

ATLANTA

BUILDING NEWS



45TH ANNUAL OBIE AWARDS

PG. 14

GAHBA PARTNERSHIP TO ADDRESS
MENTAL HEALTH IN CONSTRUCTION

pg. 38

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925 NORTH POINT PARKWAY, STE. 300
ALPHARETTA, GA 30005
(770) 938-9900
WWW.ATLANTAHOMEBUILDERS.COM

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BEWARE OF **‘Notwithstanding’** CONTRACT TERMS

by Tyler Dunn, Weissman P.C.

Proposed contracts often include provisions that begin with words like: “Notwithstanding any other provision of this Agreement to the contrary...” For example, a proposed contract might state, “Notwithstanding any other provision of this construction contract to the contrary, the contractor must obtain a Certificate of Occupancy by X date.” These “notwithstanding” provisions are fine if they accurately reflect both parties’ intent, but often, at least one of the parties really does not intend for the language in a notwithstanding provision to

override all other contrary provisions of the contract. A contractor faced with this sample notwithstanding provision would almost certainly not want delay rights in the construction contract relating to weather conditions to be wiped out by the notwithstanding provision. These notwithstanding provisions are often inserted near the end of contract negotiations as a quick way of undermining other provisions. Thus, it is very important that parties pay close attention to these provisions and, if appropriate, strike them or revise them to reflect exceptions to the notwithstanding language.

Sometimes, proposed contracts include conflicting or dueling notwithstanding provisions, each of which purports in effect to have control over the other. In this situation, one or both of the provisions should be revised to accomplish the parties’ intent. ▲

Tyler C. Dunn is General Counsel to the Greater Atlanta Home Builders Association Inc. and is a shareholder at Weissman P.C. For questions or comments regarding this article, he may be reached at (404) 926-4660 or tylerd@weissman.law.

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