to recap them later, which one person was just caught doing, he wrote the date and time, but that person did not actually write those notes down that date and time, they wrote them later, based on their recollections, which destroyed his credibility for all he talked about. It'll be the same for you, when it comes to disputes and things going on. Watch for your credibility. Make the notes as you go along. Yeah, payment records are part of it, weather records for construction, notes from architects or inspectors, you know what the notes are? I like emails. I always tell the architect, okay, this is great, we had a great discussion, if you take a note. Yeah, recap all the notes to me. Recap them all, send me an email, tell me what we agreed upon. I do that with my clients a lot. We discuss stuff and I'm typing notes into my file and then I go back to the email, respond to them and up in the thing I put in all caps in the subject line at the end of their thing, Gifford response. And then I recap the substance of the things, especially things that I told them to do. Those have been invaluable for me later, when they said, you never told me that. I go, go to the notes I sent you. And they go, oh geez, you did tell me. Invaluable. And I've learned that over the years because I'm not able to prove that I told somebody something, I may have to refund money, because I can't prove that I was not at fault that it was them at fault.

That's important stuff. Photographic evidence. (imitates explosion) If you have it. Permit history, meeting minutes, PHA meetings, we seldom keep minutes. But if you do, they can be invaluable as what was discussed. Now what we did do many times, with construction, we would tape pre-construction meetings. In Nevada, you can tape you somebody else without their knowledge as long as you have knowledge you've taped them. But we always tell them, we're taping this meeting. And if they don't like it, then they can walk. But now that's a problem because they have to be in the meeting. In business, I wouldn't tape people if your state allows that, I wouldn't take them without them knowing, if you wanna keep a good business relationship with them. You know, kind of a related thing, whenever somebody calls me, and they have me on speaker, I go, am I on speaker? Yes, who's in the room? And then I'll make notes of who they said was in the room. You don't know how many times I've been ambushed by somebody saying, well, I don't agree with that. I go Who is that? And I said, you didn't tell they're in the room. He goes, well, he ordered me not to. And I go, I'm done with you people. Boom, I'm out. I can't trust you. But don't tape contractors without them knowing, it just won't go well for you. It just doesn't sit right. Two types of contract termination, for convenience and default. Now I said we were gonna re address this right here. Okay. What you have here is a one plus on everything, right? We can only terminate for two reasons, convenience (scribbling) and cause and causes also known as default. Now, termination for cause is real easy. We're fed up, we have notices to cure, you haven't done good work, we're done with you, you are terminated as of now.

And remember, you have to pay them for all the work they've done up to that point, even if it was unsatisfactory. You cannot withhold payments for unsatisfactory work, just won't work. It's a law you have to pay them. If you didn't terminate them prior to that moment and the work was unsatisfactory, it means that it was satisfactory enough to pay them, right? So if you're having problems with a construction project, you have to tell them, you must cease work and correct this item right now. That's the only way you can keep from paying because it's incomplete. That item, okay? So we owe them money for what they've done up to that point,



and that's what we owe them. And we don't owe them for anything less if we terminate for cause, we don't owe them any portion of the unpaid money. However, termination for convenience, which is in the HUD forms and is required to be issued as part of every contract. Termination for convenience means two things. You no longer have money to pay them, or you no longer need the work done. Those are the only two conditions you can terminate for convenience. You've run out of money to pay or you no longer need a contractor to do the work. If you terminate a contractor for convenience and hire another contractor, you are not terminating for the convenience. What were you terminated them for? Cause, but you didn't terminate them for cause because you don't have the proper contract administration documents, i.e notices to cure. Now if you terminate a contractor for convenience you have to negotiate a suitable settlement for their lost profit, for the balance of the contracted period. And how much can profit goes high as, 10%, maybe more.

Hold on a minute. If you've got a contractor that you want to quit doing business with, do you want to terminate them for a portion of a year or for all the other years? A portion of the year. Stay with me, do you want to pay them profit for a portion of the year or for all of the years? Now remember, options to renew are not yet awarded so therefore, they do not pertain to this. So anytime my clients who ever terminate for convenience, they're only gonna have to pay lost profit for a portion of a year. If you sign a contract for three years, and you wanna terminate for convenience before the second year, you're gonna have to pay him lost profit for two years. Remember, not awarding an option, not awarding this option is not a termination, it is simply letting a contract expire. I've had people come to the board and go, "He terminated me for no good reason." And I said, we didn't terminate this contract. He goes, "Yes, you did. "You did not renew the option that's a termination." And I said, no, it's not. And the attorney goes, "No, it's not. "We simply did not renew the contract." I wanna know why. I've already told you why, your work is mediocre we think we can do better. So you terminated me. See, they'll still try to make that point.

