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Questions? (800) 995-9434

Home Improvement Contract

--Sample Forms

& Instructions--

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HOME IMPROVEMENT CONSTRUCTION CONTRACT

Contractor:

_____
(Company name)

_____
(Address—no. and street)

_____
(Address-city, state, zip)

_____
(Phone) (Fax) (email)

Owner(s) & Project Description:

_____
(Name of owner(s))

_____
(Mailing address)

_____
(Project address)

_____
(Phone) (Fax) (email)

Contractor agrees to furnish labor, materials, and equipment necessary to substantially complete the following work under industry standards and tolerances, generally described as:

_____
_____
_____
_____
_____
_____
_____ Cont'd. on Attachment

Owner(s) have approved the drawings and documents in the attached "Contract Document's List".
Exclusions: Permit and other fees, soil off-haul, design professionals, custom fabrication, concealed or unforeseen conditions, dry rot or insect infiltration, toxic or hazardous material,

_____
_____ Cont'd. on Attachment

Special Order Items (see Special Order Attachment). Finish Schedules (see Finishes Attachment).

Type of Contract (Check one below. For explanation, see "Type of Contract Attachment"):

__ **a) Fixed Price:** $_____ based on the contract documents, plans, and specs, including allowances.

Payment Schedule (deduct ___ % retention, except on change orders): _____
Down payment of $ _____, payable or received on (date): _____
1) $ _____ by _____, or upon completion of _____
2) $ _____ by _____, or upon completion of _____
3) $ _____ by _____, or upon completion of _____
4) $ _____ by _____, or upon completion of _____
5) $ _____ by _____, or upon completion of _____
6) $ _____ by _____, or upon completion of _____
7) $ _____ by _____, or upon completion of _____
8) Balance upon substantial completion.

__ **b) Cost-Plus:** Based on costs (see attached "Costs Summary") plus ____ % P. & O or $ _____ fixed fee.
TOTAL PRICE--ESTIMATE ONLY: $ _____ (Rough guideline only. Final Price not guaranteed).
Payment Schedule:
1) Down payment of $ _____, payable or received on (date): _____.
2) Installment Payments (choose one): ___ Every Friday, ___ Due on receipt of invoice, ___ Bi-monthly, ___ Monthly, Other: _____. Balance upon substantial completion.

__ **c) T & M:** 1) Hourly labor rates and 2) material/equipment costs plus ___ % P. & O. (see "Costs Summary")

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TOTAL PRICE--ESTIMATE ONLY: $ _____ (Rough guideline only. Final Price not guaranteed).

The TERMS AND CONDITIONS on the next two pages and all attachments are included in this contract. This proposal may be withdrawn if not accepted within ten days. Prices are good for ___days. Work will start on approximately _____and will be substantially completed within approximately ___calendar days.

Date: _____

_____ _____

(Signature and name of salesperson) (Signature of Contractor and title)

Lic/Reg. # _____ Lic/Reg. # _____

YOU, THE HOMEOWNER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE 3RD BUSINESS DAY. SEE THE ATTACHED *NOTICE OF CANCELLATION* FORM FOR AN EXPLANATION OF THIS RIGHT.

ACCEPTANCE: I/We agree to these terms, acknowledge receipt of a signed copy of the contract documents, confirm work has not started before signing, and authorize the contractor to proceed.

Date: _____ _____ _____

(Signature of Owner) (Signature of Owner)

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TERMS AND CONDITIONS

1. Drawings. Contractor shall not be responsible for errors or ambiguities in drawings prepared by others.

2. Change Orders. The contract price is based on the scope of the contract documents, plans, and specifications. Any changes to the work will cause the project cost to either increase or decrease, as appropriate. Contractor is entitled to extra compensation for a) conditions later discovered or which have changed and are either different from those indicated in this contract or not ordinarily encountered and not generally recognized as inherent in work of the character provided in this contract, b) extra or additional work beyond the initial scope, c) changes directed either by Owner, plan checkers, building inspectors, the architect (who will not be considered the final arbiter of disputes), engineers, or any other persons; d) changes to the contract documents, or e) additional work due to erroneous or ambiguous drawings or specs.

(Fixed Price only): Change orders shall be in writing and signed by one of the Owners and Contractor, but if Contractor is directed to do changed work and the Owner does not sign a change order, the writing requirement is waived and extra compensation is nevertheless allowed. Contractor may refuse to start work on extras if there is no signed change order or advance payment. The parties shall agree upon the nature of the work, additional time, and price before commencing such extras. If no agreement, extras are the cost of labor (hourly rates under this contract), material, equipment, and subcontractors, plus ___ % P. & O. **(Cost-Plus/T. & M. only)**: Contractor shall advise Owner verbally of changes and additional costs in the scope of work. Unless an objection is made in writing before starting such additional work, consent of the owner is deemed made.

3. Payment. All payments (with any extras) are due on presentation of an invoice, which includes material stored on site, with a default occurring if there is non-payment after ___ calendar days. Final payment (including unpaid extras and retention) is due within ___ calendar days after completion, regardless of any outstanding punch list.

4. Work Stoppage. Time is of the essence and upon default described in ¶ 3, Contractor may temporarily stop work. If there is non-payment after an additional ___ calendar days, a material breach has occurred and Contractor may terminate this Agreement without breach. Costs for delay in re-mobilizing shall be an extra.

5. Lien Waivers. Upon satisfactory payment for any portion of the work, Contractor shall, upon request, furnish Owner or representative lien waivers on the next progress draw for it's work and subs/suppliers, for the portion of the work for which payment has been made.

6. Interest. All unpaid amounts shall bear interest at 2% per month, commencing upon material breach.

7. Completion. Substantial completion shall be defined as the date the project passes final inspection by the building inspection department, whether or not occupied by Owner. Owner's occupancy shall constitute acceptance of Contractor's work and waiver of any claims against the Contractor.

8. Matching Materials. There are limitations inherent in the matching of existing materials such as stucco, drywall, paint, wood, tile, flooring, concrete, and the like. Exact duplication in matching, texture, and color cannot be guaranteed. Variations within industry tolerances will be considered acceptable. See Matching Materials Attachment.

9. Contractor's and Owner's Duties. Contractor shall use its best effort to perform reasonably and within industry standards, tolerances and building codes, shall be responsible for all construction means and methods, including timing and sequencing, and devote adequate (although not exclusive) time to the project. Owner shall furnish all existing reports and/or surveys, point out boundaries, and pay for and insure there is full and legal access to the property, including zoning, variances, easements, and the availability of all necessary utilities. Contractor will use best efforts to protect hardscape and landscape, but cannot guarantee results.

Owner shall keep in place either builder's risk, "all-risk", or homeowner's (fire) insurance with course of construction coverage, adding Contractor as an additional insured. Both parties waive the right to subrogation. If the property is destroyed in whole or part by accident or calamity, any work to rebuild shall be an extra. Owner shall pay for all architectural and engineering costs, as well as permits and assessments. Owner is responsible to supply water, gas, sewer and electrical utilities and shall remove or protect any personal property and pets.

10. No Loan. No moneys are being loaned or advanced by Contractor to Owner, no lien or security interest is taken, nor are there any loan finance charges.

