

# ATLANTA

## BUILDING NEWS



### 2023 GAHBA INSTALLATION AND AWARDS PROGRAM

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CONFORMING LOAN  
LIMIT INCREASES  
IN 2023

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Builders (\$34.58) and the Home Builders Association of Georgia (\$79), these amounts are not deductible for income tax purposes. You are advised to consult a professional tax adviser regarding the deduction of your dues payments to the GAHBA.

1 DUNWOODY PARK S., STE. 200  
ATLANTA, GA 30338  
(770) 938-9900  
(770) 934-8363 FAX  
WWW.ATLANTAHOMEBUILDERS.COM

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# WHY BUILDERS SHOULD USE SUBCONTRACTS

by Tyler C. Dunn

Builders should recognize the advantages of using written contracts to sell or construct houses. However, they often feel for various reasons that written subcontracts will serve no useful purpose. Advantages of written subcontracts include the following:

**Clarification of Work:** A subcontract allows builders to precisely document the work to be performed by subcontractors. This can avoid disputes about the nature of that work.

**Establishment of Standards:** Subcontracts may expressly mandate compliance with specified construction standards, such as warranty standards, plans, drawings, specifications, codes, association covenants and manufacturer requirements.

**Requirement of Lien Waivers:** Builders should not pay subcontractors without obtaining lien waivers from them. A subcontract may expressly condition payments on the receipt from the subcontractor and any sub-subcontractors or sub suppliers of interim and final lien waivers. Subcontractors may also be required to take responsibility for eliminating liens that are filed by their sub-subcontractors or sub suppliers.

**Agreement re Other Payment Conditions:** If a builder wishes to specify other conditions to interim or final payments, such as government approval of work or final walk-through approval by the homeowner, those conditions may be set forth in a subcontract.

**Specification of Insurance:** A subcontract may require a subcontractor to obtain general liability and workers' compensation insurance and may specify the amounts and terms required. In the event of construction defects or other problems, this insurance can be extremely helpful for the resolution or defense of claims.

**Creation of Indemnity:** Subcontractors may be the cause of defective work and other problems on a job site. A subcontract may include an express obligation on the

subcontractor to address those problems and to indemnify the builder from damages resulting from them. While an indemnity is worth no more than the particular subcontractor, it can assist a builder in minimizing costs associated with subcontractor errors and can be used to persuade a subcontractor to address issues for which it is responsible.

**Agreement for Arbitration:** Absent a written agreement with a builder, a subcontractor is not required to arbitrate disputes between it and the builder. Use of a subcontract allows a builder to mandate arbitration. The arbitration provision can allow the builder, under certain circumstances, to add the subcontractor to an arbitration proceeding with a homeowner. This can facilitate efficient resolution of issues relating to subcontractor work.

**Establishment of Timetables:** Subcontractors may cause delays, which can lead to claims being asserted against builders. Subcontracts can set dates or periods for completion of subcontractor work and can provide that subcontractors are responsible for delay damages assessed against builders because of subcontractor work.

**Limitations on Authority:** Homeowners often directly ask subcontractors to

perform change order work. Subcontracts may contain a provision prohibiting subcontractors from performing such work without express written or verbal permission from the builder and may clarify that no amounts will be paid to subcontractors for work performed in violation of that provision.

**Establishment of Other Rules:** There are many other rules that can be included in subcontracts. These include amendment, permit, license, cleanup, coordination, on-site supervision, vehicle parking, drug, alcohol, smoking, music and similar requirements or restrictions.

One of the reasons builders decline to use subcontracts more often is the hassle of completing a subcontract for each house or project. That concern cannot be completely avoided. However, it can be significantly diminished by using a global subcontract that covers all jobs performed by a subcontractor. The global subcontract covers the standard terms applicable to all jobs. It can be signed in connection with the first or subsequent jobs performed by the subcontractor. With the global subcontract in place, the builder and subcontractor need only sign a short work order form for each job that covers terms specific to that job. For the above reasons, I strongly recommend that residential builders use subcontracts. ▲

