

CHAPTER SIX

REMODELING?

How to avoid getting nailed

The urge to improve your home is just about as irresistible as the urge to improve your spouse. But home improvement is both more likely to succeed and better protected by law.

State and federal laws frequently address remodeling because the industry is fraught with scams and shoddy workmanship. A 1992 study by the Consumer Federation of America showed that, nationwide, home repairs ranked just behind auto repairs as a source of complaints. And state consumer protection specialists in Illinois and New Jersey found that the most common consumer grievances in those states concerned home repair contracts.

Just imagine what could go wrong.

- The contractor you hire to add a second story above your living room takes your deposit and tears off the roof, but is too busy with other jobs to make further progress. It's raining.
- The kitchen remodeler brings in three subcontractors to do the work, then takes your check and skips town without paying them.
- The new swimming pool leaks, the contractor blames the plumber, and neither is willing to foot the bill for digging out the pipes.

A major remodeling brings enough headaches without trouble from an unreliable contractor. To make sure the project goes as smoothly as possible, take time to choose a reputable contractor and make sure you have a fair contract. Know your legal rights and what to do if something goes wrong.

Your Legal Rights

Both federal and state laws attempt to protect homeowners who have home improvements done. Federal laws cover consumers in all states and are a big enough club that most contractors take them seriously.

Federal Trade Commission (FTC) rules address the problem of **false advertising**. It's illegal for a vendor to advertise any product or service for less than it really costs. So is the old bait-and-switch tactic, in which you are "baited" by an ad for a product or service, then told that one isn't available and "switched" to another, more expensive version. The law requires vendors to offer a rain check whenever demand for an advertised bargain exceeds supply, unless the limited supply is clearly stated in the ad.

The federal **Truth in Lending** law protects consumers who obtain outside financing for their projects. Any lender has to prominently state the annual percentage rate (APR) of interest you'll be charged. So whether you finance your home improvement through a bank, a credit union, or the contractor himself, at least you'll know what the interest rate is. It's your job to shop around for the best terms you can find.

Note that even if the terms appear reasonable, it's a bad idea to have the contractor secure financing for your project. In some areas it may also be illegal. Even though he may okay you as a credit risk when a bank won't, he has good reason: his guarantee that you'll pay him back is ultimately your house. It's probably worth a lot more than whatever you're doing to improve it. So if you can't pay for work right now, try to postpone it until you can.

Given the number of scam artists working the streets, your best federal protection may be the cooling-off period mandated by the Truth in Lending Act. Lawmakers were concerned about consumers being victimized by high-pressure sales pitches in their homes, perhaps because consumers relax their guard at home. Called a **right to rescission**, the law gives you three business days to cancel any contract

- that was signed in your home (or any location other than the seller's place of business),
- that implies any kind of financial claim to your home, as when the contract gives the contractor the right to file a lien against your home to enforce payment, and
- that involves your making four or more payments, as when the contractor finances a project by using your home as collateral for a second mortgage.

If the circumstances entitle you to a cooling-off period, the contractor must give you two copies of the Notice of Right of Rescission ([see page 18](#)) at the time you sign the contract. It must be separate from the contract--not buried in fine print--and a copy given to each owner, because any one owner may cancel. The notice must identify the transaction, disclose the security interest, inform you of your right to rescind, tell you how to exercise that right, and give you the date the rescission period expires.

Contractors pay attention to this law because if they don't comply, you have the right to rescind for three years from the date on the contract--or until you transfer interest or sell the property. Not that you'd want to cancel a job that's already completed, but you might have some leverage to reduce the final payment.

These laws help keep most contractors honest, but they can't keep the bad apples off the streets. Even if you report violations to the Federal Trade Commission in Washington or one of its 10 regional offices, the FTC isn't likely to prosecute a small contractor. Federal enforcement tends to concentrate on major violations or patterns.

State and Local Protection

Fortunately, states often have laws modeled after federal laws. State and local agencies are a lot closer to you and a lot more apt to pursue a small contractor who may have violated them. If you suspect that a contractor you're dealing with is breaking the law, get in touch with your state attorney general's office or local department of consumer affairs.

