



2k Owner v. Contractor- Where to find clarity when discerning who is the General Contractor versus Sub-Contractor on a residential renovation project

Owner vs Contractor – How Do You Tell Who’s Responsible on a Residential Renovation Project?

When a construction project (or the results thereof) turns sour and injury or damage occurs, it might seem obvious where to point the finger: the general contractor. After all, it’s the contractor who calls the shots, hires the team, sources the supplies, and ensures everything’s working like a well-oiled machine.

Maybe in an ideal world:

But in reality, even small residential renovation projects present plenty of challenges for litigators and insurance adjusters in determining clarity between owners, contractors, and subcontractors when issues arise.

A long time ago, property owners and contractors were not held liable for negligence from subcontractors or employees. However, there’s been a shift in the industry as the number of subcontractors increased, along with an increase in subcontractors hiring other subcontractors. Because of this, it’s becoming more difficult for those who sustained damage because of poor subcontracting to pursue legal action. This opened the doorway for owners and general contractors being held liable for these issues – but not in all cases.

This guide serves to help you understand how to distinguish between general contractors and sub-contractors, and their potential level of liability.

General Contractors vs. Subcontractors – What’s the Difference and Why Does it Matter?

Unless you’ve worked in the construction industry, the line between contractor and subcontractor (and sub-subcontractor) can become quite blurry.

In simple terms, the general contractor is hired directly by the owner, while subcontractors are directly contracted with the general contractor. General contractors typically oversee the entire project and source subcontractors to complete small portions of the work.

For example, a homeowner may hire a general contractor for adding a room to their existing house. In this case, the general contractor may hire a roofing company, plumber, electrician, and framer to complete various tasks in the project. Each of these entities would be considered subcontractors.

To add another layer of complexity, the contractor may partner with a store like Lowe’s to find someone to install flooring and paint the walls. These people are not directly contracted with the general contractor, but rather with the store.

Taking it a step further, some of the subcontractors may rely on sub-subcontractors to complete a portion of the work. The subcontractor assumes responsibility for the work performed by the sub-subcontractor.

So who is responsible when the new roof starts leaking after a week of heavy rain? Who should be held liable for faulty wiring in the new room? Who pays when a subcontractor working on the roof falls off and gets injured?

These questions have posed problems for legal teams for decades, and as the industry grows the more complicated matters become. When things go wrong, such as workplace accidents or structural failure, there's a finger that needs to be pointed, But at whom?

Contractor Liability

General contractors are often the go-to source for blame. After all, they are responsible for hiring subcontractors to complete portions of the project. They're the ones ultimately in charge of the work.

General contractors can protect themselves by ensuring each subcontractor has their own liability insurance to protect against any errors. If they do not have insurance, you can add them on your own policy as an Additional Insured for the project duration. This only covers the work they do for you, which means you're not responsible for any errors they may create on another project.

If a negligent subcontractor becomes injured on the job, the general contractor isn't necessarily liable. Contractors typically do not supervise every detail of a subcontractor's work. They will, however, be liable if they retain control over all work performed.

Subcontractor Responsibility

It's in everyone's best interest to ensure all subcontractors carry their own insurance in the event of an accident. If they don't, any injuries sustained when working on the home renovation project could be cast off onto the homeowner if the contractor does not have the proper insurance.

Worker's compensation is often the first line of defense in regards to an injury. Some states require contractors to carry worker's comp in order to obtain their contractor's license. Worker's comp premiums are high, and many subcontractors avoid carrying it by subcontracting out their labor to sole proprietors. For example, company that's been subcontracted to install a roof may be comprised completely of sole proprietors, not employees of the roofing company.

Homeowner Risk

These small differences can spell big trouble for homeowners if an uninsured person were to become injured during the project. It is ultimately the project owner's responsibility to ask for proof of insurance before allowing any work to be done on their home.

Homeowners can further reduce their risk by having a home inspection performed that could reveal potential issues that may surface during the renovation. They can provide the findings of the inspection to the contractor (and to legal teams, if necessary) as a precautionary tale to help them mitigate risk to themselves and others.

What is the AIA A201 General Conditions for the Contract for Construction?

Every construction project faces contractual relationships between contractors, subcontractors, sub-subcontractors, architects, and owners. Customizing individual agreements between each party can lead to chaos and confusion, which is why standardized documents like the AIA A201 General Conditions for the Contract for Construction were created.

As a benefit to project participants and other potentially involved parties (like insurance adjusters or litigators), these standard documents are legally binding, laying out the terms of the contract in plain, consistent language. The contract starts at the top tier and works downward through each relationship to the project.

As a legal professional, this document (or similar documents if A201 was not used) should be your go-to source when handling legal issues that arise from a project.

Finding Clarity Between Contractor and Sub-Contractor in the A201

Like most legally binding documents, the A201 is a lengthy, legalese-filled contract chock full of articles and sub-articles. For our purposes, let's take a look at which sections will matter most to legal experts and insurance adjusters when looking at responsibilities and level of liability:

Article 1 – General Provisions

The first article in the document set states that the contract in its entirety signifies the agreement between contractor and owner regarding specifications, drawings, and other details.

