

SITE SAFETY: CUSTOMERS ENTERING THE WORKZONE

Your contract needs a nuclear option – it's the only way.

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Site safety is more than OSHA standards and subcontractor indemnification provisions. Customers entering your work zone (unless as a scheduled walkthrough with the contractor) is never okay, yet it is a pervasive safety issue. Your license, your assets, your insurance, your reputation and people's life-and-limb are all at risk when customers saunter into work-zones or do their own late-night walkthroughs. It's YOUR work-zone, it's your responsibility, even if they walked under the yellow tape, around the orange cones and ignored the "keep out" signs.

Your contract can help you. You need a three-pronged approach for maximum protection:

1. Contracts need a distinct Site Safety clause or addendum devoted to establishing the professional (and physical) boundaries that customers must honor and follow. The rules boil down to this: unless it's an emergency, leave the contractor (and their subs and vendors) alone and stay clear of the work-zone at all times – do not enter. The questions, comments, critiques, suggestions, and "just wonderings" can all wait.
2. A contract's site safety provision needs teeth. Rules without remedies or recourse for the contractor have no teeth and they become empty aspirational goals. Like moths to a lamp, many homeowners do not abide by the contract's site safety rules. In a construction contract, the ultimate remedy for a contractor is termination (monetary penalties are cumbersome and unlikely to work). Sound extreme? It is, so are the risks mentioned above. The nuclear option of contract termination (with reasonable notice) gets the point across to customers who do not follow the rules of the project and do not let you do your job. To be clear, aside from customer non-payment, contract termination is almost never an advisable or appropriate remedy for a contractor when dealing with problematic customer behaviors. Realistically, a written reminder about the site safety rules (citing the contract) is usually enough for the customer to fall back into line. Nonetheless, even if you have site

safety rules in your contract, customers need a strong incentive to follow the rules (to makes the rules complete). It's their property, but it's your site and that takes precedence.

3. If a customer breaks the site safety rules, and the contractor terminates the contract, but someone or something still gets damaged or harmed because of the customer's actions, the contractor needs a strong indemnification provision in their contract to be protected from the financial fall-out from the damage, loss or harm that occurred.

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