Some states have laws specifically aimed at dishonest contractors. For example, Illinois has a specific Home Repair Fraud Act, strengthened in July 1992. The law makes it a crime to misrepresent the terms of a home repair contract, deceive people into signing one, damage someone's property to drum up home repair business, or charge an unconscionable fee for home repair services. A contractor who preys on disabled people or those over 60 years old may be committing aggravated home repair fraud, a felony punishable by three to seven years in jail and a fine of up to \$10,000..

Massachusetts' home improvement law, enacted in 1992, requires all home improvement contractors to register with the state, and requires a written contract with specific elements in it for any home improvement job over \$1,000. Violations can trigger fines of up to \$5,000 or two years in prison. The statute also establishes an arbitration program for resolving disputes, plus a guaranty fund to compensate homeowners for unpaid judgments.

The guaranty fund is unusual. In Illinois and many other states, the law provides criminal penalties for errant contractors without providing for restitution for victims. That means defrauded homeowners have to sue the contractor if they hope to get their money back. But such a lawsuit could be long, costly, and fruitless, because by the time the case comes to trial the contractor may have nothing left to pay.

Localities can also have tough laws against unscrupulous contractors. Putnam County, New York, has a local law that includes such punishments as suspension or revocation of the contractor's license, both criminal and civil penalties, and punitive damages against the contractor.

To find out the legal protections and enforcement options in your state, contact your state or local consumer protection agency, or the consumer fraud division of the local prosecutor's office.

Beware the Swindler

Despite all the statutes, if you have to rely on the law to get your money back from a shoddy contractor, you'll have to wait a long time. Take matters your own hands by checking any contractor over carefully in the first place.

Be wary of contractors who:

- claim to work for a government agency. Check it out.
- offer free gifts. (What exactly are the gifts? When will you receive them? Can you get a price reduction instead?)
- engage in door-to-door sales or try to get your business by telephone solicitations. Be especially wary if the sales pitch demands that you decide right away to take advantage of prices that

won't be available tomorrow. Most reputable contractors have enough business without having to engage in such tactics.

- offer an unsolicited free inspection of your furnace or basement. Rip-off artists use this ruse to get into a home and either fake a problem or damage a sound furnace and good pipes.
- claim your house is dangerous and needs immediate repair--unless *you* already know it does.
- have a company name, address, and telephone number and other credentials that can't be verified. Fly-by-night operators often use a mail drop and an answering service while hunting for victims.
- promise a lower price for allowing your home to be used as a model or to advertise their work. (Has the price really been lowered? What does the "use of your home" entail?)
- engage in bait-and-switch tactics. After luring you with an ad that offers an unbeatable deal on a job, these characters tell you the materials aren't available for that job but they can give you a bargain on another, more expensive, job.
- leave delivery and installation costs out of their estimates.
- offer to give you a rebate or referral fee if any of your friends use the same contractor. insist on starting work before you sign a contract.

Sam Homeowner, P.I.

After thinking through what you want and what you can afford, ask for recommendations from people who've had similar work done. Talk to building inspectors, bankers and trade association representatives--people who should know first-hand the work and reputation of contractors in the community.

For a larger job, interview and solicit bids from two or three contractors from your list, making sure they're bidding on exactly the same job to allow comparisons. The lowest bid isn't necessarily the best, because a contractor with a reputation for excellent workmanship and for standing behind the work might be worth more. Even if the job's small enough to warrant only one bid, take time to check out your contractor's reputation and credentials.

Ask contractors about the kinds of jobs they usually do. Get the names of people they've done similar work for recently, and give them a call. Chances are any such references will be people the contractor knows were happy, so try to go a step or so beyond "He's a great guy" and "No problems at all."

Ask exactly what the contractor did, and how this person found out about him. Jot down any more names that are mentioned, with addresses and phone numbers. Was the client comfortable with the way things were left at the end of a day? at the end of the project? What does the client wish he'd done differently to make the job go even more smoothly? What did the client's spouse (or roommate, neighbors, or children) think about the work and the construction process? What's the next project this person wants to hire the contractor to do (if anything)?