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11. Termination. For Owner's non-payment, termination shall be under Pars. 3 and 4. For all other material breaches, a party may terminate this Agreement if there is no commencement of performance to cure after 10 days written demand. Contractor's remedy on termination, regardless of who is at fault, is limited to the % of services performed but unpaid to date, together with ¶ 6 interest and ___% P. O. for the balance of the contract. Owner's remedy on termination: a) if Owner breaches, it will have no damages against Contractor and b) if Contractor breaches, Owner is entitled to the reasonable cost to correct the specific problem area of the defective work which is below industry standards and the cost to reasonably complete the contract, less the amounts owed Contractor as of the date of breach. If the court/arbitrator finds Contractor liable for defects, it shall split the difference between the estimates to cure offered by the parties. Other than attorney's fees and costs, neither party is liable for any other damages or expenses, by way of tort or contract, direct or consequential (as examples: emotional distress, delay, loss of profits, additional finance charges incurred, or punitive damages). Contractor will not be in default or liable for damages, attorney's fees or costs, if access to do work or correct same is denied.

12. Punch List. Within 5 calendar days of completion, Owner may submit a written punch list which Contractor shall commence working upon within 7 calendar days thereafter. Even with such punch list, Owner shall be required to make final payment, but may hold back 150% of the cost of all punch list work, to be paid to Contractor immediately as that work is completed.

13. Delays. The scheduled completion date is approximate only, subject to extension for: performing change orders, weather, site conditions, funding delays, availability of material/subcontractors, material shortage and/or ordering problems, delays in issuance of permits, acts of neglect or omission by Owner or representatives, acts of God, strikes, failure of Owner to make payments, inspections or changes ordered by a building inspector, and any other factors beyond the control of the Contractor. Both parties waive delay damages.

14. Clean Up. Contractor will keep the site clean, remove debris, as well as surplus material, and leave the project in a neat, broom-clean condition.

15. Asbestos & Hazardous Waste. This Contract excludes the testing, demolition, or removal of any hazardous material, and if encountered, Contractor shall stop work and allow Owner to obtain qualified abatement contractors.

16. Arbitration. All disputes shall be determined by private binding arbitration with the American Arbitration Association, through their rules, which proceeding shall be fully concluded within 4 months of the arbitration demand. A single arbitrator shall be selected by the parties within 20 days after the arbitration demand.

17. Attorney's Fees. The prevailing party in any action or arbitration relating to the work shall be entitled to costs, arbitration fees, and reasonable attorney's fees. See the attached **Arbitration Disclosure**.

18. Miscellaneous: To maximize job efficiency, Owner shall communicate with Contractor and not directly with subcontractors. Contractor assumes the risk of profit or loss and (except for change orders) may not increase the price. Likewise, Owner may not request Contractor's internal financial information on costs or profit/loss.

19. Subcontracts. Contractor may subcontract portions of this wok to licensed subcontractors or laborers.

20. Signs. Until the Owner makes final payment and takes possession, the Owner agrees that the Contractor shall have the right to place signs about the property and show the property to prospective clients.

21. Entire Agreement and Signatures. This is the entire agreement and there are no other guarantees, warranties, understandings, or representations made. The signature of any one co-owner shall be binding on all.

22. Limited Warranty. Upon full and final payment, Contractor warrants its work for one (1) year after completion against any defects in workmanship or material. This warranty is in lieu of any other warranty, express or implied.

23. Additional Provisions: See "Attachment to Home Improvement Construction Contract".

TERMS AND CONDITIONS READ AND APPROVED:

Contractor: _____ Initials; Owner(s): _____ Initials _____ Initials

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Contract Document's List

The terms of this contract include the provisions and conditions of the contract, any addenda or attachments (collectively referred to as the "contract documents"), as well as the items listed below. The contract documents shall prevail over conflicting provisions in the plans or specifications. If a conflict exists between the plans and specifications, the specifications shall govern.

The latest version of the contract documents shall supersede any prior or contemporaneous: a) verbal agreements, understandings, statements, or representations, as well as, b) any other written document(s). The items listed on this sheet (together with the Finish Schedules) constitute the sum total of all documents to be used, relied upon, or performed under this contract.

In addition to the contract documents, the following shall also be a part of this contract (for example: plans, drawings, specifications, shop drawings, elevations, design notebooks, calculations, schematics, plots, maps, letters of understanding, etc.):

Date	No. of Pgs	Title of Document	Last Revised

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ALLOWANCE SCHEDULE

These allowances are included in the over-all contract price (if Fixed Price) and as guidelines (if Cost-Plus or T. & M.) as to the purchase of items to be selected by Owner(s). They shall include both materials and installation, unless otherwise noted. Allowances shall not be considered bids by the Contractor and are to be adjusted up or down, and will either increase or decrease the contract price, without the need for a separate written and signed change order, after verification of the actual price difference (if any). If the cost of the owner-selected materials or their installation exceeds the allowance, the excess amount will be due and payable at the next progress payment. If the actual amount is less than the allowance, this will be subtracted from the final amount under the contract. The allowances are estimated budgets only, and no representations or guarantees are made as to whether the actual price will be within that estimate. Selections by the owner shall be made within 30 days of the signing of this contract to avoid delays.

1. Equipment and Appliances:

2. Light Fixtures:

3. Finish Hardware:

4. Plumbing/Bath Fixtures:

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5. **Floor Covering:**

6. **Interior Paint and Wall Covering:**

7. **Other:**

8. **Other:**

9. **Other:**

10. **Other:**

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11. <u>Other:</u>

12. <u>Other:</u>

Dated:_____ **_____** **_____**

(Signature of Owner) **(Signature of Owner)**

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Matching Materials Attachment

In situations in which Contractor's work involves the matching of existing finishes or materials, Contractor will use his best efforts to so match. However, an exact match is not guaranteed due to such factors as discoloration from aging, a difference in dye lots, discontinuation of product lines, and the difficulty of exactly matching certain finishes, textures, colors, and materials.

Custom milling or manufacture of such items is not included in this Contract, unless otherwise stated. Unless custom matching is specifically called for in the plans, specifications, or contract documents, any material not readily available at local lumberyards or suppliers is not included in this Contract.

If Owner requires an exact match of materials or textures in a particular area, Owner should inform Contractor of this requirement as soon as possible after making such a decision. Contractor will then provide Owner with either a materials sample or test patch prior to the commencement of the matching work.

Owner shall then approve or disapprove of the suitability of the match within 48 hours. If not approved, contractor shall endeavor to again make the match. If Contractor has provided Owner with two or more test patches that have been rejected by Owner, all further test patches, materials submittals, or any removal and replacement of materials already installed will be performed as extra work on a time-and-materials basis.

This attachment shall be considered a part of the terms and conditions of the contract documents.

Date: _____ _____ _____

(Owner) (Owner)

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Special Order Attachment

In order to meet the completion date, certain material/equipment (if applicable) must be special ordered before work begins. The time required to secure these items may extend the date of completion. The supplier(s) of these items require advance payment and accordingly, Owner agrees to make such an advancement to Contractor. The items are:

Description

Price

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Finishes Attachment

The following finish schedules are incorporated into this contract and made a part thereof. All such schedules have been read an approved by the owner(s). Changes, substitutions, or deletions may be subject to a change order and can effect the Allowances:

Name of Finish Schedule	Last Revised
Date No. of Pgs	

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ATTACHMENT TO
HOME IMPOVEMENT CONSTRUCTION CONTRACT

The following additional terms are included in the parties' Construction Contract as follows:

23. Additional Provisions:

Additional Description (if needed) of the work to be done under this contract:

The provisions in this Attachment shall supersede any conflicting provisions of the Contract.

Date: _____ _____
(Signature of Owner)

Date: _____ _____
(Signature of Owner)

Date: _____ _____
(Signature of Contractor)

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ARBITRATION DISCLOSURE NOTICE:

BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE CONSTRUCTION DECIDED BY FINAL, BINDING AND NEUTRAL ARBITRATION AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE BY A COURT OF LAW. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES TO BINDING ARBITRATION.

