

Some Advice — on the House

Deadly Sins of a Home Improvement Project

By ADAM J. BASCH, Esq.

For most people, their home is their most prized possession. This is often true from both a financial standpoint and a sentimental one. Both aspects of your attachment are key factors to consider when planning to undertake a major home improvement, and there are things you can do to help assure your project satisfaction.

Know Your Contractor

When undertaking a major home improvement, you are placing a considerable amount of trust in your contractor. At a time when you can get medical advice, purchase real estate, and even obtain a college degree online, it can be tempting to surf the net to find a contractor. If possible, this should be avoided.

The best and most honest contractor advertising is previous customers. Ask your friends, family, and neighbors who they used. Check out the contractor's work, and speak directly to the other homeowners. If you are unable to get a recommendation, and you speak to contractors found online or in the Yellow Pages, ask for references of jobs they have completed. If the contractor has performed well in the past, those homeowners will often be pleased to show off their own projects.

Check the Records

Every home improvement contractor must be registered with the Commonwealth. Once you have tentatively selected a contractor, you should visit www.mass.gov/bbrs/hic.htm. This Web site allows you to confirm that your contractor is registered. If the one you have selected is not, a red flag should go off in your mind, and you should select another contractor.

The most important aspect of

hiring a registered contractor is your future ability to access the Guaranty Fund. Should the project sour and a lawsuit follow, the Guaranty Fund will pay a judgment in your favor up to \$10,000. In many cases, this represents the only ability you will have to collect on a judgment.

The Contract

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Actually, by law, all contracts over \$1,000 must be in writing. In most cases, the contractor provides a contract, and a homeowner simply looks at the price and services, then signs it. Most do not read or give weight to other provisions.

For example, one common provision is the recovery of attorney's fees in the event that the contractor must file a lawsuit against the homeowner. While this may seem reasonable, it doesn't permit you to recover your own attorney's fees if you must file a lawsuit against the contractor as a result of poor workmanship. You should insist that reciprocal language be included with respect to any attorney fee provision.

The Payment Schedule

It is just as important how and when payments are going to be made as how much the entire project will cost. While you always hope that the project will go

smoothly, even though careful precautions have been taken, problems can arise. If they do, and the contractor either decides to walk off the job or is terminated, it is critical that the payments made to date have not exceeded the value of the work done. While it is standard practice to make payments under a contract in thirds (one-third as a deposit, one-third in the middle of the project, and one-third at the end of the project), tenths are preferable.

thousand words.

The ability to show a jury pictures of defects throughout all stages of construction can be extremely persuasive. In addition, by referring to a journal, exact dates and times of events and conversations can be testified to. This also makes the claims more persuasive.

Lien Waivers

Even if you are satisfied with the quality of the home improvement, you will still not want to pay twice for it. If payments to the general contractor are made before lien waivers are received, this is a possibility. In Massachusetts it is illegal to require a contractor or subcontractor to execute a blanket lien waiver prior to performing his or her services. Although a homeowner cannot require a contractor or subcontractor to agree that they will not file a lien upon your property at the onset of a project, this can be required at the time of payment.

In most construction contracts, especially ones for new construction, payments are made to the general contractor at different intervals throughout the project. Prior to tendering any funds to the general contractor, the homeowner should require that the general contractor and all subcontractors who will perform services on the project execute a lien waiver.

The Punch List

A punch list is created toward the end of a project. It lists items that that you and the contractor agree need to be finished or repaired. These are usually small items that are mostly 'fit and finish' issues. All too often, by the end of the project the punch list has many individuals' scribbles on it, is illegi-

For example, if the contract is for \$60,000, in the first scenario you are paying \$20,000 before any work is performed and then an additional \$20,000 with half the project left to unfold. After each payment is made, you expose yourself to a \$20,000 loss. In the second scenario, only \$6,000 is paid at a time, limiting the amount of money paid for future services. If the project ceases at any time, you will be less underwater.

Keep Records

Undertaking a home improvement should be a pleasurable experience that provides fond memories. In this respect, taking photographs at various stages of the project and keeping a contemporaneous journal can be a nice keepsake. These can also be powerful tools should future litigation arise. In this event, you will need to articulate your claim, and it is true that a picture is worth a

ble, and perhaps torn and coffee-stained.

Should your relationship with your contractor break down, you will look to the punch list as a basis for refusing to pay the remaining balance due on the contract.

To restore the value of the punch list, a computer can be of immense value. A list of items that

need to be finished or corrected can be generated, then you and contractor can both sign it. This is evidence of what both parties agreed were the issues. As items are finished or repaired, both parties should initial them. Should a dispute arise in the future, your relationship will be unambiguously documented. And in the event that litigation ensues, the punch list will

allow the disputed items to be clear-cut and well-defined, making litigation streamlined and less expensive.

As the old saying goes, an ounce of prevention is worth a pound of cure. This certainly holds true when undertaking a construction project. By following these steps, you can increase your chances of success.❖

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