

PBPA Podcast Transcript

Renovation Without Regret: Minimizing Risk with Construction Contractors (29:07 minutes)



[00:00:00] **Sireesha:** For many small nonprofits, building and facilities work can be both exciting and risky, often involving tight budgets, volunteer boards, and unfamiliar contracts. From selecting the right contractor to managing change orders, delays and payment disputes, small missteps can quickly turn into a costly conflict. In this episode of the PBPA Podcast, Mackenzie Bell will share practical risk management strategies nonprofits can use before a project begins and when problems arise.

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at pbpatl.org. Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Mackenzie Bell is an attorney in-house with The Home Depot. Prior to her role as corporate counsel at the Home Depot, she worked at a law firm as a construction attorney. She's also a dedicated PBPA volunteer advising numerous nonprofit clients annually, so she understands nonprofit concerns. I'm so excited to have an expert on this topic to speak with us today. Thanks for being here, Mackenzie. Hi, Isha. Thank you so much for having me. So my first question for you, Mackenzie, is about contracts. Should a small nonprofit sign a contract with every contractor they work with?

[00:02:37] **Mackenzie:** The short answer here is yes, absolutely.

There is never a good reason to not have a signed contract, especially when you are a nonprofit. But let's talk through why. Because this is the most common mistake I've seen small nonprofits make— not having a signed contracts.

I've heard a lot of organizations say things like: it was a small job. I didn't think we needed paperwork. He didn't ask me to sign anything, or we trusted the contractor. They came recommended by a board member, or we've hired them before without a contract and it worked out then. It was just a quick repair. We didn't want to slow things down. Thoughts like that. The intention there is good, but the consequences of not having a signed contract can be huge.

So the short answer is yes, but why a contract matters. A written agreement, even a simple one, sets mutual expectations. Rights and responsibilities and a well-written contract should leave, no questions unanswered, but I think even a simple contract should define what the contractor or architect is actually going to do. This is what the industry calls the scope of work. What materials and products will be installed, what specs and design drawings have been created. Maybe how much labor will be on the project, things of that nature.

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A contract should also define how long the project should take. When will we break ground? What is the exact date that the project is supposed to be completed by? The industry calls this the substantial completion date, meaning the date the project is substantially complete and cleared for occupancy, yes, there might be a few punch list like items left to address, but the building or space is functionally usable as intended and can be occupied.

And another piece that the contract should define is what the project cost actually is. Is payment made up front or in partial progress payments? What proof does the contractor submit, if anything, in order to get paid? Is there a cap on your project amount and on the amount of change orders to the project that you can be charged for? These are all very important questions.

And lastly, and unfortunately, what happens if things go wrong? And by the way, this is usually when folks get an attorney involved and you have to retrain your brain. Not if things go wrong, but when things go wrong because something will inevitably go wrong even with everyone's best intentions.

So does your contract contain a right to terminate the project at any time? Do you have that right? Does the contractor have that right or cause or no cause at all? Is there a dispute process outlined. If the contract is terminated by you or the contractor before the project is finished? What happens to the money you paid the contractor for upfront?

What are you going to do about the open permit on your property? These are all really important questions that can be addressed in a contract, and you can see the importance of having a written agreement, however small or large the project is. Maybe you're renovating the office break room or you're thinking about breaking ground on a new community building. Either way, you should never rely on a verbal agreement or good faith handshake.

So as an example, imagine you hire a painter or a quick refresh of a community room. You pay the deposit, they start the job, and then disappear halfway through. You might call or text, but legally your leverage is actually pretty limited. Without a written contract, you can't show what they agreed to paint. You can't show what timeline they promised. You may not even have proof of the price and you can't easily recover your deposit. A written agreement would solve all of this.

So to summarize, there must have provisions that I think. Even for small jobs needs to be included in a contract or the scope of work, exactly what will be done- materials prep work and cleanup. The timeline, clear start and finish dates, including milestones, payment terms, deposit, installment amounts, final payment terms. Maybe everything is demanded upfront, which is legal in Georgia. It should contain a termination clause when and how either party can end the contract, dispute resolution should be addressed. What's the process if one of you is in breach? There should also be insurance requirements. A contractor should show proof of liability and workers' comp insurance, which I can talk more about. You may even want to request to be added as an additional insurer to their policy.