If you're satisfied with a contractor's reputation, check his credentials before signing the contract. Ask if he's licensed and bonded. Although not all states require licensing for home contractors, those that do have at the least a record of each contractor's name and address, compliance with insurance laws and agreement to operate within the law. If it's a corporation, the state has a record of the individual responsible. While some states only require people to register their names and addresses, quite a few require them to have some experience and pass an exam.

Having a state license doesn't mean the contractors will do a good job, but it's some assurance that they've made an effort to comply with the law. You can check with the state

Contractors Licensing Board to see if their license is current. Some states will also tell you if there have been complaints against a given contractor and whether they proved to be valid; otherwise you can get that information from your local Better Business Bureau or Office of Consumer Affairs.

Being bonded provides important protections for you, but be aware that the word has two meanings. "Fully insured and bonded" generally means the contractor has insurance coverage to protect against his employees' theft, vandalism, or negligence. If you have valuables to consider, ask to see a certificate or letter certifying such a policy.

A performance bond is an insurance company's assurance that the contractor can finish the job as stated in the contract. If he defaults, the insurance company will pay another contractor to complete the work. Contractors have to take out a separate bond for each job, so bonds are usually limited to jobs of \$25,000 or more, and contractors pass on the cost to the owner. It's an expensive proposition, up to 10 percent of the contract price for a residential swimming pool. But a contractor who's been approved by a bonding company is a very good risk. You're the one who decides whether to require (and pay for) a bond.

Make sure that the contractor carries workers' compensation insurance, to cover injuries he and his workers might sustain on the job. If he doesn't carry it, you could be responsible for some hefty bills.

Ask if he belongs to a trade association such as the Remodelers Council of the National Association of Home Builders, the National Association of the Remodeling Industry, and the National Kitchen and Bath Association. Many associations require a contractor to have been in business a certain length of time, to have passed a credit check, and to meet all legal requirements of their state. It wouldn't hurt to call the association to make sure the contractor's membership is current and inquire about complaints.

Also ask if there is a warranty on his work. On materials? For how long? Make sure any warranty is included in the contract. (Even if there's no specific warranty, most jurisdictions recognize an implied warranty of good workmanship that gives you some protection.) For an additional fee, some contractors offer an extended warranty such as the five-year policies available through the Home Owners Warranty Corporation (HOW).

To see if there are any civil judgments or lawsuits pending against the contractor, check with the local clerk of court. If someone sued the contractor over, say, poor workmanship, take it as a warning. Likewise, you might want to check with the nearest federal bankruptcy court to see whether this contractor has ever filed bankruptcy--a strong indication of financial instability. The contract

As a general rule, don't allow any work to begin until there's a signed contract--one that protects *you*. Oral agreements can be enforced in court, but it's difficult to prove who said what if you don't get it on paper. (If the job is so small that you decide not to bother with a contract, at least ask to see an insurance certificate to make sure the contractor is covered in case one of his subcontractors is injured on your property).

If the contractor gives you a standard contract to sign, take it home and study it carefully at your leisure. You can strike out clauses you think are unreasonable, and have both parties initial the change. Especially if it's a big job and you're uncertain what some of the provisions mean, you may do well to check it with a professional (see sidebar).

A complete home-improvement contract should address:

Preamble. An introduction that states names, addresses, phone numbers, and date the contract is executed. It should specify whether the contractor's business is a sole proprietorship, partnership or

corporation. (If it's a partnership or corporation, make sure the person who signs is an authorized representative.) The preamble should also state that the remodeler is an independent contractor, not your employee. Otherwise, you might be responsible if the builder injures someone. And for another layer of financial accountability, add the contractor's Social Security number.

Contract price. Total dollar amount, including sales tax, to be paid by the homeowner for services agreed to in the contract. Starting and completion dates. No contractor is likely to begin until after your right to rescission (see "[Your Legal Rights](#)") has safely passed. Specify an end-date, stating exceptions such as weather, strikes, etc. Add a bonus/penalty clause if the date is critical. Specify a daily starting time if that matters to you. Consider interim completion dates for key phases of big jobs.

