



Home Improvements: How to Avoid Legal Pitfalls When Working With Contractors

Even in the dead of winter, the optimists among us look forward to warmer days. If you are a homeowner, you may spend the cold months dreaming about the projects you will undertake come spring. Your plans may include tackling those niggling repairs that have built up over the winter or perhaps it's time to remodel your kitchen or bathroom or add a great new deck and water feature to your backyard. Unfortunately, in addition to all of the dreaming about how it will look when the work is complete, you need to plan for all the contingencies that may occur during the job. That includes consideration of the potential legal pitfalls that may arise when you have others perform work on your property.

What will you do if:

- A worker on your property gets hurt on the job?
- You get into a dispute with your contractor?
- Your contractor doesn't finish the job?
- Your contractor asks for money up front?
- The job costs more than the contractor said it would?

The single greatest impediment to resolving disputes with your contractor is the lack of a written agreement.

When you as the homeowner hire contractors to perform work on your property, you need a written contract in place before any work begins. Both the contractor and you should sign it and it should cover any work performed on your property.

The written contract should:

- Specifically spell out the work to be performed by the contractor.
- Include the timeframe within which the work is to be performed.
- Clearly state the amount you are to pay the contractor.
- Specify payment due dates.
- Clarify the course of action should there be a dispute.
- Require the contractor to get a building permit.
- Include numerous other important legal issues.

Without a contract, you must all rely on what you think you agreed to back at the beginning. Relying on the memories of the frustrated contractor and the now upset you will certainly delay the job, not to mention cause confusion, misunderstanding, bad feelings and the worst outcome of all, litigation. A properly prepared written agreement executed before the work commences provides the guidance to resolve any disputes that may arise.

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This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.

W I N T E R 2 0 0 5

Late winter in Colorado is in all practical terms indistinguishable from spring. Those of us who migrated some years ago from the frozen north, South Dakota in my case, have become a bit spoiled to that fact. Combine this with an innate need for order and you wind up with someone, like me, who is ready to throw open the windows and clean house a few months before most folks come out of hibernation. From my perspective, it is just good business.

This issue of our newsletter focuses on preparing for events that are typical to spring; home improvements and home sales. Now, is that what we are really talking about? Well, as you'll see, only partially. The real point is that, as your law firm, we are here to help you focus on the legal issues that lie just beneath the surface of everyday life. Much like dormant seeds in the ground in late winter, they are waiting to sprout. Will they produce the garden you hoped for or will you harvest weeds? Every crop is determined by the seeds planted.

In this first season of the New Year, we encourage you to actively review your business and personal affairs with a shrewd eye and good counsel. Carefully evaluate contracts and business agreements, leases and financing arrangements; update your estate planning; prepare organizational and corporate minutes; gather tax records, strategize asset protection and put investment plans into action. Cultivate your own destiny; sow seeds of success.

As always, we appreciate the trust that you have placed in us. As you get a head start on your own spring cleaning, we will be ready to help when you call.

Best regards,

Bob Stewart

A Home as a Shelter

"In this world nothing is certain but death and taxes." Benjamin Franklin, 1789.

While it might not be possible to avoid taxes altogether, good tax planning can lessen the burden. Many people profit by implementing sound investment strategy only to lose money by failing to take advantage of available tax saving opportunities. We encourage our clients, whenever possible, to combine sound investment strategies with prudent tax planning strategies.

One simple but often overlooked tax avoidance strategy involves the family home. A personal residence enjoys a privileged position under Section 121 of the Internal Revenue Code. This section allows a married couple filing a joint income tax return to exclude from their taxable income up to \$500,000 of gain from the sale of their residence (or \$250,000 for an unmarried individual) if the residence has been owned and used by the taxpayer as the taxpayer's principal residence for a period of two or more years.

This strategy actually results in a total exclusion from income rather than being a tax deferral or a strategy that results in greater gain in later years. Additionally, a taxpayer is permitted to repeat this strategy every two years. There are, however, limitations to this rule. For example, the exclusion would not apply to sales between related parties.

We would welcome the opportunity to review this and a variety of other wealth protection vehicles with you.

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Here's another pitfall. Most homeowners don't know that if you hire a contractor to perform work on your property, you, as the property owner, may be liable for any injuries that occur to any workers or other persons who come on your property to perform work, regardless of your actual fault. Here's how to avoid that: Be sure that the written agreement includes proof that the contractor carries workers' compensation insurance. If the contractor does carry it, that insurance policy is the sole recourse for an injured worker. He can't successfully come after you.

Here's another tip: If you do receive a certificate of workers' compensation insurance from your contractor, call the insurer to be sure the policy is still in full force and effect. What if the contractor doesn't carry workers' compensation? A worker injured on your property may have a claim against you, even if he seeks damages from the contractor as well. Maybe your homeowner's policy covers you and maybe it doesn't. You need to check into that as well.

Think of the legal pitfalls as a water-soaked deck and your written contract as water sealant. By taking the necessary steps to legally protect yourself in your contractual relationship with your contractor, the two of you can spend your time beautifying your property, not pulling up the sodden planks.

About the author: Curtis Shortridge specializes in civil litigation, business and real estate law and is a frequent lecturer and counselor to real estate professionals, business and property owners in Colorado.