And then lastly, there should be some licensing disclosure. Make sure they're properly licensed. The contract should state their license number, and we can talk more about licensing too.

For bigger jobs, let's say this is a complete new build, you may want to include retainage, which in the industry it means holding back a portion of payment until the project is completed.

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It's like dangling a carrot in front of the contractor to entice them to finish. Should also include warranty terms. Are there workmanship or product warranties on the war? On the work? And this is important to know. In cases where in case issues arise after the substantial completion date, and then the contractor can address those issues.

The last thing is penalties for like completion. The construction industry refers to these as liquidated damages, and this is a really powerful incentive to get a contractor to finish on time, which could be vital for your nonprofit. But the bottom line is a contract isn't about distrust, it's about clarity.

It protects the nonprofit and the architect and the contractor, and keeps everyone aligned on expectations and who doesn't love clarity.

[00:09:26] **Sireesha:** That's a great point that you make, that the contract is not about distrust, it is about clarity. And to that end, what are your thoughts on emails if an organization, if they're working with a contractor on a smaller project, using an email or they have already negotiated a lot of the details and have an email trail.

[00:09:49] **Mackenzie:** Yeah, that's a great point, Sireesha. Here's the golden rule that I have told every client I've ever represented, and that's owners, developers, contractors, homeowners, nonprofits, architects, engineers, everyone on the food chain that's document early and document often.

Don't wait. Despite what we tell ourselves, problems rarely fix themselves, and early documentation is your strongest protection. So emails are a great way to document and you wanna make sure that you save all of those emails and I can talk more about other ways to document the project too.

[00:10:28] **Sireesha:** For my next question, I want to go back to some items that you mentioned earlier, and aside from a contract, what else should a nonprofit consider to minimize their risk? You mentioned licensure and insurance.

[00:10:45] **Mackenzie:** Yes. So we've established that the contract is your foundation, right? But it's not the whole structure -I'm trying to keep in time with the construction theme. There are, I think, three major risk reduction steps that I've seen nonprofits often overlook, and I've just alluded to them.

One is verifying the contractor's license. Two, verify the contractor's insurance, and three, verify the permit status. So let's talk about licenses for a minute. Licenses matter, especially in states like Georgia, where certain trades require specific specialty certification, like plumbing and electrical work, for example.

And it makes sense because the contractor has the knowledge, the skill, and the experience to do the work. You can actually verify licenses yourself using the Georgia Secretary of State website. It takes literally 30 seconds and the information is public. You'll wanna verify that your contractor has a general contractor's license, a business license and any specialty licenses like plumbing and electrical dependent on the project that you're doing.

Why does this matter? Because a license gives you the owner leverage. If the contractor is licensed, you can file a complaint with the license board, you can pursue mediation with the license board.

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And the contractor risks losing their livelihood if they behave unprofessionally. And we can talk more about the license board complaint process shortly, but just know that a quick check ahead of time could save you thousands of dollars and prevent your nonprofit's mission and financials from being affected.

The second thing a nonprofit should do is verify insurance, and this is a major one. At minimum, a contractor should have a general liability insurance policy and workers' compensation insurance if they bring anyone else onto the job other than himself or herself. Meaning the building or land that you own or are in control of, they bring anyone else onto the job, even temporarily.

They need workers' comp insurance. Why? Because without it, your nonprofit can become legally responsible. If someone gets hurt, imagine for a second a contractor who is doing some work on site. If one of their workers falls off of a ladder, their insurance should cover it. But what if they don't have coverage?

You may face medical bills, legal claims, and other liability because you own and control the building. You are essentially just providing a temporary workplace, which is why you may be responsible. This is the kind of thing that I think could financially cripple a small nonprofit.

The last thing a nonprofit should verify are permits, if any permits. Ooh, they sound bureaucratic, and they are, but they're also admittedly very essential. Common jobs requiring permits include electrical work, major plumbing, any structural changes like roofing or windows, for example. And here's the key. A permit not only needs to be opened. It needs to be properly closed, and that happens after inspection by the city or municipality.