Scope of work. Contractors may shy away from a clause as broad as "all labor, materials, and services necessary to complete the project." But don't allow them to be so specific in the work listed that anything else becomes an "extra" or a "change order," which may be billed separately.

See that complete descriptions of agreed-to products--including brand names and order numbers--are listed. Plans, bids, estimates, and all other documents relating to the project are part of the scope of work; see that copies of these are attached to all copies of the contract before you sign it.

Permits, licenses and zoning. Specify that the remodeler will obtain all necessary licenses and permits and satisfy all zoning regulations and building codes, and indemnify the homeowner in case he fails to do so.

Cleanup policy. Will the contractor clean up daily? after each project? only at the end? Where is refuse to be placed?

Storage. Specify where materials and equipment will be kept. You are probably liable for damage to materials and equipment from fire or accidents; check your homeowner's policy.

Parking. If it's a problem, arrange for the contractor's vehicle as well as the subcontractor's.

Noise. Some is inevitable and may even provide a safety valve for workers, but place limits on time and volume, according to local laws and neighborhood needs.

Theft. Building materials are often stolen. The contract can make either the contractor or the owner responsible.

Damage. What if the retaining wall collapses when they're digging for the new swimming pool? You'll want the contract to state that the contractor is responsible for damage to your property.

Change orders. Since very few jobs go exactly as planned, the contract should have a provision that enables it to be amended simply and easily. Contracts provide that change orders can be written up, signed by both parties, and attached to the contract as plans change or delays occur.

Here's a typical change-order clause:

Without invalidating this contract, the owner may order changes in the work, including additions, modifications, or deletions. Price and time will be adjusted accordingly. All such

changes in the work shall be in writing, and signed by the contractor and owner and attached to this document.

Warranties. Your contract should assure that the materials are new, and that you will receive all warranties from manufacturers for appliances and other materials used on the job.

Progress payments. Contractors don't expect to be paid entirely in advance, but they also don't expect to wait until all work has been done. It's customary to pay one-third upon signing a contract to allow the contractor to buy supplies and get started. In smaller projects, two payments may suffice. In larger ones, plan to make payments after completion and approval of major phases of the work.

In all cases, make your final payment as large as possible, usually at least 10 percent. **DO NOT MAKE FINAL PAYMENT** until all work is completed, inspected and approved, subcontractors are paid and any liens canceled, and warranties are in the proper hands.

Financing contingency. If your ability to proceed with the project depends on securing outside financing, include a contingency clause stating that the contract is not binding if you're unable to secure the needed funds on acceptable terms.

Ask for a list of subcontractors and suppliers and attach it to the contract with their addresses, telephone numbers, and Social Security numbers. Though you are not their boss, they probably have a right to place a lien on your home if the contractor does not pay them in full. It's only fair that you know who they are, should legal action become necessary. If you prefer, arrange to pay suppliers subcontractors directly.

Before the Job Begins

Signed contract in hand, you still should check out a few other details to avoid legal trouble later.

Ask your local department of housing whether you need a building permit. The person who takes out the permit is considered liable for the work, so follow the usual custom of having the architect or contractor obtain it. You as homeowner don't want to be responsible if the work doesn't conform to standards or codes, but you need to know which permits are required and make sure they are obtained.

Why bother with a permit? The inspector who checks your house can assure you that the work you're paying for is safe. And if you've followed proper procedures, your house will be free of encumbrances when you want to sell it. In New York, for instance, real estate inspectors can stop property sales when they find disparities between original and remodeled plans of a property. Altered fire-escape routes, often caused by a door or doorway altered without permit and inspection, can be dangerous. And such noncompliance puts the homeowner--and buyer--in an expensive bind.

If you live in a condominium or cooperative apartment, or other common-interest property, your rights to renovate and remodel are different from those of owners outright. Check your condominium declaration--or check with your board--to see if your renovation will be permitted.

(See chapter two.)

Local zoning laws may apply if you want to expand your home beyond a certain point. By the same token, such laws may protect your home from encroachment by a neighbor's addition. Call your local zoning board to see whether its regulations affect the work you're planning to do.

