

Selecting a Builder

Your home is probably your most expensive investment. Before you spend thousands of dollars on building or remodeling, you need to do your homework and understand your role as a consumer.

Your first step is to plan:

- Think your project through from start to finish. Consider special needs you may have and how you will use the space in the future. Consult an architect or designer if necessary, and decide on a realistic budget.
- Think about the materials you want to use - visit lumber yards and suppliers, look at magazines featuring distinctive home designs, see what friends and family have done, or do research on the Internet.
- Clearly define the job you want done in a specification sheet and rough floor plan which you can give to potential contractors. When all the contractors who bid on your job work from the same design plan, you are most likely to get complete and accurate bids that can be compared.

Shop for Quality - Not the Lowest Price

Once you develop a list of builders or remodelers, find out about their reputations and the quality of their work. Recording all information, as well as your own impressions about specific contractors and homes, in a notebook helps to make comparisons easier. The best way to learn about contractors is to visit homes they have built or remodeled and talk to the owners. Don't be shy. Knock on doors and ask people how they like their homes, and whether they would buy another home from the builder or have another remodeling job done by the contractor. The more people you talk to, the better the cross section of opinion you'll receive.

Check out each contractor's credentials. Find out how long the firm has been in business and what kind of reputation it has established in the community. Try to ascertain information about the contractor's credit rating. Check with the Better Business Bureau and local consumer protection agencies to learn if there have been any complaints. Also find out if the contractor is a member of the local home builders association, and check with that association to verify the builder's professional standing.

Consumers planning to build or remodel a home can also protect their investment by seeking out those professionals in the home building industry who are licensed contractors. To obtain a Massachusetts Construction Supervisors License, builders must demonstrate - through exam performance and prior construction experience - that they possess the necessary qualifications to perform or oversee construction, renovation, alteration, repair, removal or demolition involving the structural elements of buildings. Remodelers must register with the state as a remodeling contractor.

Important Information on Remodelers Contracts

While it is advisable to put all contracts in writing regardless of the cost of the work being done, it is the law that any home improvement contract over \$1,000 must be in writing. If a contractor violates this provision, his or her registration may be suspended or revoked and he or she can

be fined or face prosecution.

Valid remodeling contracts over \$1,000 must contain several provisions and provide some consumer cautions and special notifications. For instance, all contracts must provide complete identification of all parties involved with the proposed job including the registration numbers of all contractors and sub-contractors. It must also include:

- a complete description of the job;
- a detailed list of specifications and materials;
- the starting and completion dates;
- the total price of the work and the payment schedule;
- a copy of the contractor's insurances; and
- signatures.

It must conspicuously display notifications about a consumer's right to cancel within three days of signing, any information on applicable warranties, and a warning not to sign the contract if there are blank spaces. It must also be noted on the contract that it is the responsibility of the contractor to obtain all permits and that if a home owner obtains them, the home owner will be excluded from applying for compensation through the Guaranty Fund if a dispute arises. A contract must also inform the consumer that state law requires all applicable contractors and subcontractors to be registered with the Director of Home Improvement Contractor Registration. Look over your contracts carefully before signing. Any contract which is presented to you without meeting these requirements is invalid and could affect your protection under the law. If you are unsure of anything in the contract, contact an attorney to review the document. If everything is in order, sign the contract and make sure you receive a fully executed copy before the work begins.

- For more information on contract specifications and to receive a copy of the pamphlet entitled 'A Sample Home Improvement Contract', call the EOCA Consumer Hotline.

Obtaining Building Permits

If you obtain necessary building permits on your own because you plan to self-contract your home improvements or because you think you are doing the contractor a favor, you should know that doing so will reduce your options under the law if a dispute arises. It could also extend your personal liability for any work-related accidents. If you contract with someone to do work, make the contractor obtain all necessary permits.

What Consumers Should Know About Their Contractor's Insurance Coverage

Uninsured contractors can expose unwary home owners to financial hardship. All responsible contractors should carry appropriate insurance to protect their clients, their employees and themselves. But what insurance should your contractor carry to protect you, the home owner?

Liability Insurance

If your contractor is a sole proprietor and has no employees and uses 'independent' subcontractors to do any portion of the work, your contractor cannot purchase Workers Compensation Insurance. To protect yourself, you should insist your contractor and/or his or her independent subcontractors carry Liability Insurance. This insurance coverage protects you if

your property is damaged, or if the contractor or subcontractors is/are accidentally injured during the course of the work. Proof of your contractor's liability insurance helps you substantiate that this contractor operates as an independent business person and is not your employee.

