

Follow Your Change Order Requirements

By [Melissa Dewey Brumback](#)

[Adopted from [Construction Law in North Carolina 8/12/10](#)]



On construction projects, it is extremely important that you follow your written contract requirements. No where is this more evident than in the change order process.

Most contracts have an explicit provision for the payment for additional work--and they generally require a written, signed change order (or change directive) before the work is performed. Can you get by with verbal agreements for additional work? Sometimes yes, sometimes no. Will it be much harder to get paid for additional services without a signed change order? You bet. So why put yourself through that trouble?

Often times parties begin to "waive" formal requirements for written change orders, and construction projects are often on tight deadlines where stopping work to get a fully executed change order would bog down the schedule. However, you run the risk of *throwing yourself on the mercy of the Court* when you don't play by the contract rules.

A new case out of the Eastern District of Virginia demonstrates this fact very clearly. In [Artistic Stone v. Safeco](#), 2010 WL 2977894 (E.D.Va July 27, 2010), the Court held that the requirement that change orders be in writing was to be strictly construed and the subcontractor in that case could not recover for verbal change orders that violated the written change order requirement. The Court held that where there is a method to ensure recovery of additional extra work in the written contract, the subcontractor could not recover additional money when it failed to follow that method.

"Written change order requirements maintain order and predictability in the construction business, and are meant 'to avoid subsequent disagreement, and prevent just such a controversy as has arisen in this case. For this reason, 'where there is a method under the contract by which a party can insure the recovery of the

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cost of extra work, that party is not entitled to recovery where it fails to follow that method." Artistic Stone Crafters at 5. [Internal citations omitted.]

A North Carolina court would likely concur.

To ensure you can fully recover for extra work, make sure it is authorized. Follow the contract. If circumstances make it so you cannot always follow the contract terms, document the situation as best as you can. A follow-up email, confirming a verbal change order, would at least provide written evidence you can present in Court, should it come to that. Otherwise, arguments can and will be made that the person who gave the change order wasn't authorized to do so, and you may be stuck with no recovery for the extra work.

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