



## **We Have A Contract, But Now It's Changed...**

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You have an enforceable contract in place, but something changes with the work. Maybe the Owner has made a scope change. Or perhaps inclement weather created a material delay. Whatever the reason, the change may be given verbally with pressure to implement the change immediately.

Many contracts require changes to the work be made in writing. But what happens when the parties fail to follow the contract requirements? Simply put, such failure may very well lead to dispute.

A court may uphold a verbal change despite the contract's requirements. Courts historically seem to uphold a verbal change based on one of four theories. Under the first theory, the verbal change created a separate contract to address the changed work. The second theory finds that the verbal change waived the requirement that the change be in writing. Under the third theory, the court determines that the verbal change implied a waiver of the writing requirement. Finally, courts may use equitable principles to enforce the verbal change. Kentucky courts generally base the enforcement of a verbal modification on such principles.

Courts vary on the level of proof they require to enforce a verbal change. Some courts require a heightened level of proof that an indisputable and mutual decision to verbally modify the contract existed. At the other end of the spectrum, states may require little proof to enforce a verbal change. Most jurisdictions generally fall somewhere in between these two extremes.

As is the case with the original contract, the best practice is always to get the change in writing. While moving forward with a verbal change may seem efficient, it may ultimately cost significant time and money later if it ends up in court.