Dated: _____ _____
Owner

Dated: _____ _____
Owner

Dated: _____ _____
Contractor

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NOTICE OF CANCELLATION

Date of Signing the Contract: _____._____

You may cancel this transaction, without any penalty or obligation, within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instruments executed by you will be returned within ten (10) days following receipt by your contractor (hereinafter referred to as "seller") of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days or the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for the performance of all obligations under this contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to:

_____
(Contractor's Company Name)

_____
(Address)

_____
(Address)

Not later than midnight of: _____.

I hereby cancel this transaction.

Date: _____ _____ _____
(Signature) (Signature)

Note: Make two copies and give one to the owner(s).

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ADDENDUM TO
HOME IMPROVEMENT CONSTRUCTION CONTRACT

Contractor: _____

Owner(s): _____

Project address: _____

Date of contract: _____

The within described parties hereby amend the Home Improvement Contract above dated as follows (state additional, deleted, or changed terms):

The provisions in this Addendum shall supersede any conflicting provisions of the Contract. All other terms and conditions of the Home Improvement Contract, unaffected by this addendum, shall remain in full force and effect. The terms of this contract shall continue to be unchanged unless modifications are in writing and signed by both parties.

Dated: _____ _____
(Contractor's signature and title)

Dated: _____ _____
(Owner(s) signature)

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HOME IMPROVEMENT CONTRACTS--
GUIDE AND INSTRUCTIONS

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Forms

Description

Home Improvement Construction Contract. The full version which includes all attachments.

Home Improvement Construction Contract—simple (HIC-2). This is a simpler version which consists of only four pages, without attachments. Use this on smaller jobs. Can also be used for service and repair contracts. An example would be the homeowner hiring a heating and air conditioning contractor to service the HCAC system.

Pre-Construction Notes. This is a form given to the owners at the beginning of the project to let them know what to expect during construction. It contains the job policies and procedures that will be followed. It is a good idea to go over it thoroughly with the owners.

Special State Statute Requirements. If this is included in your Kit, this means your state has special statutory requirements for home improvement contracts. If these instructions are not present, your state does not have specific requirements. But, a written home improvement contract would be recommended in any event.

Finish Schedules. A list of all the finish items provided, such as plumbing, electrical fixtures, appliances, doors, windows, etc.

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HOW TO SET-UP THE KIT

It is recommended that you keep these PDF forms on your computer and print out a separate set. The hard copies should be three whole punched and put in a one inch binder, titled: “Home Improvement Contracts”, keeping them in the same order as in the Table of Contents. It is like having a small booklet used for reference.

Having a printed set makes it easier for you and your staff to pick out which forms you need. Once identified, you can go quickly to the computer forms that have been downloaded and fill them out, or simply print in blank and fill in by pen.

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GUIDE TO PREPARING HOME IMPROVEMENT CONTRACTS

INTRODUCTION

One would be hard pressed to find an experienced construction attorney who did not recommend a written contract. This is even more important on residential projects when the homeowner is, by definition, less sophisticated. It is especially beneficial to have a contract with custom drafted provisions as to the legal rights and obligations of the parties. NationalLienLaw has gone to a great deal of effort to fashion these contracts so the parties know exactly what they are getting into, and in the hopes that disputes will be minimized or resolved. Remember that many judges are still "old school " and in many cases eagerly enforced the terms of a contract .

These contract provisions are prepared **for the benefit of the contractor.** If you are a homeowner, it is suggested that you seek independent legal counsel because these forms are not drafted for your benefit. On other hand, they are not onerous or unenforceable—although some people are tempted to prepare one-sided contracts, if you go too far, there is the danger the courts will refuse to enforce them as unconscionable or as adhesion contracts.

You might find a verbal handshake agreement acceptable *, but should you take the chance? The days of "My word is my bond" have dwindled to near nonexistence. The old adage of "You can trust me", too often becomes a prescription for fraud.

Are we becoming too pessimistic? Not at all. A contractor actually becomes more sensitive to the needs of themselves and their customer by reducing terms to writing. It is simply a more professional way of doing business.

So, you will not be surprised to hear experts unanimously recommend written contracts. The good news is that that NationalLienLaw has devised an agreement that includes provisions to protect your legal rights and lessen disputes. In other words, if you are going to the time of preparing a contract, you might as well have provisions that help you as to future disputes. It is a proprietary document prepared by an experienced construction attorney, using custom drafted provisions, as well as standard clauses commonly in use throughout the industry.

- ✓ ***Who should use these contracts?*** A general contractor or subcontractor who has a direct contract with a residential homeowner.

- ✓ ***Who does not use them?*** Not recommended if your contract is with a general contractor or for suppliers not performing installation or labor. These contracts assume that you are forming construction services to an existing residence. If you are building a subdivision, new condo complex, custom home, or spec home and the owner has not yet been identified, you should not use these forms.

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- ✓ ***What kinds of construction?*** Applies to any construction, repair, replacement, remodel, service, or improvement of a private residence or work on the land surrounding it. **Does not apply to swimming pool or spa contracts. Because some states have special legislation on this subject, you should consult with a local construction attorney.**

- ✓ ***What kinds of projects?*** Recommended for work on private residences (construction of a new home from scratch or work on an existing residence), such as a single family dwelling or condo. Not needed for: a) commercial, industrial, utility, school, or highway projects, or b) public works (Federal, state, county, city).

Who Signs?: Anyone in your office, whether owner, manager, or other employee.

Copies: One signed copy for your files and one signed copy for the owner(s).

Verified or Notarized?: Neither are required for the validity of this contract.

Record Keeping: Keep these contracts and attachments in the project file and give a copy to your bookkeeper. It is recommended that you use a separate three-ring binder for each project with tabs for each section (keep a separate section for billing). Print out this Kit so you and your staff have a hard copy for reference. Use the PDF versions on your hard drive to fill out and print the actual copies.

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INSTRUCTIONS

These forms have been specifically formatted so that they are self-explanatory, as much as possible, in the filling in of spaces and blanks. However, the following explanation will help you in the preparation of the more important provisions:

General comment. Believe it or not, these forms are meant to simplify your life. This is done by building into the forms as many provisions which are to your benefit as possible, hopefully limiting disputes and litigation. You may doubt this wisdom, especially since there are nineteen pages and separate schedules. Most of the attachments to the contract will apply to your job, but if they do not, simply write: "Not Applicable" and you can be done with the form.

Home Improvement Contract—Page 1

1st Paragraph--Description of labor and materials. There is no need to describe in infinite detail every single item of labor and material, down to the last board and brick. On the other hand, you want to specify more than a general description. List the important or significant items of labor, materials, and equipment. If you run out of space, simply use the "Attachment to Home Improvement Construction Contract". This contract comes with a series of Finishe Schedules which are a good way of describing the finish materials, equipment, and appliances being used. As a result, you can generally describe the work to be done, followed by the statement: "see finish schedules for more details".

It is common to attach a Schedule of Values. This is a breakdown of the price, per component, of the work to be done. For example, it might state: "Demolition: $_____, Clearing, grubbing, grading, and staking $_____, Utilities: $ _____, Rough framing: $ _____, etc. home owners of love this but it is not always beneficial to the contractor. This is because homeowners typically insist that you stick to the exact amounts in those schedules, even though the actual job cost more or less than specified. And, it sometimes sets up the homeowner in requiring you to divulge the actual cost of labor and materials for your crew and subcontractors, which you would not otherwise give to them. So, if you have a certain amount listed for finish carpentry but it turns out it comes in a bit less, that is your business and you should not have to divulge this to the homeowner. On a fixed-price contract, whether you make or lose money is entirely your business. But if you listed these items in precise dollar amounts, they might very well hold you to it and expect a deduction in the overall contract amount. Because this would be impermissible in a fixed price contract, be careful in using such a schedule. Unfortunately, many construction lenders require it.

