

HOME IMPROVEMENT CONTRACTS: STEPS TO TAKE WHEN HIRING A CONTRACTOR TO DO WORK ON YOUR PROPERTY

(A BAD CONTRACTOR CAN BE WORSE THAN A HURRICANE)

PREPARED BY: LEGAL SERVICES OF GREATER MIAMI, INC.

I. INTRODUCTION

Are you planning to improve your home or have repairs done to your home? Then there are some things that you should consider before you hire a contractor to start the job.

In Florida, there are laws that govern home improvement agreements. Home improvements include repairs, replacement, remodeling, alteration, conversion, modernization, or improvement of, or addition to, any land or building which is to be used as a single-family residence or dwelling place.

You should enter into a written contract with the contractor if you are going to have any of the above services performed on your home. But before you enter into this contract, you should take steps to make sure you are hiring a qualified contractor.

This pamphlet is intended to provide you with information about your legal rights and obligations with respect to home improvements and contractor law under Florida Law (§713, §501 and §489 of the Florida Statutes). It is not, however, intended to take the place of legal advice from an attorney.

II. STEPS TO TAKE BEFORE ENTERING INTO A CONTRACT WITH A CONTRACTOR.

A. Get Estimates

You should shop around for a contractor before making a decision. You should also get free written estimates from more than one contractor to ensure that you are paying a reasonable price. You should explain what you want done, specifying such items as the

quality and type of materials.

Be suspicious of a contractor who offers the fastest, cheapest job on a “you must act now:” basis. The result is usually poor workmanship, inferior materials and unfinished work.

B. Make sure contractor is licensed.

Florida laws require that a contractor be licensed to engage in the home improvement business. There are some exceptions to this law. (See FS§520.68)

C. Check status of contractor.

You should check on the status of the contractor. You should also check to make sure the contractor is correct when (s)he says (s)he does not need to be licensed. You can call the Department of Business and Professional Regulations at 1-850-487-1395, which maintains a system of licensure status information so that you can find out:

1. if complaints have been filed against the contractor.
2. the status of the individual’s state license.
3. if the certification of the contractor is active.
4. if the contractor has failed to make restitution in any Construction Trades Qualifying Board.
5. if there are any ongoing disciplinary cases against the contractor by the Construction Trades Qualifying Board.
6. if there are any outstanding fines against the contractor.

Ask your contractor for references and inquire of these references as to the quality, and timeliness, etc. of the work.

III. ENTERING INTO A CONTRACT

If a contractor is licensed, the cost is reasonable, and the contractor’s status complies with the standards of the Department of Professional Regulation, then the next step is to enter into a contract.

A Contract must follow a format as set by the Florida statutes.

A. Contract must be in writing and signed by both parties.

B. Contract must include:

1. the name, address, and license number of contractor.
2. the contract should include definite dates when the contractor will begin the work and when the contractor will complete the work.
3. a description of the work to be done and the materials to be used.
4. the total amount due under the contract, which shall be stated as a sum in dollars, less any down payments.
5. the schedule of payments corresponding to the amount of work completed.

You should add any additional details you require, such as color, quality of materials, etc.

C. Copy of contract.

The contractor must provide you with a copy of the contract after you sign it.

D. Right to cancel contract

The home improvement contractor has to furnish you with a notice that the contractor and you have until midnight of the third business day following the signing of the contract to cancel by giving notice to the other party by either certified or registered mail. You are not liable for any damages if you cancel the contract during this period.

IV. BEFORE ALLOWING CONTRACTORS TO BEGIN WORK.

A. File a Notice of Commencement

You must always file a “Notice of Commencement” with the Miami-

Dade County Clerk of the Courts prior to beginning any home construction, repair, or renovation project for which the contract price exceeds \$2,500.

The Department of Building and Zoning Office will not issue a Building Permit without first requiring the contractor to complete the form. ASK YOUR CONTRACTOR FOR A COPY (he should post a copy somewhere on your property). If it was properly recorded with the clerk it should have a notation on it in the upper right hand corner by the Clerk's office indicating the recording information. If your contractor refuses to give you copy (or he can't give you a copy) that means that the Notice probably hasn't been recorded (it may also indicate that the contractor did get a property building permit. You can record the original Notice of Commencement yourself. First, go to the Building Department and get a blank copy of the form. Then have it completed, signed, and notarized form. Then go to the Clerk's office to have it recorded:

Miami-Dade County Recorder
Miami-Dade County Courthouse East
22 NW First Street, 1st Floor | Miami, Florida 33128
Telephone: (305) 275-1155 | Business Hours: 9:00am- 4:00 pm

The fee is \$10.50 for the first page and \$8 for each additional page.

