

## NEW HOME CONSTRUCTION SURVIVAL GUIDE

If you are considering having a new home built by a contractor, or considering having major improvements made to your existing home, please add these things to your list of things to think about:

### 1. Who will enforce your contract?

If your contractor fails to fulfill your contract, you could make a complaint to the office of the Attorney General; but any contractor with a smart lawyer may come up with a bogus reason to sue you, informing the Attorney General's Office that the matter will be going to court. The Attorney General's Office will then drop your case. From that point on, you must initiate a civil suit against your contractor, if you wish to enforce your contract.

This is the only way to enforce your contract. If you have been cheated, you can't just call a policeman!

We have found it is nearly impossible for a layman to handle a civil construction case, simply because information on procedures to follow appears to be unavailable. It is not available from the St. Lawrence County Bar Association, nor the District Attorney's Office, nor the Canton Courthouse Law Library, as far as we could determine.

You will most likely need to hire a lawyer in order to begin a civil suit. **BEFORE BEGINNING ANY LARGE BUILDING PROJECT, SET ASIDE FIVE TO TEN THOUSAND DOLLARS AS A FUND TO ENFORCE YOUR CONTRACT. THIS FUND IS FOR LEGAL FEES, COURT COSTS, AND PROFESSIONAL INSPECTIONS. WITHOUT IT, YOUR CONTRACT IS NOT WORTH THE PAPER IT IS WRITTEN ON, AND ALL "BAD" CONTRACTORS KNOW THIS!**

If your project goes well and you are satisfied with it (having had it inspected by a credentialed, independent inspector), the money you have set aside will be welcome for other uses. If you do not have that amount of money to set aside as "insurance", you should reconsider starting the project, because without that fund, you will be unprotected.

2. Does your contract contain a warning about liens?

General Business Law Article 36A, section 771, states that every home improvement contract must contain a warning statement about liens. Who enforces this law? No one, as far as we can determine.

Even if you have paid your contractor, if he doesn't pay his suppliers and or sub-contractors, they can place liens on your property. You could be forced into foreclosure, even though you paid your contractor in good faith. Liens cripple your ability to borrow, and that is why you need to have your "legal and inspection fund" set aside before you start your project.

Your contractor is required by law to hold your money in trust, for your project, and to keep accurate accounting records for your money while it is in his keeping. This is Lien Law: Article 3A -Section 71-a. However, the only way to force an accounting is to **go to court at your expense**.

Strongly consider making all checks written to your contractor two party checks, issued to both the contractor and a particular supplier or subcontractor. Before you pay your contractor, obtain lien releases from your contractor and each supplier and or subcontractor.

3. Who is going to make sure that your building project meets or exceeds code requirements, and is built in a skillful manner?

**NEVER RELY ON YOURSELF ALONE FOR THIS ASPECT OF THE JOB!**

Are you relying on your local code enforcement officer to catch violations of New York State code? The code enforcement officer can be your best friend during your building project, if s/he is knowledgeable and conscientious. If s/he is negligent, you could be in big trouble.

**ALWAYS HIRE AN INDEPENDENT AGENT TO INSPECT YOUR HOME AT MULTIPLE STAGES DURING CONSTRUCTION. UNDERSTAND THAT "BANK INSPECTIONS" DO NOT COUNT. YOUR INSPECTOR MUST BE EITHER AN AIA CERTIFIED ARCHITECT OR A PROFESSIONAL ENGINEER (P.E.).** These professionals put their reputations on the line with every home they

inspect, and they have a lot to lose if they make a mistake. They charge a lot, and they are worth it. **SPEND NOW, SO YOU WON'T CRY LATER!**

For your inspections, **DON'T** hire Joe-Blow-down-the-road who says he has twenty years experience building houses. Your family's home is too precious to take this kind of risk. Even if Joe-Blow has an official sounding job somewhere doing house inspections, don't hire him unless he is a credentialed architect or a professional engineer.

4. Is your damage less than \$ 20,000.?

We consulted with seven lawyers before choosing our present attorney. Each attorney had virtually the same message: if you have less than \$ 20,000. in damage go home and lick your wounds. You will spend that much just trying to get your money back. Crooked contractors know that there is a magic number, below which it is impractical for you to initiate a civil suit. The bad guys know that they can get away with "this much".

Small claims court limits are so low that it would not usually be a practical solution for a case of this type, yet the civil court process with a lawyer is so expensive that it may not be worth it, either. The homeowner can't win in a situation such as this. The limits of small claims courts need to be raised to the threshold at which a civil court suit becomes practicable. NYS politicians need to be made aware of this. Please write to them!

A new home can be a good dream or a nightmare. Ours is a nightmare. We hope this guide will ensure yours is a good dream. If you wish to discuss your project with us, we can be reached at 315-379-9871.

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