If there is such a requirement, you may wish to have special language attached to your contract as follows: "The Schedule of Values is provided as a guide only for the purposes of determining progress draws and percentage complete. If the actual work performed is more or less than the scheduled amount, there shall be no modifications to the overall contract amount, nor shall for this reason alone (if there is a change to the scope of the work however, a change order shall be applicable) it be the subject of an additive or deductive change order".

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"Owner(s) have approved the drawings and documents in the attached "Contract Documents List". This means that the contractor is required to perform under the scope of the plans, specifications, and contract, nothing more and nothing less. This prevents the owner from asking for additional work without charge or expecting to receive "freebies".

"Exclusions". Never rely upon a verbal understanding, industry standards, or what you think is obvious—always put these exclusions in writing.

"Special Order Items". This refers the owner(s) to the Special Order Attachment which lists all the special order items.

"Finish Schedules". It is common, with or without formal plans, to have an attachment for the various finish items. Examples would include a door, appliance, window, light fixture, plumbing, and exterior finishes schedule. This lists the various finishes, materials, suppliers, manufacturer numbers, colors, sizes, warranty, and locations.

As part of this Kit, there will be a separate file for schedules where you can insert this information. Make sure your owner reviews the schedule and the initials each page. This way it'll become clearer later if there is a need for a change order, especially if the owner decides to move up to a different or more expensive finish item. It will make it clearer it was not originally part of the contract.

"Type of Contract". It is common for home improvement contracts to be either a fixed price arrangement or cost-plus (to a lesser extent, T. & M. is used). For this reason, put a checkmark to the left of the type of contract you are performing, whether fixed-price, cost-plus, or T. & M.

"Fixed Price". This would obviously be a lump sum amount. It **includes** allowances. So, if you have a $20,000.00 allowance, that is included in the overall price. If the homeowner orders more expensive finishes, for example, that would correspondingly increased that overall price.

"Payment Schedule". You may want to consult with a construction attorney, but in a state that does not have any law as to the amount of down payment, you would want to get as much as possible so that you could defray the advancement of labor and materials which occurs before you get your first progress draw. As far as the installment payments, you would state either: a) "$ 5,000.00 by July 15 2008" or b) "$5,000.00 upon completion of demolition". Example b) is preferred, because it does not lock you into a specific completion date and gives more flexibility.

"Cost-Plus": Insert the profit and overhead percentage, for example 15%. If instead you are basing it on the cost plus a fixed fee, you would insert the dollar amount of that fee.

On cost-plus contracts, a fixed or lump sum amount is not stated. This is because you never know exactly how much the final cost will be until the project is completed. Instead, it states the contract price is based upon the costs times the percentage for profit and overhead. The owner is referred to the attached "Costs Summary" which gives a detailed explanation of

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what costs are included. It also gives an example of how the pricing on a costs-plus contract is computed. Next, there is a section for the estimated cost of the project. Why do we do this? Technically, is not required. However, the tenor of most states is that for consumer protection purposes, the courts like to see an amount stated so the consumer can plan accordingly. So this amount is included with very strong language to the effect this is a rough estimate only. Never, under any circumstances, tell your customer there is a set or ceiling price on a cost-plus contract. You may tell them the price and confirm it is merely an estimate, but later in court they will insist that you said it was a guaranteed maximum. This contract is worded to make it clear there is no such a representation being made.

"***Payment Schedule":*** Cost-plus contracts are usually billed in installments, as opposed to stages of construction (for example, at the demolition or framing stage). This is because you don't really know how long it's going to take.

"T. & M.": As is commonly known, the "time" element of this type of contract is simply the hourly labor rate. This is a negotiated figure between the owner and the contractor. For example, if you arrive at a figure of $55.00 an hour, that is an all-inclusive figure which covers all payroll taxes, burden, benefits, and the like. As far as materials and equipment rental, some contractors simply charge for the actual cost without any markup. However, if you do wish such a markup, you need to insert the applicable percentage of profit and overhead which will be assessed only against the material, equipment rental, and subcontractor costs.

Home Improvement Contract—Page 2

Last paragraph before signature of contractor. Note it states the work will commence on an **approximate** date, which gives you more leeway. As far as the substantially complete date, to be safe, it is suggested you add a few days to it--in case you run into contingencies and other unexpected delays.

Signature of the owner and keeping copies. It is amazing how often the owner ends up with the only signed copy of the contract. Make sure you have two copies available and that original signatures are put on both of them. You then keep a copy and the owner gets the other. Also make sure that everyone signs the contract documents. In many cases, people get busy and it turns out that there aren't signatures as suspected—you can imagine the problems this will cause later in court.

Home Improvement Contract—Page 3—TERMS AND CONDITIONS

Format. This is the guts of the contract. It cannot be overemphasized how important these provisions are. NationalLienLaw has spent countless hours on these provisions so that every word is important. The purpose is to protect the contractor as much as possible, but within reasonable bounds. It would be easy to prepare a draconian or overreaching contract which had every provision lopsided in favor of the contractor. This would make us feel good for the present, but the more onerous the provision, the more likely a court would knock it down. Or worse, the owner might refuse to sign. These provisions are also in Word format and you certainly can make changes, but be very careful in doing so. You may wish to seek competent legal advice before you make those changes.

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Please do not forget to type in numbers in the small boxes under paragraphs 1, 2, 3, 4, and 11. Or, you can simply hit the tab button and it will take you to the exact location within each paragraph.

Are we free to put anything in a contract as long as it is signed? Good question. The general rule is that unless there is a specific statutory rule to the contrary, the parties can enter into any contract they wish. In other words, you can agree to any provision as long as it is not against your local state statute or public policy. For example, you could not insert a provision that the contractor could hire unlicensed subcontractors, eliminate any warranty whatsoever, not be responsible for any personal injury or property damage even though the contractor was solely and directly responsible, not be required to comply with the code, or other such extreme provisions.

A word about interpretations by the court. There is a popular misconception that by hiring a good lawyer, you can find loopholes in almost any contract. Nothing could be farther from the truth. In the absence of an ambiguous provision, the courts unanimously enforce the very letter of a contract and do not rewrite it for their benefit of anyone. To be honest, judges do not want to go to the effort of re-doing a contract because it is much easier for them to enforce it as worded. The best lawyer in the land cannot contradict the clear terms of a contract that is not otherwise against public policy.

Should you go over these provisions, line by line, with the owner? Not necessarily. This would take a lot of time and would only set up a lot of discussion, referral to the parties attorney, or the refusal to sign the contract in the first place. On the other hand, you should point out the fact that these terms and conditions are part of the contract and give the homeowner the luxury of spending some time to look them over before deciding to sign. If you are to specifically go over a provision, it is suggested that you at least discuss your paragraphs 2, 7, 8, 9, 12, and 22.

Here are our comments as to the specific paragraphs:

1. Drawings. There is always somewhat of a conflict between who is responsible for erroneous, ambiguous, or incomplete drawings. Obviously, if you prepare them (design build contract), you would be responsible. But if we assume someone else did, you want to make it clear the responsibility is with the drafter, for example an architect. Why is this important? If you have to perform extra work due to the inadequacy of the plans which have been prepared by others, you could be entitled to a change order. Without this provision, the other side will always argue that as a professional, you should have known of the inadequacy when first reviewing them before the signing of the contract. This argument is especially used if the drawings are not in accordance with building codes that you are supposed to know about. Hopefully this will prevent that argument.