However, it also mentions that the forms, unless specifically written, does not include any information pertaining to bids, bid proposals, invitations to bid, instructions to bidders, or other details.

Section 1.1 also outlines the specific definitions of common terms throughout the document. Starting here provides clarity for how these terms are used in the document.

Article 3 – Contractor

This section indicates the terms for contractors, including what's expected of them during the project. However, of particular interest to legal experts is section 3.3, which pertains to supervision and construction procedures. The document explicitly states that the contractor is responsible for and has control over "construction means, methods, techniques, sequences, and procedures...", and is solely responsible for the job site safety of these things.

In subsection 3.3.2, the document mentions the contractor's responsibilities to the owner regarding subcontractors and sub-subcontractors (including suppliers or materialmen). The contractor is in charge all actions or omissions of employees, subcontractors, and sub-subcontractors, in addition to any damages, expenses, costs, or losses that result from their actions or omissions.

Following in part 3.3.3.1, it is noted that the contractor is to require subcontractors and sub-subcontractors to inspect their work prior to proceeding with additional work. Advancing their work indicates that the

subcontractor or sub-subcontractor has done so, and waives the right to any claims that result from their failure to inspect their work.

The rest of Article 3 discusses the contractor's responsibility to hire appropriate talent, procure materials, and ensure all materials and equipment are free from defects. In addition, section 3.12.8 mentions that the contractor will be held responsible for deviating from the requirements listed in the contract documents unless they have informed the architect in writing and has received approval to do so.

Perhaps most important to legal teams lies in section 3.18 regarding indemnification. This section outlines the contractor's requirement to hold harmless the owner, architect, and owner's affiliates under specific circumstances. These include (but are not limited to)

- Liabilities, costs, or damages stemming from work performance
- Death or bodily injury of subcontractors, sub-subcontractors, and employees
- Immigration reform violations

Clearly, there is a large amount of liability on the general contractor role, as they assume most of the responsibility of the project.

Article 4 – Architect

The AIA A201 document says that the Owner is responsible for retaining a licensed architect during the project, meaning the architect is neither considered a contractor or subcontractor.

While the architect is responsible for periodic visits to the site, he or she is not obligated to perform in-depth quality inspections. The architect is not held liable for any part of the construction process or safety precautions associated with the projects, since these are listed as the Contractor's responsibility.

Article 5 – Subcontractors

By definition, a subcontractor is someone contracted directly by the general contractor that will be involved in a portion of the project.

Of important interest in this article is section 5.4 regarding the contingent assignment of subcontracts. Here, the owner has the right to assign a subcontract to a successor. If this happens, the owner is not legally liable for the successor's obligations under the subcontract.

Article 10 – Protection of Persons and Property

While subcontractors and sub-subcontractors are expected to operate under OSHA requirements and practice good safety while on the job site, the general contractor is still primarily responsible for worker safety.

According to section 10.2.8, the general contractor should report any work-related accident in writing to the owner, and will be responsible for any costs the owner incurs related to the accident.

In addition, general contractors are liable for complying with hazardous materials requirements (section 10.3).

Though this form is more often used for large construction projects, its insights may prove to be valuable to legal experts and insurance adjusters who need additional knowledge of the industry.

Additional Resources for Clarity

If a project forgoes the A201 document, or if you still have questions regarding the roles and liabilities of contractors versus subcontractors, look at precedents set forth in court.

In the case of *Dow Chemical vs. Bright*, when independent contractor Larry Bright was hit by a falling pipe put in place by another independent contractor, the courts found that for a general contractor to be held liable for an incident concerning the work of a subcontractor, the general contractor must have a right to control the subcontractor's work. After reviewing the contract terms, it was determined that Dow Chemical did not maintain a right to control the independent contractor's work, which rendered them **not liable** for the falling pipe.

Another good example is the *Ormsby vs. Capital Welding* case, where a subcontractor for the construction of a new Rite Aid store became injured in a structure collapse. The project owner (Rite Aid) had contracted Monarch Building Services, who then subcontracted Capital Welding, who subcontracted Abray Steel Erectors. Ralph Ormsby, an employee of Abray, received worker's compensation for his injury, but sued Monarch and Capital Welding citing they had remained in control of the project and had been negligent in supervising it. However, in this particular case, the owner retained control, making this case subject to the "common work area" rules.

One of the more complex examples is the 2003 case of *Primrose Operating Co., Inc. vs. Jones*, where the outcome relied on determining if the general contractor had a right to control the work of an independent contractor. Primrose Operating Company was contracted by another company, Palmer, to drill a well and run casing. Jones, an employee of Palmer, was injured due to a faulty casing joint that swung out after an elevator became stuck.

In Closing

Of course, no two cases are ever the same. Specific details must be considered to provide a fair and accurate assessment. Also, things like workplace insurance and other regulations can vary by state. But looking at the specific nature of similar past incidents offers potential clues that you may not have otherwise considered.

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