Therefore, you are not responsible for injuries, pain, suffering or lost wages provided the injuries were not caused by you.

Get a copy of your contractor's and any subcontractor's Liability Insurance. Make sure the policy's effective dates are current and that the policy dollar coverage is sufficient to cover any potential claims for injuries or damages. Be sure the insurance certificate covers the period the workers will be on the job.

It is reasonable to expect that professional contractors who carry all the appropriate insurances will have greater business overhead expenses and that their bids will be a bit higher than those from workers who take business shortcuts. However, it's a small price to pay to hire the right person for the job and forego the risk of exposing yourself, your financial future and your home to someone who is improperly insured or uninsured.

Workman's Compensation

Workman's Compensation pays medical bills and lost wages to any or all employees of a company who are injured while working on your house. Only corporations, or employees of companies are covered by Workers Compensation Insurance. If your contractor's business is incorporated then everyone in that corporation must be insured by Workers Compensation Insurance. If a contractor should, but does not have Workers Compensation Insurance for his or her employees, the law exposes you, the home owner, to litigation by the injured party. Home owners increase their risk of exposure if:

- a) the home owner takes out the building permit for the work to be done,
- b) the home owner pays the contractor by the hour,
- c) the home owner supplies or loans the tools and materials to get the job done, or
- d) the home owner gives directions on how to perform the job.

If any of the above conditions apply, the home owner may, in the event of a lawsuit, be found to be acting as their own general contractor and could be responsible for anything that happens to the subcontractors, or their employees during the course of their work.

If your contractor tells you that he or she has Workers Compensation, get a copy of the certificate of the insurance policy with yourself named as the certificate holder before the job begins. Keep this document with your written contract and other important paperwork pertaining to your project.

Service and Warranties

Make a special effort to learn what type of customer service and warranty protection contractors offer. Do not wait until after you have purchased a house to find out how to correct problems. Most builders offer some form of written warranty. Find out the length of the warranty, if it is backed by an insurance company, and what procedures to follow if a problem arises. Many contractors back their own warranties on workmanship and materials, typically for one year. A warranty backed by insurance costs more, but it offers long-range protection.

When choosing a contractor, be thorough and ask a lot of questions. Get as many specifics as possible. Never hesitate to ask a question for fear of sounding stupid or uninformed. What seems like a stupid question may yield an informative answer or avoid any future misunderstandings.

Resolving Disputes

If you have a contract dispute with your contractor or you think that the job he or she did was shoddy or was done in an unprofessional manner, there are options for you to explore if the problem cannot be resolved privately. If the contractor is a member of this association, the consumer can contact our organization to attempt an informal resolution to the problem. A good first step would be to contact the Attorney General's local consumer group in your area for help with informal mediation. Beyond that, you are encouraged to fully investigate the following alternatives. The cost and effectiveness depend largely on your particular situation. Homeowners should be forewarned that once a dispute enters this stage it can consume a lot of time, effort and energy for both parties before it is resolved and/or compensation is awarded.

Arbitration

If a consumer has a dispute against a registered contractor or subcontractor, the consumer may try to resolve the dispute through a state-approved arbitration program. The consumer selects an approved form and pays a fee, based on a sliding scale linked to the size of the claim. The fee may include a nonrefundable processing charge that would be kept in the event the case is withdrawn before making it to a hearing. Once the arbitration firm has been chosen and the application fee has been paid, the case is heard with both parties present and a decision is rendered. An arbitrator's decision is final but may be appealed by either party in a court within 21 days of the decision.

- For more information and to receive a listing of all approved arbitration firms and a description of the sliding fee scale, call the Executive Office of Consumer Affairs Hotline at:
phone: (617) 727-7780
e-mail: consumer@state.ma.us
or fill out the on-line form for the quickest response.

Court Action

A consumer always has the option of bypassing the arbitration process by taking the dispute directly to court. Except for arbitration by mutual agreement of the parties, a contractor is limited to using the court to resolve any dispute against a home owner. Either party may bring the dispute to small claims court if the monetary claim is less than \$1,500.

A judgment received from either a court action or an arbitration session fully preserves all rights of the parties to pursue other remedies including additional legal action and, in the event of a consumer involved in a remodeling dispute, compensation from the Guaranty Fund.(see below)

- For more information about taking a case to small claims court, call the EOCA Consumer Hotline and ask for the 'Consumer's Guide to Small Claims Court'. For help with preparing a court case which will result in claims in excess of \$1,500 and for other legal advice, you are urged to contact an attorney for advice.