2. Change Orders. Because of the importance of this subject, this is become the largest clause. It makes it clear that change orders will, as a result of a) changed or unexpected site conditions, b) extras, c) changes directed by the owner, architect, inspectors, or others, d) general changes, and e) additional work due to a relative's or ambiguous drawings.

As to a) most contracts provide that if there are changed site conditions that were not discoverable by the contractor in the initial inspection and could not be discovered at that time, a change order would be allowed. But, if such conditions are later discovered, the owner almost

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always argues that the contractor should have known about this and therefore would not be entitled to an extra. For example, assume you are rewiring an older structure. You assume that most of the older wiring is still functional but when the walls were opened up, it is determined the entire structure would have to be updated and rewired. Under this provision, it would be a change order, whether the contractor should have known about it or not. Also, there would be a change order for work that is not generally recognized as part of the contract. An example would be requiring a contractor to not only have a gravel envelope and perforated drainpipe behind a retaining wall, but the unreasonable request to extend it an additional 200ft. into a curb and gutter at the street.

As to c), even the owner would have to admit that if they direct a change, there would have to be additional compensation. As to changes made by architects and design professionals, sometimes the argument is made that the contractor must perform these changes without extra compensation so this provision prevents that unfair result. Additionally, many owners argue that changes by the building inspection department are simply to make the project code compliant, and since the contractor is required to comply with the applicable codes, it would not be an extra. But we know otherwise: many times the inspector is arbitrary and acts like a mini-Hitler, making changes that no one could not predict.

As to d) this makes it clear additional work due to ambiguous drawings is the subject of a change order. For example, assume the design for an interior stairway is deficient in that it does not fit exactly into the dimensions of the lower floor and landing. After fabrication (metal and wood members), the contractor discovers this and goes back to the shop to redo much of the work. This would then be a change order.

And then there is the much debated subject of whether there should be a requirement of a written change order. Some contractors take the position that the contract should allow a change orders verbally, on a theory that they have more chance of prevailing because the owner could simply refused to sign the change order. Putting aside the fact that anything verbal is subject to the problem of " he said—she said" controversy in court, all you're doing is setting yourself up for a dispute later on. Putting it in writing also prevents the owner from pelting you with freebies and even worse, being told verbally to do something with the agreement you will be paid extra, with the owner denying the conversation after the work is performed.

NatrionalLienLaw has a better solution. Require that a change order be in writing because it clarifies issues and gives the contractor the added benefit of refusing to start work unless it is signed. But most importantly, if you're told to do the work and the owner refuses to sign the change order, this clause allows you to get an extra based on a costs-plus arrangement. That way you get the best of both worlds. In the absence of an written change order, you would get the actual cost of all labor, material, equipment, and subcontractor amounts, plus a percentage for profit and overhead (at least 15%).

Special note—Cost-Plus Contracts: By definition, there is no such thing as a change order on a costs-plus contract. The contractor continues to perform services until the job is done. The ultimate price and scope of the work is not determined beforehand and evolves as the project continues. Such contracts are popular for older buildings where you don't know in the beginning what you're getting into (what is behind the walls).

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On the other hand, a costs-plus contract has a basic scope of work. If this changes, you should notify the owner so they are informed of what is transpiring. This is a especially important because if they object to such changes, you want to know beforehand so you don't go to time and effort of doing something that will eventually be unpaid.

3. Payment. Because getting paid on time is so significant, this provision is definitely in favor of the contractor. It begins by allowing a billing for materials that are stored on the site, even though they have not yet been incorporated into the improvement. To give teeth to this provision, a default occurs if there is nonpayment after a specified number of calendar days, even without a demand letter or follow-up invoice. It is suggested that you insert "15 days" in the first space. It is also recommended you have the same grace period for the final payment, such as fifteen days. The final payment is to include the balance on the contract, unpaid extras, and retention. Note that the final payment is due even though you are in the process of working on the punch list. Further, it makes it clear that the allowances are estimates only and if they are exceeded, there will be a change order.

In the beginning of the job when things are amicable, you will probably not wish to assert a default if there is nonpayment after fifteen days. After all, it is quite customary to be paid within 30 days. The point is: you have the right to waive this if you wish. But if you get to the end of the job and you have already had problems with the owner and nonpayment, you'll be thankful to have such a short period before the default.

4. Work Stoppage. A "time is of the essence" provision is important because it allows you to strictly enforce the payment requirements. Without such a provision, the courts will read into the contract a "reasonable time" instead. So, if you have this provision and the person is exactly sixteen days late, technically the court would find a default. If not, the court may consider a default much later, for example thirty days, if the judge finds this more reasonable. The date of default is important because it puts into play all your legal rights, including interest, damages, temporary work stoppage, and eventually termination.

This also allows you to temporarily stop work if payment is not made within the number of days in paragraph 3, for example 15 days. Then, if there is still nonpayment after an additional number of days, for example ten, you can then for terminate the contract completely because of a material breach. But if they do pay later (for example after 30 days), you have the option of accepting the money and going back on the project, but you would
have to be paid your re-mobilization costs. Here is an example of the time limits that might be used:

10/1/07—date of invoice.

10/5/07—date of receipt of invoice.

10/20/07—date of default for nonpayment (paragraph 3 specifies fifteen days) and temporary work stoppage.

10/30/07—date of material breach and time in which you can permanently walk off the job.

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5. Lien Waivers. Note initially that the requirement of furnishing a lien waiver only applies if you have been fully paid for the portion of the work. In other words, if there is a "hold back" or unreasonable withholding, you would not have to furnish the waiver, the waiver would only be required if requested by the owner or construction lender.

One of the biggest hassles is the requirement of furnishing a lien waiver for yourself, subs, and suppliers **before** you receive payment. It's a lot of work, and many subcontractors and suppliers balk at the idea of signing a waiver, even if it is conditional upon payment, before getting a check. And, what if you indicate in the waiver that you have been paid in full, but it turns out you are shorted or the check bounces? This clause allows you to send the waiver to the owner on the next progress draw after you know for sure the payment has been received. In other words, assume that progress draw number two is for $10,000.00. You get paid this money and then go into progress draw number three for additional $10,000.00. Before you get drawn number three, you would simply have a lien waiver for the previous payment. This gives you more time to get your subs and suppliers to sign the forms and they are more likely to comply because of already being paid. Of course, you should check with state law because there are sometimes requirements that the lien waiver be given in exchange for the immediate payment on that draw.

6. Interest. This makes it clear interest will accrue up on the date of material breach. In the example above, that would be on an after 10/30/07. Note there is no problems with usury because performing services as a contractor is not considered the loaning of money. Remember, the 2% is assessed for each month and is different from a per annum basis.

7. **Completion.** There is much debate as to the exact date of completion. You should consult with a construction attorney because some states by statute delineate that exact date. Remember also that completion is not defined as a date in which absolutely everything has been completed, including a punch list. The operative phrase is "substantial completion", which means that the project is completed except for minor items. The idea here is that the sooner completion arrives, the faster you will receive final payment. For this reason, the clause does not make the completion contingent upon acceptance by the owner, occupancy, certificates from an architect, or other factors which would extend that date. One of the earliest, and for that matter reasonable, dates is upon final inspection. This is well before any punch list items and such a finalization does not depend upon such finish work as a carpeting and painting.