The Notice of Commencement must be recorded (as described above) no more than 90 days before the contractor begins work on your property. If work does not begin within 90 days, you must file a new Notice of Commencement. The notice is good for one year after the recording date, unless otherwise specified.

If you do not file a Notice of Commencement you will receive less protection under the Construction Lien law. Also the Monroe County Building and Zoning Department will not allow the work on your home to pass inspection when you or your contractor calls for the first required inspection.

B. Post the certified copy

Once you've filed the Notice of Commencement, you must post either a certified copy (or a copy with a notarized statement that indicates that the Notice of Commencement has been filed) on your property. It must be visible to the subcontractors coming onto your property.

Therefore, you should put it some place where it can be clearly seen, is visible, such as on the window or door of your house.

V. PERMITS

Permits are required before most improvements, repairs, or additions can begin. You should require that your contractor get these permits. You should not get these permits yourself even if the contractor assures that this will be a faster and easier process. Pulling these permits yourself may make you responsible for fines and penalties for incomplete and improper work.

Under no circumstances should work begin without the contractor getting the permits. You should see these permits for yourself. These permits must be posted in a visible location on your property, such as on the window or on your door.

VI. RELEASE OF LIEN AND AFFIDAVIT

A. Release of Lien and Affidavit

Prior to making any partial or final payment to the contractor, you must receive a "Release of Lien and Affidavit" (or "Partial Release of Lien and Affidavit:" that specifies that the contractor has either paid all subcontractors, materialmen, and laborers or list all individuals owed any money and how much is owed to each. This amount may be withheld from the contractor's pay and paid directly to the subcontractors or suppliers.

This payment to subcontractors or suppliers may be made directly to them after given ten (10) days written notice from you to the contractor. Again, if you pay

the subcontractors, materialmen, or laborers directly, make sure to obtain a release of lien.

B. Final Release of Lien and Affidavit

You should not make the final payment until the inspector approves the contractor's work. It is good practice to withhold at least 20% of the total contract amount as final payment. You should also not make the final payment if you are not satisfied with the contractor's performance.

You should not pay the final payment until you receive the Final Release of Lien from the contractor. You should follow the same procedure as stated above in Section A. about Partial Release of Lien and Affidavit.

If at the end of the job, the money owed to contractor is not enough to pay off the subcontractors and suppliers, then you should contact an attorney.

VII. SUMMARY OF STEPS YOU SHOULD TAKE WHEN YOU PLAN TO HAVE SOME HOME IMPROVEMENT WORK DONE ON YOUR PROPERTY.

1. You should get at least three (3) free estimates from different contractors.
2. You should make sure that the contractor is licensed and has no complaints filed against him.
3. Once you have selected a contractor, you should enter into a written contract specifying all your requirements regarding quality and timeliness of work to be completed and payments to be made.
4. You should file a Notice of Commencement and post it on your property. It should be visible to subcontractors.
5. You should make sure that the contractor pulls all the necessary permits and posts them on your property.
6. You should not make any payments until you receive a Partial Release of Lien and Affidavit for each payment made to the contractor.
7. You should not make the final payment until you receive a "Final Release of Lien and Affidavit" from the contractor, and you are certain that all the subcontractors have been paid, and the final inspection has been passed.
8. If you run into problems contact a lawyer familiar with contractor law.

Remember, it is your responsibility to guard your house against unjust liens and foreclosures. The best way of doing this is to maintain written proof that every supplier, subcontractor, and contractor has been paid for providing any materials or services to your property.

AGENCIES:

DEPARTMENT OF PROFESSIONAL REGULATION

DPR Consumer Complaints

Northwood Centre

1940 N. Monroe Street

Tallahassee, FL 32399-0781

1-850-487-2252

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Construction Licensing Service

1940 North Monroe Street

Tallahassee, FL 32399

1-850-487-1395

DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION

Board of Construction

7960 Arlington Expressway, Suite #300

Jacksonville, FL 32211

1-904-727-6530