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**CONSIDERATIONS FOR PROPERTY OWNERS WHEN SELECTING A CONTRACTOR
AND ENTERING INTO A CONSTRUCTION CONTRACT**

by: Jessica H. Miller

Property owners can take many proactive steps when selecting a construction contractor, negotiating a construction contract and overseeing a construction project. These proactive steps can often help you to receive what you wanted and to protect you, your rights and your property.

SELECTING A CONTRACTOR

- Ask people you trust to recommend a contractor they have worked with.
- Request any contractor you are considering to provide you with multiple references of clients they have previously worked with and contact these references, asking them specific questions about their experience with the contractor.
- Research the contractor you are considering. See if there are any complaints with the Better Business Bureau or Colorado Attorney General's Office. See if the contractor has a local address. Ask the contractor about the ownership of the company, how long it has been in business, and the contractor's ability to finance warranty work or the repair of defects. Quality issues may not arise until years later and a warranty is only as good as the company behind it.
- Speak with architects, engineers and other construction industry professionals about their experiences with a contractor or ask for recommendations, but apply this same screening approach when hiring an architect or engineer and understand these construction professionals often have relationships between them to send business to one another.
- Do not be afraid to ask your contractor important questions, such as their insurance coverage, completion time and delays, and billing. Don't ignore any red flags or suspicious issues! Ask contractors if they have done this type of work before, if they will be purchasing necessary permits, if they are licensed for this type of work and if the work will be inspected.
- Be wary of contractors soliciting business door-to-door. Be cautious in dealing with a contractor who asks for a large down payment.
- Always ask for a bid and get bids from at least three separate contractors.
- Hire an attorney for legal advice. Construction projects often involve a major financial investment, affect what is most individual's largest asset (their home), and improperly performed construction work can cause significant property damage or liability from injuries on your property. An attorney is duty-bound to protect your best interests and can help draft a contract that will best protect you, your property and your investment in the project.

NEGOTIATING A CONSTRUCTION CONTRACT

- There is no such thing as a standard construction contract. The provisions of a construction contract can be modified greatly to provide greater protections to the property owner or the contractor and to impose or remove important obligations on the contractor or owner.
- Make certain that the contract is drafted to protect your property, your property rights and your control of the work and cost of the construction project.
- Any person who provides labor, materials, supplies or equipment for the construction of improvements to your property may claim a lien against your title to your property if they are

unpaid (in some cases, even if they are subcontractors who you paid through your general contractor but went unpaid by the general contractor). A construction contract can be structured to significantly help protect your property from liens and ensure payments are properly passed along to subcontractors.

- Make certain that your contract gives you the control and oversight you want over the project and that any important promise or commitment made by the contractor is in a written contract.
- Your contract should be structured to require written documentation of any cost increase or changes to the work.
- Confirm that the contract addresses the contractor's and his subcontractors' insurance coverage in the event of property damage, defects or injuries.
- Make sure you receive a written warranty, if offered, and that you understand how it will work.
- Consider hiring an attorney to draft or review your construction contract. An attorney is bound to protect your best interests and can strengthen contract provisions to protect your rights and your property. In many instances, a small initial investment in having an attorney draft or review a construction contract to protect your rights can save thousands of dollars and substantial headaches.

ONCE CONSTRUCTION HAS BEGUN

- Be proactive in the process. Keep track of the progress of the project and billings. Ask questions if you don't understand billings. Require the contractor provide backup documentation for his billings. Don't be afraid to ask questions!
- Check that you are being billed for work that is actually completed and correct. Ensure your contractor has acquired the necessary building permits and the contractor's work is compliant with applicable building codes.
- On large projects, consider hiring an independent construction professional to do periodic inspections of the contractors' work throughout the project.
- Keep track of your records and documents related to the project.
- Discuss the progress of the project and billing with your contractor regularly. Open lines of communication can help address problems before they get bigger and avoid misunderstandings.
- Ask your contractor how punchlists or small defects will be addressed at the end of the project.
- Don't ignore any red flags! Question anything that seems problematic or suspicious!
- If problems arise with your contractor, involve an attorney as soon as possible. This can help to control or minimize problems. Address an issue as soon as it arises. As Benjamin Franklin once said, "An ounce of prevention is worth a pound of cure."

FURTHER ASSISTANCE

If you have further questions about selecting a contractor, negotiating and agreeing to a construction contract or dealing with construction issues, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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