The completion date under this clause may actually be sooner than industry standards. As a general rule, substantial completion is the date when the work is sufficiently complete that the owner may occupy or utilize the property for the use it was intended. It is extended if there has been an intentional deviation from the plans and specifications, the punch list relates to functionality, or there has not yet been full code compliance. This provision states that completion would be before those dates.

8. Matching Materials. We don't have to tell you how frustrating it is to embark on a project of trying to match older Materials or finishes. The owner might tell you to simply do your best, then when it doesn't come in perfect, they could very well complain. This makes it clear Bristol clear that perfection is not the order of the day. To make it even clearer, there is a special Matching Materials Attachment.

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9. Contractor's and Owner's Duties. The statement of performing the contractor's duties "reasonably" and within industry "tolerances" is not by mistake. This means that the owner cannot insist upon perfection and that payment will be made even if there are minor variations which are acceptable within the trade. Additionally, the contractor will decide how ("means and methods") the work is to be performed, including timing and sequencing. The latter has to do with when and how the various trades perform the work. It also means you are not required to devote 100% of your time and work force to one particular project.

The owner is required to turn over existing reports, and if required, pay for soil reports and surveys. Utilities are also to be furnished at the expense of the owner, as well as procuring and paying for any required variances or easements.

The owners it is also required to keep insurance policy in place which covers property damage and personal injury and something occurs during the course of construction. By adding the contractor as an additional insured, this means that you are a co-owner of the policy and can assert first party rights. For example, if a landslide that destroys your retaining wall, you would be able to make a claim against that insurance carrier even though you did not pay the premium.

The best way to describe the waiver of subrogation, is an example. Let's assume we have the same situation of the destroyed retaining wall and both you and the homeowner have your own insurance policy. For sake of example, assuming the payment is initially made by the homeowners insurance carrier. The waiver of subrogation means that that carrier can not in turn sue or seek reimbursement from your insurance carrier.

If some calamity destroys all or part of the work, some homeowners take the position that you would have to rebuild on your nickel. This makes it clear that it would be a change order.

There is also clarity with the fact that all design professionals will be paid for by the homeowner. The homeowner would also be required to remove or protect any personal property or pets. You will be responsible for protecting driveways, walkways, and landscape, but after using those best efforts, not be liable if there is unavoidable damage.

10. No Loan. There is legislation in many of the state's placing strict requirements upon contractors who either finance the improvement or work closely with lending institutions. In those cases, it usually involves a form of security interest against real estate. Along with this, comes finance charges if the payments are not made on time. If that is the case, there are separate sets of documents which are required. To eliminate any inference in this regard, this provision makes it clear no loan is being made by the contractor nor security interest taken.

Home Improvement Contract—Page 4—TERMS AND CONDITIONS

11. Termination. Forum and owners nonpayment, we are refer back two paragraphs three and four. But what about other breaches of a contract? There all sorts of possible violations of the terms of the contract and if any of them occur, the other party can terminate if ten days written notice is given and the other side is not start to perform as required. For example, assume There is a dispute as to the true balance a lien and the owner is required to secure a survey. If the owner does not do so, you could give a ten day demand notice and if the owner does not start to secure the services of a surveyor within the ten days, there would be a breach.

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Then there's the question of the measure of damages if one party breaches and there is a termination (the contract coming to an end). There are a number of remedies either side can secure or but it becomes a complex battle of who gets the most out of termination and who has drafted the contract to their benefit.

But it is one thing to sue for damages and another thing altogether to be awarded them. And, many of these damages are hard and expensive to prove. So, for example, if an owner breaches, contractors typically allege such damages as: extended overhead, delay damages, interference with productivity, employee overtime, additional finance charges from supply houses, loss of profits, loss of the ability to secure or other jobs because of the lack of capital, remobilization costs, and about the like. But it is a relatively simple matter to request the money owed to you to date, with interest, and your loss of profits for the balance of the contract. Judges readily understand this measure of damages and so this is the one that is inserted into this clause. All other damages are not allowed under this clause.

Likewise, if the contractor breaches, the owner can assert a number of remedies, including slander of title for an erroneous lien, increased interest rates on a construction loan, emotional distress, punitive damages, loss of profits (if they operate their business out of their home), diminution in fair market value, and the cost to repair a defective work.

So, you might ask yourself: why don't we simply ask for everything possible and see what we get? The problem with that theory is that the owner will try to do the same thing. The goal of this clause is to reduce the amount of damages the owner can request. To have that enforceable by a court, you have to show that both parties are reducing many of the damages they can receive. In other words, it would make sense to have a clause where you get everything and the owner gets very little.

The bottom line: this clause reduces some of the larger and more drastic damages (like an insurance policy) that can be assessed against the other, but the same time gives you the damages that really matter.

Because this is a complicated area of the law, if you have any questions or want to make revisions to these clauses, it is highly recommended you seek the advice of a construction attorney.

Accordingly, this clause is stated as follows:

Contractor's rights on termination: This gives the Contractor what is owed to the date of breach, together with interest, and the loss of profit and overhead for the balance of the contract. So, for example, if your contract provided for 15% profit and overhead and you were owed $30,000.00 at breach, your profit and overhead would be $_____. You wouldn't be entitled to the full gross balance of your contract anyway, because the judge would deduct the costs to give you a net recovery. You are not entitled to get more in damages than you would have received if allowed to perform the contract. If you are at fault and were terminated, this is a great deal. If the owner is at fault and you terminate, it is still not half bad. Both are simple and very enforceable. These same remedies apply regardless of whom breaches the contract.

Owner's rights on termination: Obviously, if the owner breach the contract (for example nonpayment) and you walk off the job, the owner would not be able to sue you for any

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damages. That is because they are the ones in breach of contract. As a result, if they hire someone else to finish the job, they cannot charge you for it.

But if you breached the contract and the owner terminates, it is a 100% guarantee they will find something wrong and sue for the cost to repair defect of work, hiring someone to finish the job. Such “back charge contractors” notoriously charge more than you would to finish the job, in many cases two or three times that amount. Why? That is simply the way the industry works. Back-charge contractors know they are stepping into a problem job and therefore always charge more. And, in many cases the courts give the owners these large repair damages.

The solution? This clause allows the owner to sue for the cost to repair defective work and finish the job but it has a cap: no more than 150% of what it would cost you to repair or finish the job. This is done by looking at what you are charging under the contract. Although this is not technically speaking a universal industry standard, it is used in many cases, especially in the area of punch lists. Further, if you end up in court, each side has their own expert testifying as to the cost to repair allegedly defective work. So, your expert might claim it will only cost $2,000.00 and their expert $10,000. Under this clause, the court will be required to split the difference. Additionally, the owner will not be entitled to any other damages and will have to give you credit for what is owed as of the date breach.

But what if the owner will not let you back on the premises to make repairs of the allegedly defective work? This happens on a reoccurring basis across the nation. This clause states that if you are not allowed to repair this work, they cannot assess damages from the back charge contractor.

12. Punch List. Under this provision, the contractor has seven calendar days to start (but not necessarily finish) punchlist work. And, this does not hold-up the receipt of a final payment. We have all experienced this scenario: you have completed the job and owed a final payment of $10,000.00. There are six relatively simple punch list items that could not possibly amount to more than $500.00. Nevertheless, the owner withholds over your head the entire $10,000.00 until the work is done. This requires that the final payment be made, less 150% of the expected cost to repair the punch list items. But how do you determine the cost to repair? Simple. Do a quick take-off of what it will cost, on a costs-plus basis, and send it to the owner with the 150% calculation. The ball is in their court to come up with a different number.

