

WHAT IS A GUARANTEED MAXIMUM PRICE CONSTRUCTION CONTRACT?

*Construction Contracts Can Take Different Forms,
Depending Upon What the Parties Believe
To Be Appropriate for Their Unique Situation*



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Whether you are remodeling or undertaking a new build for a residential or a commercial property, a construction contract is the first step in your project. The construction contract establishes the parameters of the work to be performed. It establishes the cost, the terms, the materials and the rights and obligations of both the builder/contractor and owner/developer.

Construction contracts can take different forms, depending upon what the parties believe to be appropriate for their unique situation. One common type of construction contract is called a guaranteed maximum price construction contract. A guaranteed maximum price construction contract has advantages as well as disadvantages for both the builder and the owner. An experienced real

estate attorney can review your situation and assist in determining if a guaranteed maximum price construction contract is appropriate for your project.

Understanding a Guaranteed Maximum Price Construction Contract

A guaranteed maximum price construction contract is a hybrid of two other common types of construction agreements: a *time and materials* contract and a *fixed price* contract.



When a builder and owner enter into a fixed price contract, they agree upon a set price to complete a specified project. The owner of the property pays the price that is outlined in the contract, regardless of what occurs during the building process, unless the owner alters the specifications or scope of the project. When an owner makes a change, a *change order* is produced and the owner pays for the additional added

expenses of the new specifications. In some cases, a change order fee is also charged if the owner makes alterations to the project details after construction has begun.

A fixed price contract is risky for contractors/builders, who are left with all responsibility for unexpected expenditures or cost overruns. The benefit to contractors, however, is that the builder has an incentive to maximize savings in

order to reduce costs and keep the excess funds. Owners/developers benefit from protection from cost overruns but do not get to realize any savings. Further, unless the specifications are very clear, there is a risk to the owner that the builder will compromise quality to keep costs low.

A time and materials contract is another option for construction contracts. This type of contract establishes that an owner will pay a set price for labor and will pay a fee for profit. The owner is also responsible for paying for the costs of materials and overhead. A time and materials



contract protects the builder from the risk of cost over runs. Buyers, however, are disadvantaged because they do not know what the final price of a project will be when the project begins. Further, builders do not have incentives to keep costs down and buyers may experience higher costs as a result.

A guaranteed maximum price contract combines features of each of these different types of contractual agreements. A guaranteed maximum price contract makes the buyer responsible for paying for the materials used and for the costs of the builders time. However, there is a price ceiling above which the buyer is no longer responsible for paying. If the builder exceeds the price ceiling or the *guaranteed maximum price*, the remaining work on the project must be completed with no additional charges to the buyer.

The risks of a guaranteed maximum price contract to builders is that the builder could become responsible for excess costs if the project runs over budget. The

risk to the buyer is that the builder may overestimate the maximum price to reduce the potential for overruns.

Structuring a Guaranteed Maximum Price Contract

A guaranteed maximum price contract can be drafted in different ways depending upon the negotiation among the builder and the owner. The contractor's fee may be based on a percentage of the costs of construction up to the price ceiling or may be set at a fixed amount. Contractors and owners may also agree to include a shared savings clause in the contract. When this provisions is in a guaranteed maximum price contract, any savings realized throughout the project is split between the builder and buyer.

It is essential to understand what terms will be most advantageous for you as you enter into a construction project. An experienced real estate lawyer can provide you with information on different types of construction contracts and can assist you in negotiating and drafting an agreement that is appropriate for your situation. Construction projects are major investments with significant potential for things to go wrong and you should never sign a construction agreement that has not first been reviewed by a qualified legal professional.

About Pintar Albiston, Attorneys at Law



Pintar Albiston is known for our ability to accommodate client requests. We are hands-on, and if we don't "pick up" the second you call, you may be certain we will get right back to you. We offer flat fee rates so that your fees are predictable.

Family Law Attorneys

Whether you live in Las Vegas, Henderson or North Las Vegas, our lawyers realize that every family situation is different. We will work with you to determine your objectives whether it relates to divorce, child custody or child support. We will take the time needed to explore your options and then work to obtain fair and workable solutions that allow you to move forward with your life.

Our firm confidently handles every aspect of family law disputes, including child support, child custody and parenting matters both during and after the divorce or other legal dispute.

We will keep your goals and best interests in mind when pursuing a fair and equitable divorce that divides assets properly. We will always keep your children's best interests in mind when resolving child custody and child support issues.

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