



LEGAL ADVICE: What Builders & Homeowners Need to Know

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efore embarking on a construction project, it is essential that the homeowner and the prospective builder have an understanding of their individual rights and responsibilities. With this understanding, the project has greater success of fulfilling both parties' needs.

"How do I protect my paycheck?" is one of the most important questions a builder can ask an attorney. The answer is dictated by the Michigan legislature and requires a written contract between the homeowner and the builder and a valid residential builders license. While this seems simple, the details of these rules must be understood and followed.

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First, an agreement to improve the property of another must be in writing. And, the written agreement must include a statutory recital that a license is required, that you are licensed and must provide your license number. Second, the residential builders license that you are relying upon must be issued to you individually if you do business as yourself or have a current d/b/a filing in the county in which you work. And, if you conduct your business as an entity -- a partnership, limited liability company or corporation -- your business entity must possess its own license in the name of the entity. The fact that you are licensed individually and own the company by yourself does not create a residential builders license for the company. In such a situation, the company would be unlicensed and not entitled to use the court system if the homeowner will not pay for the improvements provided. And, without a residential builder's license, the Courts have held that the homeowner has no legal duty to pay the contractor for the improvements made to their residence.

These rules equally apply to change orders that spring up during a project. Change orders, just like the original contract, must be in writing and must contain the statutory recitals concerning the requirement of a builders license and licensing information. Finally, qualifying officers for a company must maintain an active individual builders license. And, the legislature recently added a continuing competency requirement for all licensed residential builders that went into effect in June of this year. A percentage of all licensees will be audited, so failure to complete the competency requirements can be detected and will result in an investigation of a complaint initiated by the Department of Energy, Labor and Economic Growth. Following two simple rules, having a written contract and holding a valid residential builders license, will allow contractors to use the court system to collect monies when homeowners refuse to pay the construction bill.

So, asks the homeowner, "How do I protect my project?" The answer again lies with the Michigan legislature. Homeowners who hire a licensed residential builder will be protected from paying twice for materials and labor provided to improve their real property. So, if the general contractor hired to complete a project has been paid by the homeowner, but the materials provided to the project and the subcontractors who performed work on the project are left unpaid by the general contractor, then the homeowner is protected by the Homeowner Construction Lien Recovery Fund which will step in to pay the materialmen and subcontractors. This protection from paying twice for the work performed is only provided to homeowners that hired a licensed residential builder. In addition, if litigation is filed that involves your project, the law will enable the homeowner to be let out of the litigation if the homeowner paid the contractor in full and cooperates with the Homeowner Construction Lien Recovery Fund.

Homeowners should check with the Licensing Department before contracting with a builder to make sure that the individual builder or the company is properly licensed. License information on residential builders is public and can be found by visiting the State of Michigan Web site at <https://www2.dleg.state.mi.us/colaLic>. Make sure that the person or entity you hire presents paperwork to you that is identical to the person or entity that holds the residential builder's license. As discussed above, John Doe may hold a valid license but if you are contracting with John Doe Remodeling Inc. then the company itself must have a license in the name of John Doe Remodeling Inc.; the license of the individual will not pass through to that person's

business. And, John Doe would need an individual builder's license in order to be the qualifying officer for John Doe Remodeling Inc's residential builders license.

For both builders and homeowners, the scope of work and time for completion are key issues in negotiating a job. Defining what improvements will be made, what materials will be used, and the quality of the result protects both parties from misunderstandings. And, if the scope of work is properly defined, change orders will be easy to identify. This protects the builder, who is seeking to receive payment for the work performed, and protects the homeowner, who is watching a construction budget and making decisions as the project progresses.

The time allotted to complete a project is also an important topic to discuss and include in your contract. Both parties need to know the expectations of the other for when the project will start and when it will be complete. The builder needs to schedule subcontractors and have materials available at the jobsite. The homeowner needs to have financing available and may have a desired date for getting possession of the project and occupying the newly improved space.

Finally, both builders and homeowners should enjoy the construction process and keep a personal log of the events as they unfold on the project. Such a diary can create a treasured memento of the project or be a useful tool for enforcing the party's agreement. In the digital age in which we live, a photo diary is easily created and may prove useful should a problem with the project arise. □



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