13. Delays. This removes any doubt that the completion date is approximate only. There is a long and comprehensive list of the reasons the project may wanted a mentally be extended. Even more importantly, it states that neither party may sue for delay damages. For example, in some contracts there is a daily penalty or liquidated damages provision that says if the project is not completed by a certain date, $50 to $200 dollars per day is assessed. This eliminates any such possibility.

14. Do you know one of the most common complaints from homeowners? Alleging the contractor left a garbage behind and the residence was a mass. We’re not sure whether this is true, but it is good from a sheer public relations standpoint to instruct your crew to clean up after themselves. This clause states the cleanup required is simply “broom-clean” and nothing more. This is a relatively easy standard to meet. It means that the property does not have to be in the same original condition. In other words, you do not have to mop down, scour, wax, or disinfect. On the other hand, it is probably a good idea to do a thorough dusting.

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15. Asbestos and Hazardous Waste. It seems like almost everything these days is considered hazardous. On most jobs, the drill is as follows: someone notices hazardous materials, it goes to the attention of the contractor's job superintendent, the job comes to a screeching halt, and the owner has to hire a certified removal contractor. This is the way it should be and the way this contract is worded. You want to eliminate the possibility of the owner forcing you, at your expense, to hire such a contractor. Making it even potent, the exclusions section on the first page of the contract so states.

16. Arbitration. There is quite a debate amongst construction lawyers as to whether you should go to court or arbitration. See the instructions attached to the Arbitration Disclosure form for more details. It is the humble position of NationalLienLaw that only medium to large sized jobs should have arbitration because of the cost. Arbitration can actually take as long as a court proceeding unless there are definitive time limitations. This clause makes it clear there must be a conclusion to the arbitration within four months. It also specifies it will be under the American Arbitration Association rules, which limits discovery
(lengthy and expensive depositions, interrogatories, document inspections, requests for admissions, designation of experts, bills of particular, and discovery motions). If both parties agree, they can always use another arbitrator or arbitration association, especially since the American Arbitration Association has become increasingly expensive.

If you do not want an arbitration provision, simply delete this from the contract. Without it, as a matter of law, you will automatically be entitled to a court proceeding.

17. Attorney's fees. Under the American system, beach party bears their own attorney's fees. The only exception is if you have an attorney's fees provision in your contract or in some cases, state law under consumer legislation makes this provision by statute. This is such an attorney's fees provision. But this provision cuts both ways. If you win, the other party pays your attorney's fees. But if you lose, you have to pay or own attorney and the owners.

There are three common situations: 1) you sue the owner as a simple collection matter and there is no allegations of untimely or defective work, 2) the owner owes you significant money and you suspect there might be some minor deductions for punch list items or minor defects, or 3) you have a "rip roaring" dispute with serious allegations of untimely performance, damages, defective work, resulting physical damage, and the whole panoply of legal redress.

The gamble is you never know what kind of project it will be when signing the contract. But let us help you a little bit. The vast majority of lawsuits do not involve 3) above where you can easily be hit with the other side's attorney's fees. Examples 1) and 2) mean you will probably be the prevailing party and the other side will have to pay your attorney's fees. So strictly from a gambling standpoint, it is recommended you use this provision.

18. Miscellaneous. There is nothing more frustrating than the owner communicating directly with subcontractors. It holds up the job, prevents you from properly managing the schedule, and worst ever, owners are always trying to get freebies or changes while from them—and you not knowing what is going on. An even worse, when the job disintegrates, they try to get the subcontractors to be witnesses against you and hire them directly. Hopefully this will prevent that eventuality.

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Because this is a fixed price contract, it is none of their business what you are making or losing on the project. This clause clarifies they are not entitled to request any internal financial information. In other words, if they suspect you are making too much money on a particular item, they cannot ask for your payroll, material invoices, profit statements, and the like.

19. Subcontracts. This may seem obvious to you but not the homeowner. It removes all doubt that you can subcontract any portion of the work to some other company, even the framing.

20. Signs. This gives you the right to place signs on the property for advertising purposes for as long as possible.

21. Entire Agreement and Signatures. Lawyers call this the integration clause. Most written contracts such as this one which have complete the language included within them, are considered fully integrated contracts and cannot be modified except by an addendum signed by both parties. This is important because it is almost a given that the owner will allege that there were various verbal conversations but before, during, and after the signing of the contract, which modified its terms. Under the parole evidence rule, a fully integrated written contract cannot be modified by any such verbal statements, understandings, representations, or guarantees.

Here is an actual example. The contract between the parties clearly indicated the completion date was approximate only and there would be no damages for delay. The homeowner claimed a trial that it had an expensive construction loan with high interest that became due on July 1, at which point they intended to stop that high interest and get permanent financing. The homeowner further alleged the Contractor told them "the way the job was going, there will be no problem with finishing at least by July 1" and if there were any further construction loan charges, "we would take care of you", implying that the contractor would be responsible for additional loan interest. The job did not finish on time and the homeowner alleged an additional $15,000.00 in interest. Not surprisingly, the contractor denied this conversation and asserted the provisions of the contract. Because of this integration clause, the Contractor prevailed.

This provision also states the signature of one owner is binding on the others. So, if only the husband signs the contract, the wife would also be bound. There is some uncertainty in this area belong so you should consult with a construction attorney. It is a backup provision only and you should always seek both signatures to be safe.

22. Limited Warranty. This contract has a limited warranty of one year after completion as to defects in workmanship and material. This is important because it waives all other warranties, including the implied warranty of merchantability and the implied warranty of fitness for purpose. Those other warranties can be longer than one year and give the homeowner greater rights. It is also good idea to include the special warranty agreement that can be purchased on this web site.

23. Additional Provisions. There's just no way to include all possible provisions in the standard clauses. This gives you the ability to insert different clauses under an attachment.

Homeowner Initials at the bottom of the second and third pages. Really important! Although homeowners typically claim they did not read or understand the terms and conditions, it knocks out that argument somewhat if they have initialed both pages.

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Type of Contract Attachment—page 5 and 6

In a fixed price contract, there is much less speculation (hopefully) and therefore dispute as to the overall cost. The matter is much different with cost-plus contracts. This is a fertile ground of controversy and the clearer you described how these contracts work, the less chance the owner can claim surprised at a later date.

Costs Summary Attachment—pages 7 through 9

There may be a tendency on Cost-Plus and T. & M. contracts to state the terms in as simple language as possible, and then move on. This is a mistake. These contracts are actually complicated as far as what is and is not included in costs. This gives a detailed outline of what both you and the owner can expect. By clarifying the issues early in the game, it will help limit disputes.

Contract Documents List—page 10

This gives you the opportunity to list all the documents and drawings that are used in the construction process. It is not only a factor of being organized, it has a selfish purpose: it limits very specifically what you have to do on a project. You only have to build according to the contract, attachments, drawings, and specifications, no more or no less. This has the effect of preventing the owner from requesting additional or freebie work.

But it also minimizes disputes. How often can you remember being a controversy as to exactly what you are required to construct? This is even more prevalent when there are multiple revisions to plans and conflicting verbal understandings. An actual example: the plans prepared by the architect clearly indicated that for a veterinary hospital there would be dropped/suspended ceilings that would camouflage the HVAC ducting. It was also much cheaper. Later in the project the owner of the hospital claimed there had been a change to open and vaulted ceilings with acoustical tiles. To do this would be much more expensive because of the special finish wood to be wrapped around the ducting for the aesthetic effect. At trial, the contractor was able to prevail because of the specificity of the plans.