As an example, let's say a nonprofit once installed a roof without realizing a permit was required. When the city conducted a compliance sweep, the organization received a fine because of this. Part of that penalty includes retroactively opening a permit & scheduling an inspection for the work that happened five years ago to meet code. And codes change all the time, so you should hope that the roof you installed five years ago is up to code during this inspection.

As another example, let's say the contractor did open the permit, but never got the work inspected by the city and never got the permit closed. Now there's a permit hanging on your property's title. You won't be able to refinance the property, you won't be able to make further renovations or open a new permit and you won't be able to sell the property until the work is inspected and the permit is closed.

So this just shows that permitting is there because it ensures the work is safe and up to standard. So we always wanna make sure we're verifying if permits are required, and if they are, we're opening them and closing them.

[00:15:57] **Sireesha:** Those are great tips to give for a nonprofit to do their due diligence before they enter into a relationship with a contractor. So now let's say we've gotten to a point where the construction work is under progress and the nonprofit notices that there's an issue or a concern. What should the organization do when they first notice that something might be off?

[00:16:26] **Mackenzie:** So document, early. Document often. This means take photos and videos of the work from multiple angles, write down dates and times when you notice the issue. Save all of your text messages and emails and notify the contractor in writing, not just verbally.

So for example, let's say an exterior entrance door was installed incorrectly. Maybe it doesn't close all the way, or the hardware is misaligned, something like that. The moment you notice, you should take a photo of the door gap. Take a video showing how it sticks when closing. Then send an email describing the issue. Now you've created a clear timestamped paper trail, and if the issue escalates, you have evidence showing when the problem started, that you notified the contractor promptly, and that you acted professionally. Because you wanna show that you made a good faith effort and also demonstrate your credibility as a believable witness if the time comes.

So documentation is your safety net.

[00:17:43] **Sireesha:** And by documentation you don't just include paper, but you're mentioning the video or the picture. There are multiple ways that we can pretty easily document these sorts of situations.

[00:17:58] **Mackenzie:** Exactly.

[00:18:00] **Sireesha:** And what should nonprofit do if there's no response from the contractor? Or they're providing delay tactics that don't lead to actual progress?

[00:18:10] **Mackenzie:** Unfortunately, this happens more often than nonprofits think or expect. Contractors may stop returning calls. They'll say -i'll come next week repeatedly. They'll blame supply chain issues indefinitely and offer other excuses, but there's really no real action. So what do you do?

To answer your question, the first step is to send a formal demand letter, and this demand letter should include a summary of the issue, a reference to the contract- which you signed, hopefully -a deadline for resolving the issue and a statement of next steps if they fail to act. This is about moving the situation from informal conversations to a formal record.

For example, at the end of the letter, we should state something like "We expect completion by March 1st, or we will file a complaint with the license board". The signals to the contractor that you're taking the matter seriously.

And then the second step, if the demand letter doesn't work, is to contact the state licensing board. Most states, not every state, but most states, including Georgia, have a license board that specifically is dedicated to investigating license holders, facilitate mediation between the consumer and the contractor. Issue fines or sanctions, and they can even suspend license for repeated violations.

Contractors care about their licenses or they should care and reporting an issue can motivate them to resolve the issue very quickly. In fact I recently represented a nonprofit who needed to get some pretty major plumbing work done. And this is actually a really sad story. The project was a huge undertaking. We're talking structural would have to bring in heavy construction equipment to address the plumbing issue. Unfortunately, the nonprofit didn't sign a contract because they had a

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history with this general contractor and felt like he could be trusted. The nonprofit also. Was involved with taking care of animals on site as part of its mission, so it was vital to the nonprofit that they had running water.

I think you can probably see where I'm going with this. They paid the contractor upfront and the contractor began work, but stopped because he needed to order a part. About a week past, and the contractor would respond to some texts. Said he was still waiting on some parts that he ordered, which honestly sounded plausible because again, this was a major structural plumbing job, but he never actually completed the work and the nonprofit was without running water for an extended period of time.

This is when the nonprofit sought legal advice from PBPA and as a volunteer attorney. I spoke with the nonprofit. I researched the contractor on the Georgia Secretary of State website, come to find that the contractor only had a general contractor's license, did not have a specialty plumbing license, which was required for this job, and also let his business license with the state lapse.

