

# Steps to Successful Remodeling

## How to Protect Yourself from Unsavory Contractors

By ADAM J. BASCH, Esq.

**D**ue to the current economic climate, more and more people are deciding to renovate their existing home, as opposed to purchasing a new one. These renovations can be big or small, but regardless of the size, any construction project should be approached with the same degree of caution.

A handshake with a contractor is still a business deal, and all too often the party on the consumer end is ill-prepared in the event that a conflict or problem occurs.

Unfortunately, oftentimes when business or homeowners are dissatisfied with a contractor's work and the problem escalates to attorney involvement, the most valuable protections afforded to the consumer have been lost. As the old saying goes, "an ounce of prevention is worth a pound of cure."

Massachusetts General Laws Chapter 142A provides consumers with certain remedies in the event that repairs go astray. As such, it is very important to comply with the requirements of Chapter 142A if you wish to reap its benefits. First of all, make sure that all the people you hire are registered with the state. If the contractor or subcontractor you hire is not registered, you have no protection under the provisions of the law. The contractor is required to display his or her state registration number on all advertisements, contracts, and permits. If you receive paperwork from a contractor without a registration number, that should be your first red flag, but it may be an oversight on the part of the contractor, so be sure to ask for his or her license number. Any resistance or side-stepping should be regarded as another red flag warning you to find a different contractor. Be sure to also take the next step and check the contractor's registration online, because the license may no longer be valid.

Another common mistake consumers make is obtaining their own building permit. Doing so may reduce the homeowner's options under the law if a dispute arises, whereas having the contractor obtain the necessary building permit offers significant protections to consumers. Important to note is the fact that the person who obtains the building permit may expose himself or herself to personal liability for work-related instances. For these reasons and the fact that

the building permit should include the contractor's registration number, consumers should insist that the building permit be obtained by the contractor that has been



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hired to do the work.

While it is strongly advisable that all agreements between consumers and contractors be documented in writing, the law dictates that only contracts for improvements in excess of \$1,000 must be written. Written contracts must contain several provisions, including the identification of all contractors and subcontractors who will perform services. In addition, they must include a thorough description of the project, completion schedule, and final cost agreement with payment schedule, which must be signed by the contractor and consumer. The contract must notify the consumer of their right to cancel the contract within three days of signing. It must also state that it is the contractor's responsibility to obtain all necessary building permits, and that, if the consumer obtains the building permits, he or she will be precluded from making a claim against a special fund designated to be utilized by registered contractors, should a dispute arise.

The contract must also disclose that Massachusetts state law requires all contractors and subcontractors to be registered with the director of Home Improvement Contractor Registration. As with any contract, it may be advisable to have an attorney review it prior to execution. Once the contract is executed, the consumer should immediately receive a copy.

In the event that a dispute should arise, a

consumer has the option to pursue the matter in the state court system or to attempt to resolve the dispute through a state-approved arbitration program. Utilization of the arbitration program requires a small fee payable by the consumer.

Within arbitration, both parties are permitted to submit their case, and the arbitrator renders a decision.

Although the arbitrator's decision is final, either party may appeal to the district or superior court within 21 days of the decision. A consumer may file for arbitration any time within two years of the signing of the contract, and he or she has the right to choose arbitration or pursue the matter in the Massachusetts court system. On the other hand, a contractor may request arbitration only if it was stipulated in the original contract. Although a consumer may represent himself pro se in either arbitration or a court proceeding, it may be appropriate to retain the services of an attorney.

When a consumer receives a judgment as a result of arbitration or a court proceeding, the judgment must be collected on. If the contractor refuses to pay the judgment, remedies are still available through an avenue called the guaranty fund, which was designed to cover such expenses. It is funded from one-time assessments levied on registered contractors. The amount each contractor must pay is determined by the number of employees on the contractor's payroll.

To collect from the fund, a consumer must file a claim within six months of the initial judgment made by either the arbitrator or the court, as well as demonstrate that all reasonable efforts to collect the judgment have been unsuccessful. Up to \$10,000 in actual losses may be collected from the guaranty fund per incident.

While remodeling projects usually result in a satisfactory outcome, occasionally something goes wrong. The greatest protection a homeowner has in this circumstance is a proper contract with a state-licensed contractor. It is likely that such professionals will adhere to higher standards, and in the event that they don't, the consumer has a fall-back for compensation. ■

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