One of the forms furnished to you in this packet is called: “Pre-Construction Notes and Job Site Policies”. It is recommended you include it on the list because it is so important as far as clarifying a number of the issues during construction.

For this reason, carefully list all relevant documentation, and including shop drawings, schematics, plans, and all other contract documents.

And do not forget to attached the various Finish Schedules, if applicable.

Allowance Schedule—page 11 and 12

As is commonly known, allowances comprise mostly finish items. The reason they are allowed scissors because homeowners chronically change their minds and many times purchased different or more expensive items. If they do so, they will exceed the allowance and have to pay

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extra. This makes it clear the allowances are all only estimates.

It is crucial that you get the homeowner to agree on the finishes in the allowance schedule as soon as possible. Nothing delays a job more than having to reorder our or backorder in the middle of the job. It is suggested that you get the homeowner to prepare and a " design notebook" at the beginning of the job. It is simply a three ring binder pin as clippings from newspapers, magazines, and products fliers Showing the types of finished work, equipment, materials, and appliances they may want.

An example of would be an entry such as: "Wolf gloss back model 2324 range-$1,750.00."

Once they agree on an item, have them give you the description and you can order it yourself from your own supply house. Never, under any circumstances, let them charge on your account directly with the supply house. There are many war stories in which people charge extravagant amounts against your account and with disputes later, stiff you.

Special note—Cost-Plus Contracts: **A**n allowance attachment is not provided in a costs-plus contract. This is because there is no fixed price and the ultimate cost of such items depends upon what the owner chooses as far as finish items.

Matching Materials Attachment—page 13

It is pretty obvious what this attachment is meant to accomplish. There are so many problems with attempting to match older and existing materials, that a simple contract provision is not enough. Actually having an attachment which is separately signed by the homeowner will hopefully give you a better case in court.

It simply emphasizes the impossibility of matching exactly existing finishes or materials. And, unless specifically mentioned in the contract, the contractor is not required to custom manufacture and can simply do his or her best at getting them from standard suppliers.

Then there is an outline of how the process works. A contractor begins by providing a sample or test patch and the owner has 48 hours to approve or disapprove. If not approved, the contractor gives it one more try. So far, all of this is on the contractor's nickel. But if the second sample is rejected, it goes on a cost-plus basis.

Special Order Attachment—page 14

Nothing can delay a job more readily than waiting around for special order equipment or appliances to arrive. This attachment makes it clear such special order material must be ordered before construction begins. And because many supply houses require advance payment, this also must be accomplished. Finally, it specifies that the completion date will be extended for any delays while waiting for the material.

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Finishes Attachment—page 15

This is similar to the Contract Documents List, but specifically lists the finish schedules that are attached. This removes any doubt they are incorporated into the contract. It punctuates the fact that if the homeowner changes his or her mind, it ushers in a change order with additional compensation.

Attachment to Home Improvement Construction Contract—page 16

What is the difference between an attachment and an addendum? Simple. When you are first preparing the contract and run out of space on the standard form, you need an attachment that has extra room to write on.. If you make a change after you have started performing the contract you then use an addendum. after you've started performing the contract No standard form contract can have all the provisions you want. There are always changes. This gives you the opportunity to put in custom provisions under "**23. Additional Provisions".** And the beauty is that your custom provisions in the Attachment automatically take precedence over the standard ones in the contract. It also has a section for additional description of the work being done because there is seldom enough space on the first page of the form.

Arbitration disclosure—page 17

There once was a time when almost everyone recommended the extolled virtues of binding arbitration for construction disputes. In fact, this was one of the reasons the American arbitration association was formed (along with collective bargaining disputes). Arbitration was lauded as being quick, inexpensive, reduced the amount paid to attorneys, and was decided by arbitrators that had knowledge of the industry. Who could say no to that? No more. More and more attorneys are recommending to their clients, especially as too small and medium size cases, to simply have them heard in court. Arbitration has simply gotten too expensive (you are paying an arbitrator by the hour). It has now reached the point that as many cases are heard in court as in arbitration. Remember that this may be the case because your taxpayers' dollars pay for court— if you have a non-jury bench trial, it costs you nothing other than witness fees. In other words, the benefits of both are more evenly balanced. Want a final recommendation? Use the court for small cases and arbitration for medium/large ones or more complex matters. Here's a quick rundown of the benefits and burdens of arbitration:

Benefits: Arbitrators are experienced in construction; you can pick the arbitrator from a list of candidates; jury trial not available; punitive and emotional distress damages rarely allowed; discovery is minimal (depositions, interrogatories, inspection demands, requests for admissions, subpoenas, etc.) and so attorney's fees are reduced. But many parties stipulate to allow discovery and so there is no cost savings. Additionally, the case is tried on the date set for trial (subject to reasonable continuance requests) so there is no waiting in the hallway for a courtroom to open up, paying the attorney to re-prepare each time it comes up for trial, or being continued by the court indefinitely because of lack of courtrooms (most states are backed-up).

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Disadvantages: pretrial restraining orders, injunctions, attachment, and other emergency orders not available; expensive—like hiring a private judge, usually $350.00 an hour and above; sometimes takes as long as court to hear the case because it is common to have continuances; the tendency of the arbitrator to "split the baby".

So, if you still want to have a binding arbitration clause in your contract, use the one included in this contract. But, you must have the owner sign the Arbitration Disclosure form for it to be binding.

Notice of Cancellation—page 18

Many states and Federal law give the consumer three days to cancel any transaction that relates to the sale or lease of household goods and, in many cases, residential construction. But you would want to have this provision anyway. If someone is so unhappy that they want to cancel your contract immediately, take it and run. You do not want to deal with anyone who is that displeased or who simply does not want the construction in any event.

You should give two copies of the form to the homeowner so they have one to send in and one for their records. The date at the top of the form is when the homeowner signed the contract. Simply insert your company name and address in the middle of the form. The cancellation date will be midnight of the third business day. Frankly, if they are off a couple of days, we would recommend you accept the cancellation. To count the days, you never count the first day and give them three business days. If the last day falls on a weekend or holiday, they get midnight of the next business day.

Addendum to Home Improvement Construction Contract

This does not have a page number because it is something you would use well after the signing of the contract. It is a multi-purpose form to be used if you make changes during the course of construction. If you do so, simply fill it out and have both parties sign. Remember that this is an exception to the parole evidence rule which forbids changes to the contract unless put in writing.

Remember also that almost any writing, in whatever form, is sufficient to change the terms of a written contract if signed by both parties. Accordingly, even though you do not use this formal addendum, you can still use a general memo, correspondence, or any other written document as long as there are signatures by the homeowner.

Pre-Construction Notes and Job Site Policies

This is a form you go over with the owners at the beginning of the project to let them know your company policies. It accomplishes two purposes: 1) letting the homeowner know what to expect--which engenders a smoother project, better customer relations, and eliminates surprises; 2) gives you a better chance to enforce your legal rights since it contains provisions to your benefit and which they have agreed upon.

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It is provided in both PDF in Word format. The Word document lets you add, subtract, and edit your unique job of policies. Included in the standard form are such issues as: child and pet safety, visitors, sanitation and phone, security, work hours and overtime, parking, location of contractor's tools and debris box, construction sign, protection against dust, owner inspections, owner's selection of allowance items, hidden or inaccessible work areas not discovered until after the work has begun, access, problems with matching existing material, differing a site conditions encountered after commencement, clean-up, change orders, completion date not guaranteed, owner's duty to furnish reports, owner's obligation to protect property from damage, and the policy that owners are not to communicate directly with subcontractors.

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