So the contractor not only committed fraud and breach of contract by taking my client's money and running, he was doing unlicensed work. So we ended up filing a license board complaint with the state to get the nonprofit's money back and admonish the contractor publicly for doing unlicensed work.

[00:22:02] **Sireesha:** And this is a good reminder about why it's so important to work with licensed contractors so that organizations have the added protection of the license board to assist. My next question, Mackenzie, is about the demand letter or working with the license board, like you mentioned. Does an organization always have to work with an attorney to help with those?

[00:22:25] **Mackenzie:** That's a great question.

If an issue arises, the good news is that you don't always need an attorney right away. Many issues can be solved through clear professional communication, documentation, a demand letter. You don't need an attorney to file a license board complaint with the state. You can actually file that yourself and it's completely free.

There are situations where, in my opinion, legal support is worth the investment. When the project is high value. And I know for nonprofits, every project feels high value. In my opinion, it never hurts to get an attorney involved to review your agreement prior to signing. I think the cost and time it takes for an attorney to review an agreement pales in comparison to the cost of litigation. Or the harm to your nonprofit's mission or finances.

When the contractor has abandoned the job, that's a situation where you may need legal support. If there's property damage or injury. You suspect fraud or deception, the contractor threatens legal action. You definitely want representation or the issue affects your program's operations or safety.

So as an example, let's say you have a \$50,000 renovation project at a community center. The contractor finishes half the job, but then they stall. At this point, an attorney can review the contract, send a demand letter on law firm letterhead, which can be very effective. Advise on whether to withhold payments or help you file a complaint or small claims action in court if needed.

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[00:24:22] **Sireesha:** What are the options for a nonprofit if they have a bad experience with a specific contractor and they want to put others on notice, try to help others avoid this bad actor?

[00:24:36] **Mackenzie:** Yes. So the thing that I want nonprofits to remember is that reporting isn't about punishment. It's about protecting your mission. Other nonprofits, our community and our neighbors, and I think for nonprofits, the most effective reporting channels for construction claims are the State License Board, the Better Business Bureau, the BBB, and the Consumer Protection Agency.

The first being state license Board complaints. I think state licensing boards are the most powerful avenue if the contractor is licensed because again, complaints can lead to investigations, fines, suspension of license required corrective action. And these complaints get resolved very quickly.

The BBB is a public facing platform used by many nonprofits and consumers too. I use it myself as a consumer. And you can check credibility of the business, read actual reviews from real customers and see complaint histories. Now, the one caveat is that the BBB is for any complaint for any business, and so it's less likely to be successful in resolving your construction claim, but it does create a public record that others can reference.

The last avenue is the Georgia Attorney General's Office Consumer Protection Division. Like the BBB, that's for any consumer complaint against any business. So it's effective, but less likely to be as successful and actually resolving your construction claim.

[00:26:32] **Sireesha:** So this has all been so much great information, Mackenzie. If there's one thing you want a nonprofit to take away from this episode, hopefully they'll take away everything. But if there's one thing, what do you think is the most important takeaway?

[00:26:47] **Mackenzie:** Sure. I think if your nonprofit remembers nothing else from this discussion, remember this.

Always verify credentials and put everything in writing. I think this one habit will save you money. It will prevent disputes, preserve your nonprofit's reputation and ensure you can continue serving your community. I think proactive risk management is far easier and far cheaper than trying to fix a crisis after the fact.

Contractor issues can be just so disruptive, especially for nonprofits operating on tight budgets and limited staff capacity. But I think with the right precautions, like clear contracts, verified licenses, proper insurance documentation, formal professional communication and reporting when necessary, you can really dramatically reduce your risks. Because every dollar, every hour, and every resource your nonprofit has is so precious. And protecting those resources allows you to stay focused on what matters most, which is your mission and the communities that you serve.

[00:28:04] **Sireesha:** Mackenzie, this is such helpful insight to help nonprofit leaders understand how to avoid disputes where possible, and how to resolve them effectively when they can't. Thank you so much for sharing your time and expertise with us.

[00:28:22] **Mackenzie:** You're welcome. Thank you so much for having me.

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[00:28:24] **Sireesha:** We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.

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