

# Top 10 Legal Myths and Misconceptions

by *Rebecca Knudson & Jessica Humphries*

In our years of representing builders and construction professionals, we often find that our clients have been misinformed about important legal issues.

Here are the Top 10 construction-related legal myths and misconceptions:



## 1 “I don’t need to form a business entity if I am the only employee.”

If you do not conduct business under a properly formed legal business entity, such as a corporation or LLC, you can be held personally liable for your business debts and creditors can take your individual property, such as your home, to satisfy these debts. If operated properly, having a legally formed business entity can protect your individual assets in the event of a problem.

## 4 “I can’t be sued if I didn’t do anything wrong.”

Unfortunately, this is not true. Once brought into a lawsuit, it is difficult to get out, meaning you could remain in the lawsuit for a long time, possibly years, at your own expense. It is important to plan for this possibility by minimizing your risk in the event you are sued, such as including certain clauses in your contracts.

## 2 “If I form a business entity, nobody can take my personal assets.”

While forming a corporation, LLC, or other business entity makes it more difficult for creditors to go after your personal assets, it does not guarantee that your personal assets are safe. Creditors may be able to take your individual property if you co-mingle your business and personal finances, or if you do not follow legal corporate formalities. It is important to operate your business and personal finances separately to protect your personal assets.

## 5 “I’m safe if I follow the Building Code and pass inspections.”

Meeting the Building Code requirements is the bare minimum, and passing inspection does not necessarily mean that the work is lawsuit-proof. You also need to follow any applicable industry standards, manufacturer’s instructions, plans, and specifications.

## 6 “I’m safe if I follow the instructions of the owner/architect/engineer.”

Do not blindly follow instructions that are questionable. If you are given questionable instructions, document what you are told in writing to protect yourself if you are later blamed for any problems that result.

## 7 “I don’t need a written contract with my subcontractors or suppliers.”

Often times, parties think that as long as they agree on the scope of work or cost of materials, they do not

## 3 “I don’t need an attorney unless I’m sued.”

Often, when someone waits until they have been sued to hire an attorney, the damage is done and the attorney’s options are limited in how they can help. Plan ahead, and have an attorney counsel you on how to structure your business and prevent the risk of future problems.

need a written contract. Having a properly drafted contract allows you to plan for common problems that can arise on a construction project. It is important that your contracts protect your interests and set forth the procedure for resolving future disputes.

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**“I can hold my subcontractor responsible for its faulty work.”**

This might seem logical, but it is not guaranteed. Without what is called an “indemnity” provision in your contract, you could be held liable for your subcontractor’s faulty work and not be able to legally force them to pay you back. You need a strong indemnity provision in your contracts to protect yourself if you hire subcontractors.

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**“I can get rid of my job file after the builder’s warranty period is over.”**

You need to keep your entire job file for at least six years after the project is completed. In North Carolina, even if the Builder’s warranty has expired,



you can be sued up to six years after the project is completed. Without your project documents, it is very difficult to prove your exact scope of work for the project, which can be crucial to resolving the case.

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**“If I win a lawsuit, the other party has to pay my attorney’s fees.”**

While there are a few limited circumstances where you can make another party pay for your attorney’s fees, generally, every party is responsible for paying its own attorney’s fees, regardless of who wins or loses.

**Please feel free to contact Hamlet & Associates at (910) 777-5995 if you have questions or need advice related to any of these topics.**

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