Once the Job Begins

The kitchen looks like a war zone and the noise makes an afternoon at the dentist's sound like a treat. Your remodeling project is underway. But in the midst of the confusion keep a handle on the documents that can help you avoid problems later. In consultation with your contractor, draw up a schedule of what will be done when and make sure it's followed. If you don't have the wiring inspected before the drywall goes up, the inspector may require you to tear out the drywall.

Contractors report that their biggest problems with homeowners come because the owners request additional work along the way, then object when they see the bill. The best way to avoid misunderstanding is with a specific **change order**. This document, signed by both parties and added to the original contract, specifies the additional work to be done, the materials, and any change in the schedule. ([See page 21 for a sample.](#)) For a large project, type up and duplicate blank change-order forms to fill out as you need them.

What if someone is hurt on the job? If you were dealing with an independent contractor, his insurance should cover expenses. But if you hired someone down the street to paint your house, someone who doesn't maintain a separate business and who relied on you for tools and supervision, that person is your employee and any injuries are your responsibility. If someone gets hurt later because, say, the new basement steps weren't nailed down, your insurance company may pay the injured party but then go after the contractor responsible. What if you come home from work one day and find that the new picture window that was supposed to face your view of the river has been cut into the wall facing your neighbor's garbage? If you believe there's been a contract violation, first bring the matter to the attention of the contractor. Your first step can be a phone call or

conversation. To protect yourself, make a note of the conversation, summarizing your concerns and any agreements, and send it to him. Keep a copy yourself. Step two is asking your lawyer to write a letter stating your concerns and asking for the correction. If that doesn't work, check to see if your contract specifies alternative dispute resolution (ADR)--that is, mediation or arbitration. That means you and the contractor will have agreed to call in a mutually acceptable third party to resolve the dispute without going to court. If your contract does not specify ADR, your initial letter and the lawyer's letter will provide you with a base for further action with a consumer-protection agency or a lawsuit, possibly in small-claims court.

Either way, your options are to push for **specific performance** of the contract, which means forcing the remodeler to do the work as agreed, or for the remodeler to pay any extra costs you incur by having someone else do it. Even if the new sunroom turns out precisely as you hoped, you may be in big trouble if someone doesn't get paid for making it that way. That's when you might have a lien filed against you. The person filing the lien may ask a court to raise the money by selling your house. Construction liens (also called mechanic's liens) are subordinate to any prior mortgage on your house, so it's a difficult route to payment. It's possible to add a clause to the contract stating that the contractor agrees to give up his lien rights, but the contractor may not agree to it. And, even with a contractor's waiver, any subcontractor or supplier who isn't paid for his work or materials by your contractor can file a lien against your home. Unless your job is covered by a performance bond, or your state has some sort of fund to protect homeowners from paying twice when the contractor does not pay sub-contractors or laborers, your chief protection against a lien is holding back final payment until all work has been completed to your satisfaction and your contractor supplies proof in writing that he's paid everyone who worked for him on your job. The release-of-lien form included on [page 21](#) is useful, since it provides places for all the subcontractors

to sign. (This is one reason to have all subcontractors and suppliers named up front in your contract, so you can make sure everyone has signed off on the release-of-lien form.) In some states, contractors and subcontractors have to notify a homeowner if they intend to take out a lien. In others, you only learn about it after it's filed at the local recording office. If you find out someone has filed a lien, call your lawyer immediately because the next step might be notice of foreclosure.

Sidebar: THREE SCAMS AND HOW TO AVOID THEM

The chimney-shaker/furnace-breaker scams begin with someone at your door purporting to be an inspector, perhaps with an official-sounding agency, who says he must check, say, your furnace. He finds a pretext for getting out of your sight, tampers with the furnace, and informs you that he (or a colleague he recommends) can fix it.

TIP: Don't let anyone you haven't called or don't expect into your home. Ask to see proper identification. If you're in doubt, ask for the phone number of the person's company and call it (if you get an answering machine, watch out). You can also call the Better Business Bureau and your local or state office of consumer fraud--or any agency the person claims to be with--to ask about the person and his business affiliation. If damage has been done, also call the police to report a crime against your property.

