

Challenges with Time and Materials Contracts

A landscape contracting business enters into a landscape installation agreement with its customer. The price is to be determined based on time and materials. As to price, that's all the agreement says. No one has seriously estimated what the job will cost, but before the agreement was signed the contractor's salesman assured the customer it would be no more than \$48,000.00.

Payment is to be 25% down, 25% when 1/3rd complete, 25% when 2/3rds complete and balance on completion. There is a well defined landscape plan prepared by a certified landscape designer.

The customer paid the down payment and the job starts. Paperwork is not the foreman's long suit. When the work shown on the "first third" of the plan is complete the contractor sends Customer an invoice for \$12,000.00. It is based on sketchy time records and incomplete material records. In fact, the work was only about 20% complete. The customer paid the invoice making total payments \$24,000.00 (down payment plus Invoice #1).

The complicated work is on the "middle third" of the plan. The designer showed up to make sure the patio and water feature were installed exactly as planned. The owner of the landscape business caught wind of this and insisted that accurate records be kept so all time and material costs would be captured. After the "middle third" was completed the foreman presented his boss (the landscape business owner) with a proposed invoice. The work was perfect and the invoice was accurate, but the amount due was nearly \$30,000.00. At this point the job is 2/3rds complete.

The landscape business owner presented Invoice #2 to the customer. He blew a gasket and refused to pay more than \$8,000.00 for what he believed was a job only two-thirds complete (i.e., 2/3^{rds} of \$48,000 is \$32,000 and he'd previously paid \$24,000.00). He also demanded that the remaining third of the work be completed for the promised \$48,000.00 price tag.