

The Importance of Termination Provisions in a Construction Contract,^{NYREJ}

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It is extremely important for an owner to incorporate specific termination provisions in order to protect it from non-performing or under-performing contractors. Without these provisions, an owner may find itself on the defensive and at greater risk when the contractor claims that the termination was wrongful. And, if the owner cannot prove that the termination was proper, it may find itself having to pay the contractor lost profits in addition to sums claimed to be owed for work performed.



Most construction projects have a baseline schedule which shows the duration of each trade

contractor's work and, among other items, the substantial completion date. In some situations, there are milestone dates for specific tasks to be performed by a trade contractor. One of the most detrimental termination clauses that owners put in their contracts provides that the contractor shall be in default of the contract, in the event that the contractor does not achieve a milestone date or the substantial completion date set forth in the schedule. However, this event of default may not be enough for the owner to mitigate its losses if the contractor is not performing at a pace which the owner believes would allow the contractor to achieve its performance dates.