

Contractors and Contracts

by

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Spring, summer and fall seem to be the best time for home repairs. There are some people who have the skills to do their own repairs and others who need someone to do the repairs for them. I believe most people fall into this latter category.

On many local community social media websites there are a lot of postings about contractors and subcontractors not living up to what they said that they will do or what the customer's expectations were.

Two caveats: I am not an attorney but have a family with 3 of them. I am also not an expert on contracts but have written over 500 proposals and contracts. Thus this commentary is based on my experience both as a customer and as a "contractor" or make of goods.

The days of discussing a work project and then shaking hands to bind the oaths of both parties are long gone. With that being said, many people will sign proposals or contracts assuming that the contractor is on the up-and-up and will do an honest job.

While we want to believe in the inherent good in people, as always there is a "rotten apple that spoils the barrel." This is so true in many trade occupations.

When home repairs, yard work, or any other work that is to be done on private property, once the needed work is identified, homeowners generally reach out to contractors to provide a proposal for the work or project that is desired.

Proposal: a plan or suggestion, especially a formal or written one, put forward for consideration or discussion by others. Proposals are made prior to acceptance of any work that is to be done.

Contract: a written or spoken agreement that is intended to be enforceable by law. Typically an acceptance of a proposal that has been made.

Contractor: a person or company that undertakes a contract, verbal or written, to provide materials and/or labor to perform a service or do a job.

There are two sides to every contract, and most of the time, neither the client nor contractor get it right.

Typically most homeowners will identify some need and then reach out to contractors to do the work. This is where they start to get into trouble. Prior to contacting any contractor, the homeowner needs to do some basic research. This may involve researching the Internet, asking neighbors for their input, contacting the manufacture, or going to a big box store to seek advice and information.

It is important to understand what the problem is, what are the ramifications if the problem is not fixed, and the various ways it can be resolved. Here are two examples.

1. **Refrigerator not making ice.** There are many reasons including water not getting to the icemaker, the ice chute is clogged, the bale in the icemaker is stuck, or the icemaker is just broken for some reason. The first step is to consult the manual and/or manufacture.
2. **Water is overflowing the gutters.** This is a typical problem for many homes. It may appear to be as simple as a clogged drainpipe, but if it has gone on for awhile, the homeowner should suspect that other issues may be involved. One of those issues is that the fascia boards, bargeboards, and/or soffit may have water damage. It is also possible that the shingles on the roof have failed and need replacement.

As the problem is researched it is important to **write down** the following:

- Identify the problem
- Define possible solutions
- Determine ramifications if not resolved
- Estimate repair costs

Once this written document is in hand, it is time to start the proposal phase of your project. Like previous phase, the homeowner should research

- which contractors in the area are qualified to do the work
- identify at least three (3) contractors qualified to do the work

- do background checks (complaints, praises, associations, etc.) on the contractors
- contact each contractor
- explain the problem and ask for a written proposal
- meet with each contractor on separate days

The Proposal

The purpose of the written proposal is to:

- (1) identify the issue as seen by the contractor and
- (2) develop a concrete strategy for resolving the issue
- (3) state contractor's scope of work and policies
- (4) provide an estimate of costs, time involved, and needed materials
- (5) identify and list the expectations of both the homeowner and contractor
- (6) signed by the contractor

The proposal should provide as complete as possible every aspect of the "job" at hand. The more complete it is the better for everyone involved. A well written proposal is also a cost, labor, materials, and time control document. In many states, proposals are considered legal documents and can be viewed as contracts if signed by the homeowner.

The Contract

It is important to realize that not all contracts need to be in writing. Verbal agreements can be as binding as written ones. However it would be to the homeowner's benefit in many cases that written contracts be made. An example of a verbal contract can be mowing the lawn, picking up leaves, clearing trash, etc. The cost of these services is low as are the expectations. On the other hand, services rendered for repairs, landscaping, and/or construction or structural work, all of which involve a long-term type investment in the property, should have written contracts.

While contract law varies in each state, all agree that if it is written and signed by both parties (homeowner and contractor) the contract becomes a legally binding document. And therein lays the rub.

While contracts should be a win-win proposition for both homeowner and contractor, they are often biased for the contractor. Essentially if it is not in writing, it is not part of the contract.

All contracts are negotiable. However most homeowners do not realize this and consequently are at the mercy of the contractor. There are several items that should be in all contracts which include:

Quality of work

Homeowners expect a job well done but rarely reference the expectation in a proposal or contract. When it comes to home repairs or structural projects, contractors are expected to follow local building codes. Such codes may be better than or less than national codes and the homeowner needs to know this. The contract should stipulate which set of codes will be followed. If the contract simply states, "in accordance with standard building practices" this should raise a red flag for the homeowner.

If there are other expectations as to quality, these need to be included. For example, if adding a room it is important to specify solid, not jointed 2x4s are used in the wall construction. If an outdoor project, exterior wood products should be noted. If it is a wood picket fence the contract should stipulate using exterior screws instead of nails.

Cleanup

While many city and county codes require that construction trash be "disposed of properly," the contract should specify how it will be disposed of. Many building contractors will simply bury the trash on the owner's property.

Timelines

Most homeowner contracts fail to stipulate any timelines or even completion dates. These should be included in the contract along with exceptions. Some common exceptions are weather, delivery of materials, emergencies, and sickness. Each should be discussed and such occurrences noted in writing to the homeowner.

Penalties and Incentives

Commercial contracts often include penalties and incentives whereas homeowner contracts do not. Penalties and incentives are often associated with timelines and payment. If a timeline is not met, the contractor is often "fined" for missing it. However if the timelines are completed ahead of time, an incentive is often paid. Similar penalties and incentives are used regarding budgets and material/labor costs. The problem with budget incentives is that unscrupulous contractors might be tempted to use inferior materials or unqualified labor.

Contracts may contain many other clauses depending on the type of project and government requirements. As mentioned a good, well written contract should be a win-win for both homeowner and contractor. For more information, visit:

<https://www.legalzoom.com/articles/19-things-every-construction-contract-should-have>
<https://www.levelset.com/blog/construction-contract-documents-guide/>