"I'm doing work down the street and have some leftovers." Here, a workman approaches you saying he can save you money if you'll let him do work--perhaps put a new surface on the driveway or add tar to the roof--that you may really need to have done. But, he says, you must do the work now in order to get this bargain price.

TIP: Resist the temptation of believing this is a stroke of luck. Bargain prices are usually for shoddy work you'll need to have redone. Don't be pressured into agreeing on the spot. Do call and check with the neighbor he says he was working for, or check with the Better Business Bureau, your local consumer fraud office, and the police.

Getting big money by laying claim to your home. This is a rare but real scam. In 1991, the New Jersey Department of Consumer Affairs, for example, put a stop to dealings of a home-repair contractor and finance company that had defrauded a number of homeowners by overcharging for agreed-to work and then tricking them into signing second mortgages on their homes.

TIP: Negotiate a good contract and stick to it. Stay away from remodeling projects until you have a good idea of where you can borrow. (Banks and credit unions are generally safer and cheaper than a remodeler might be.)

Sidebar: SEVEN THINGS TO REMEMBER ABOUT ANY CONTRACT

1. A standard contract is probably far more favorable to the party presenting it--here, the contractor--than to the consumer.
2. It is negotiable, and either party may change it by crossing out the contract's language and writing in new provisions--as long as both parties agree by initialing each change.
3. It may be preprinted or as casual as a piece of paper or letter of agreement, so long as both homeowner and contractor sign it. Sometimes it is simply the proposal that the contractor submits as his bid; when you sign it, it becomes a contract.

4. Even a simple word like "consideration" has precise legal meaning that's different from its use in everyday language. Don't sign until you understand every term (the other party may not be your best source of explanations).
5. Sign no contract that has any blank spaces in it. Draw a line or place an "x" in them.
6. Consider signing only in blue ink, to distinguish originals from copies.
7. If you're in doubt or if the job is very expensive, the time to talk to your lawyer is before you sign on the dotted line. That's when it's easiest and least expensive to address any problems.

Sidebar: SAMPLE NOTICE OF RIGHT OF RESCISSION

Notice of Right to Cancel

Your Right To Cancel

You are entering into a transaction that will result in a

___ mortgage

___ lien

___ security interest in/on your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following three events occurs last:

1. The date of the transaction, which is
2. The date you received your truth-in-lending disclosures, which is

3. The date you received this notice of your right to cancel, which is

If you cancel the transaction, the

mortgage

lien

security interest

is also cancelled. Within 20 calendar days after we receive your notice, we must take steps necessary to reflect the fact that the

mortgage

lien

security interest

on/in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have completed the action mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How To Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing at:

Creditor's (Remodeler's) Name

Creditor's Business Address

You may use any written statement that is signed and dated by you and that states your intention to cancel, and/or you may use this notice by dating and signing it below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of (date) p or midnight of the third business day following the latest of the three events listed above. If you send or deliver your written notice to cancel some other way, it must be delivered to the address listed above no later than that time.

I hereby cancel my contract

(Consumer's signature)

(Consumer's signature)

(Date)

(Date)

Reprinted from What Builders and Remodelers Should Know About Right of Rescission Provisions in the Truth in Lending Act (Washington, D.C., Consumer Affairs Department, National Association of Home Builders, 1987).

Sidebar: SAMPLE CHANGE ORDER

(Amendment to Contract)

The owner and the contractor agree to the following changes in their contract signed on the day
of , 20 .

Changes:

 Add water treadmill with 4 HP pump and dual jets to north end of lap lane. Eliminate southeast
corner gate.

Price:

Add \$400 to total

Deduct \$120

Total Increase \$280

Agreed to:

OWNER

CONTRACTOR/DATE

Sidebar: SAMPLE RELEASE OF LIENS

The following contractors and subcontractors have furnished materials and labor for the construction of
(describe work completed)at(address, lot, block, and square)and have agreed to release all liens for the above-described work.

Date	Name of Contractor and/or Subcontractor	Signature
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