



Lipsitz Green  
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ATTORNEYS AT LAW

*About the Authors*

## Joseph Manna

Joseph Manna has nearly 20 years of experience as a trial lawyer, with one of his focuses on Construction Law and Litigation. He is consistently recognized by his peer for his legal ability, professional ethics, and the results he obtains on behalf of his clients. Mr. Manna's recognitions include being named to *The Best Lawyers in America*, *New York Super Lawyers*, and *Business First/Buffalo Law Journal's Who's Who in Law*. Mr. Manna can be contacted at 716 849 1333 or via e-mail at [jmanna@lglaw.com](mailto:jmanna@lglaw.com).

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## Andrew Miller

Throughout his career, Andrew Miller has successfully represented general building contractors, site work contractors, demolition contractors, and building trades subcontractors as both litigation and trial counsel. Many in the construction industry turn to Mr. Miller to regularly handles their legal needs including disputed and unpaid change orders; differing site conditions; unanticipated changes in the scope of work; bond claims; Article 3-A construction trust claims; and mechanic's liens. He has been named to *New York Super Lawyers' Rising Stars* and *Business First/Buffalo Law Journal's Who's Who in Law*. Mr. Miller can be contacted at 716 849 1333 or via e-mail at [amiller@lglaw.com](mailto:amiller@lglaw.com).

LEGAL NEWSLETTER ON

# ConstructionLaw

## The Importance of a Change Order

"Why don't you just go ahead with it and we'll settle-up later; we'll be fair, ok?"

This is a scenario you are probably all too familiar with. While in the midst of a job you are asked to make a "small change" to the scope of work and the owner agrees to "settle-up later." As the job progresses another change is requested and then another; all the while a price for this additional work is not agreed upon.

### YOUR LEGAL AND FINANCIAL HEADACHE

The job concludes and suddenly the owner of the project starts to challenge you on payment for the extra work you performed at their request. You are now faced with the burden of suing to receive payment for the extra work performed or surrendering to an agreement for a discounted fee for the extra work simply to avoid the hassles of a lawsuit.

### YOUR PREEMPTIVE HEADACHE CURE: A CHANGE ORDER

The best way to avoid a dispute over payment for additional work on a job is to utilize a well drafted Change Order request.

We have provided you with a sample of a Change Order request on the back side of this newsletter and it is available to download for free anytime on our website by [clicking here](#).

It is important to note that the contract you agreed to before a job should include procedures for Change Orders. You will need to reference your contract before you utilize a Change Order request.

### GETTING PAID WITHOUT A CHANGE ORDER

The [last issue](#) of our *Construction Law* newsletter outlined ways you can receive payments for extra work without a written Change Order. Those methods are:

1. **Oral Change Orders:** The owner orally agrees to changes in the scope of work;
2. **Acquiesce by the owner:** The owner is present at the project and does not object to changes;
3. **Waiver by conduct:** Typically occurs because the parties have been doing business together for years and have never followed the contract's Change Order requirements.

### REALITY OF THE DEMANDS ON CONSTRUCTION SITES

While it's best to agree in advance how payment for extra work will be handled; we recognize that construction projects are fast-paced work environments and you may not be able to obtain a signed Change Order before the extra work must be performed. If you have to proceed with extra work before a Change Order can be signed, you should immediately send a Change Order identifying:

1. the extra work you performed;
2. who instructed you to perform the extra work and why it was needed; and
3. the cost to perform the work.

If handled properly, a Change Order can provide you with an excellent opportunity to increase your profits and earn money. To do this, you must follow the contract's Change Order procedures and use well-drafted Change Orders.

# Change Order Request

**Subcontractor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Project:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Submitted To:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Phone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Change Order Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Architect's Project No.:** \_\_\_\_\_

**Contract Date:** \_\_\_\_\_

**Contract For:** \_\_\_\_\_

**Job No.:** \_\_\_\_\_

**Job Cost Code:** \_\_\_\_\_

**Work Requested By:** \_\_\_\_\_

The contract is changed as follows:

**Item:**

**Amount:**

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

**Total Amount of Change Order:** \_\_\_\_\_

**Work to fulfill this Change Order (has) (has not) begun and (has) (has not) been completed.**

The original Contract Sum was: \$ \_\_\_\_\_

Net change by previously authorized Change Orders: \$ \_\_\_\_\_

The Contract Sum prior to this Change Order was: \$ \_\_\_\_\_

The Contract Sum will be (increased) (decreased) (unchanged) by this Change Order in the amount of: \$ \_\_\_\_\_

The new Contract Sum including this Change Order will be: \$ \_\_\_\_\_

The Contract Time will be (increased) (decreased) by: \_\_\_\_\_

*This change order is not complete until signed and approved*

**Submitted By:**

**Approved By:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_