Why? Well, first of all, they're probably offended. But secondly, because a lot of them know that they can get money for those additional years, maybe 10% of the contract. That brings up another point. Let's say you have a contract for plumbing services, not to exceed \$20,000 in a year, and you're awarding all task orders as they occur, right? And the contract is not to exceed 20,000. Well, let me tell you what I did once. I had one for a flooring guy like a plumber, where the contract was not to exceed 20,000. But we just didn't have that many issues and at the last year of it, we had a lot of money left over the not to exceed amount. Well, he didn't want 10%. We added the 20,000, if I remember correctly, we had spent 9000 and there was 11,000 left. So he booked a vacation to Hawaii and gave me a bill for \$11,000. He said, "That's my money." And I said no, that's a not to exceed amount. You don't get that money 'cause I said I would only award contracts based on task orders. And I just can't exceed that amount without changing the contract amount. You should have seen the look of terror on his face, like my check is gonna bounce, my check for Hawaii, "I need that money now, my wife is gonna be angry." Yeah, he thought he was getting \$11,000. That was his assumption. That's about not to exceed amount, which is in some ways related to contract options. Because if we give them a not to exceed amount, it doesn't mean we owe the money on all of that we owe the money based on work that has been assigned, but not yet completed. That's what we owe the money on. 'Cause remember, for the work completed, they have already received their profit. It's the work that's been assigned. Just having a not to exceed amount does not mean that the work has been assigned. It's contract terminations. If you terminate somebody, send a written notice by certified mail. What I do with every certified letter is I take the letter and I do it 'cause it looks official and it is official. And they almost always reject the letter. They just won't pick it up or won't receive it. That's fine, I've already sent them to them

by email, saying I've followed this with certified letter. And they've already received it because they open the email. And by the way in the subject line, I do not say termination, why? Because they may not open the email, thinking that they can avoid being terminated. Forget it, you are hereby served. (laughs) Termination notice. We always cite the clause that allows us to terminate them. We tell them whether it's been partial or full, 'cause sometimes we terminate a portion of the project and not the entire thing. Default terminations must include acts or omissions constituting default and tell them their appeal rights. But by then we've already sent them notices to cure, are you with me? And we can make references to those notices to cure. And when I send a termination on the few times that it's occurred, I attach all copies of all the notices to cure so they got it right there. I want them to see the totality of my documentation.

Why? 'Cause I'm trying to scare them into just going away. 'Cause I'm done. I ain't going to reconsider, that's just the way it is. The effective date and copies of the notes are sent to their surety if it's construction. You need to notify the surety if it's construction, and you have a surety, meaning the circular 570 showed compliance surety. Termination for convenience. You no longer need the supplies, or you no longer can fund the procurement. You've gotta negotiate a fair settlement of profit. It's gonna be around 10% probably. But that's a good round figure to start with. Remember, if you terminate for default, you're gonna have to have notices to cure backing up why you did that. You can't just suddenly ambush a contractor and terminate for default. Well, you can but it's not going to stand out in litigation. The judge is gonna look at it and say, 'cause you know, what the judge has to decide is, was it their fault, or was it yours? I've been through this. And if you don't have those notices to cure, how are you gonna prove that it was their fault? I can tell you, your honor. No, I wanna see it all in writing. It's what Judge Judy, always says, "No, don't tell me, show me." I got nothing, well, then you got nothing. Sometimes it's easier to mediate the terms and conditions with the contractor. This would probably occur during construction, because we don't wanna terminate construction contractors. Sometimes we negotiate a partial settlement of the whole issue, if they're actually gonna complete it. I remember one time a contractor went out of business, and he said, "I'm sorry, bad things have happened here. I'm closed down, I can't finish the work. "How can I help with this thing?" I said, Well, you can agree to our terms and conditions 'cause I've got your retention. And I still owe you some money. So we're gonna have to get the work done. So it'd make it a lot easier if rather than me doing it punitively, if we work out something out to get it done, he in fact, said, "I've got another buddy "that does good work, let's bring him over, "you can pay him out of my retaining money." And by the way, this all had to be in writing. And then because he's not gonna give us any warranty anyway, he's out of business. It was just tragic but it happened. So you can mediate things to try to come to a settlement. Well, if it was lawn cutting, I just tell them go. I have no warranties, they've performed the work that they're gonna perform. But with construction, we don't wanna terminate if we can help it. If they don't complete the work, what do I have to go against? Their payment performance bond. I've done that very seldom, somewhat easier to go against the payment performance bond than it is a bid bond. Bid bonds are difficult to go against, the surety more probably fight them. Payment performance bonds are much easier to go against. You can allow for a modified delivery schedule. Well, you know what, contractors are supposed to fulfill the terms of the contract but if they're failing, you may have to modify some of that just to get the job done. Allow the contractor to bring a sub? Oh yeah, to complete, and that's what I did before. He brought them in, they did the work, and I paid him and he paid them. A no cost settlement agreement, meaning it doesn't cost me anything. Let's come to terms on settlement and be done with it. And sometimes when that occurs, I remember on one occasions, our people finished the work ourself. That way, we had our own warranty. It was a limited amount of work and I don't remember the job, but it was limited and it is an option.