

CONTRACTOR FRAUD

Beware of Unscrupulous Contractors

CONTRACTOR FRAUD SERIES (Part 2)

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Most of the misunderstandings pertaining to contractor and homeowner relationships occur as a result of unclear or wrongly interpreted construction contracts. Upon entering into a building contract, the enthusiasm for starting the proposed work often creates a kind of glazing over or dulling of the senses on the part of the homeowner. Many times questionable terms and arrangements for payment scheduling are accepted or unknowingly agreed to as the homeowner's urgent desire to start work overshadows common sense. Often, the lowest priced contractor seduces the homeowner with promises of more value for the money.

Many homeowners are unaware of what an appropriate price or schedule for incremental payments should be. They are often convinced by the general contractor that the terms as proposed are barely enough to sustain the job costs advanced by the contractor and his agents. They are told that the final or last couple of payments are actually where the contractor is collecting his profits for the project.

A fair and equitable distribution or payment schedule should not be weighted too heavily towards either party. Materials and labor services, when completed, should be due and payable promptly. However, in most cases, the most fair and equitable payment schedules pertain to some milestone completion or verified approval of building inspections. If a homeowner has obtained a bank loan for the construction work, it may be possible to use that bank loan as a safety device. Sometimes, bank officers can be consulted to approve payment increments. Some banks do offer this service, and can assist a homeowner so that the contractor does not unfairly receive payments until work is completed. Many homeowners are regularly taken advantage of by unscrupulous contractors. They are baited with insignificant promises and the assurance of low overhead. It is my suggestion to ask for, obtain, and verify trade and past project references. Do not hesitate to contact suppliers and former customers for references prior to signing any contract. If you do not get satisfactory responses to your questions, make no allowances and do not accept excuses, find another contractor immediately.

It is important to verify that the prospective contractor is currently licensed. Make sure the contractor's license must be in good standing and all provided insurance policies are in force. Make sure the contractor you plan to hire is financially stable and able to work on your job without other negative financial concerns that are unrelated to your project. Ask for an advance list of all sub-contractors that will be used on your project. Obtain the subcontractor's license information, insurance policies, and trade references prior to beginning any working arrangements.

I have recently been involved as construction expert witness in several construction fraud lawsuits. In these cases, the general contractors had told the property owners that they would not be using subcontractors on their projects. Claims were made that all of the trades would be performed by the contractor personally or by crew members of the general construction company. That way, the homeowner would not be paying for the additional costs associated with hiring sub-contractors and the general contractor mark-up associated with that hiring. While there are a few reputable contractors that can provide all trade services in-house, they are probably rare and hard to find these days.

Check out the date the license was issued for the contractor you are considering. Check to see what trades or special supplemental licenses your prospective contractor has. Make sure the license is valid and the name corresponds to the person you are considering. If a contractor has a relatively new license, a few issues need to be analyzed. Is that contractor relatively "green", lacking experience due to his few years on the job? Has the license recently been issued, because of past problems that forced the suspension of previous contractor licenses? Has your prospective contractor recently been involved with other entities that have gone bankrupt or mysteriously disappeared? Is the contractor planning on associating with any other contractor to obtain your building permit?

In the State of California, it is possible to obtain a license if you have a friend who was once a qualified tradesman. Or, you can have a casual acquaintance verify that you have been working for the last four years in some form of trade related work. Alternately, if you have a college degree, and can get someone to claim that you have been practicing a related trade such as engineering or architecture; you may be eligible to apply for a license with only two years of

experience. In the past, years of hard work, apprenticeships, and strict supervision of trades gave you some assurances that a new applicant for a contractor's license had attained a level of proficiency. This might make them a good candidate for deserving a contractor's license.

Unfortunately, today many people are getting their contractor's license without being properly qualified. That is why the average homeowner cannot be assured that their prospective contractor is qualified just because they have a license. Very similar to the 1970's where just about everyone you met in Los Angeles had a real estate license; now, you can take a few classes, read a few test prep manuals, and learn how to answer the test questions. With a little luck and no trade related skills, you can become a licensed general contractor. Unless the individual you are considering has special abilities, specific trade knowledge, and can perform the contracted work properly, the average homeowner may be subject to serious problems. The State of California does very little to assure the integrity and quality of the applicants requesting a contractor's license.

These days, with the job market as questionable as it is for many college graduates, many graduates are trying to acquire as many types of licenses and trade certifications as possible. Many of these recent graduates, not finding a job in their field of study are trying to obtain any license they feel may help them on their resume.

Licenses, such as general contracting, surveying, bar tending, and restaurant & hospitality management certificates are relatively simple to obtain. In short, many of these people are unqualified because they have little or no experience in their field. Once they obtain a license, they are allowed to "work" as a general contractor or attempt another field where they easily acquired a license. It seems that the State of California is more interested in generating the revenues from these tests and licenses then providing protection to the general public by assuring that the recipients of these licenses have professional experience and trade relevant qualifications.

Fully understand who you are hiring before you enter into a contractual agreement. If you have any doubts or suspicions that something is not correct or doesn't seem legitimate to you, seek legal advice from a competent source. As a homeowner, your most prized possession is your home, make certain that you hire reputable, skilled, and competent tradesmen to work on your home. Thoroughly evaluate and analyze every aspect of your planned project prior to agreeing to any contract. Make sure that you have all of the elements needed to go forward with your project explained to your satisfaction. Do not feel pressured or uncomfortable with your decision. If you are uncertain, take the appropriate time to fully understand your obligations and commitments prior to signing. Never make the poor choice to hire the lowest priced contractor. There is an old adage that states "The lowest price generally comes with the highest cost".

Mike Panish is a licensed general contractor, electrical contractor, cabinet & millwork contractor, door, lock & security contractor, and paint & finish contractor in the State of California. He has over 30 years of experience working in these fields. As a leading expert witness for contractor fraud, currently involved in over a dozen homeowner vs. contractor disputes, Mr. Panish provides his expertise to both homeowners and contractors in mediation, arbitration, and courtroom proceedings. He has been involved in numerous past cases that have led to landmark decisions and major jury awards. Mike Panish can be contacted through www.constructionwitness.com.