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Merger Clauses in Contracts

A “Merger Clause,” sometimes referred to as an “Integration Clause,” is a clause frequently found in contracts. It reads something similar to this:

This document is the entire agreement between the Parties. There are no understandings, representations, promises, or terms other than those set forth in this document. This agreement may only be modified by written agreement, signed by both parties. There have been no oral statements, inducements, or promises which are not explicitly set forth in this agreement.

This clause is usually inserted near the end of the contract. It looks innocuous, and rarely do parties object to the clause. But rarely do parties stop and consider the implications of the clause. The purpose of the Merger Clause is to limit the contract specifically to the terms set forth in the written agreement.

So, for example, those emails the subcontractor sent the night before the contract was signed—those may not be part of the contract. Those phone calls with the owner, while negotiating the contract—where he approved 10% profit on change orders—again, if not included in the written agreement, it may be unenforceable.

Merger Clauses are not always ironclad; there are occasional loopholes. But, at the same time, it is best to ensure that any promises or terms of the contract are specifically included in the written agreement, or at least referenced by the agreement, so that the terms are not lost. At a minimum, emails or bid quotes can be printed and attached to the contract. Parties can even handwrite additional terms to ensure that they are included in the agreement. If negotiating or litigating a contract dispute, it is best to contact an attorney for advice.

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What's Happening Now . . .

24.8% Increase

- Sales of new single-family houses in February 2015 were at a seasonally adjusted rate of 539,000. This is 24.8% above the February 2014 estimate of 432,000.
- February 2015's new single-family home sales were also 7.8% above January 2015's estimate.
- Also released this month, the economy gained 295,000 in February, lowering the unemployment rate to 5.5%. Not surprisingly, employment in “specialty trade contractors rose by 27,000, mostly in the residential component.”

Sources: U.S. Census Bureau News and HUD Joint Release: New Residential Sales in February 2015 (Mar. 24, 2015); Bureau of Labor Statistics, News Release: The Employment Situation—February 2015 (Mar. 6, 2015).

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