

**COMMUNITY
HEALTH LAW
PROJECT**



*Protecting the Rights and
Promoting the Independence
of People with Disabilities Since 1976*

HOMEOWNER'S GUIDE TO SANDY HOME REPAIR CONTRACTING

**Prepared by the Community Health
Law Project**

Hurricane Sandy left behind a historically high number of home repair and construction projects. The purpose of this Guide is to help homeowners avoid common repair and construction problems starting with finding and selecting a contractor, negotiating a contract, paying wisely and preventing and resolving disputes. Home improvement contracts include almost all work and services performed by contractors on residential properties except for new home construction and services provided by design professionals such as engineers and architects.

Caution: This guide is intended to highlight some of the common best practices of home improvement contracting. This guide does not provide legal advice which can only be provided by a licensed New Jersey attorney.

STEP ONE: CAREFULLY PLAN YOUR PROJECT

- 1) Write down in as much detail as possible what you need to have done. Does the work include more than one trade, such as carpentry, electrical and plumbing? For bigger jobs you should consider hiring an architect to plan and inspect the work.
- 2) Do you need a general contractor? That depends on the complexity of the job, your level of skill, and your ability to spend time coordinating a project. Most homeowners will elect to use a general contractor who will be responsible for hiring sub-contractors, getting permits and coordinating the construction phases. For smaller single trade jobs it is generally not necessary to hire a general contractor.

conducted on each of them as well. Never sign a contract or agree to have work done by an unlicensed contractor. Also, ask Consumer Affairs if any complaints have been filed against a contractor and what were the results of the complaint. You can research most of this information easily on www.njconsumeraffairs.gov.

- 3) Get references from your potential contractors.

Ask previous customers if they were satisfied with the work. Was the work started and finished within a reasonable period of time? Does the contractor return phone calls? If problems were encountered how did the contractor respond to complaints?

- 4) Does the contractor belong to a trade association?

Membership in a professional home building or repair association may be a sign that the contractor recognizes the responsibilities of the profession and follows its best practices.

STEP TWO: FINDING A REPUTABLE CONTRACTOR

- 1) Make a list of potential contractors.

Ask friends, neighbors, and relatives for names of contractors they used. Find out if their experiences were good or bad. Would they use that contractor again? Were there any concerns with the contractor or the work?

- 2) Call the Division of Consumer Affairs (800) 242-5846 to find out if the contractor is registered, and if the contractor has the required licenses to perform the type of work involved in your job. Subcontractors also must register and registration checks should be

- 5) Check with your insurance agent.

Do they have any experience with potential contractors? Do they have a list of recommended contractors? Will your insurance cover you in the event of an accident during construction? What is their policy with respect to progress payments? What types and amount of insurance coverage should you look for from potential contractors if your policy provider does not cover all or parts of the construction phase?

- 6) Sit down with potential contractors. You should interview at least three contractors. The purpose of the initial interview is not to sign a contract, but rather to ask questions that will help you decide whether this is a contractor with appropriate experience and who you feel comfortable dealing with.

Some questions to ask potential contractors:

What experience, expertise and certification do you have?

Do you have a specialty?

Who will be at my home supervising and doing the actual work- you, employees, subcontractors?

Will you get all required permits? Be sure to find out why not if the answer is "no".
What written warranties do you offer?

Are you willing to sign a detailed contract, breaking out line item costs?

How can I contact you directly if something needs to be addressed at the job?

How many other jobs will you be working on at the same time?

Give me your best estimate of how long the job will take to complete.

What will be the date to start the work?

What will the estimated completion date be?

Ask for copies of the contractor's state registration and licenses.

How much does the contractor want upfront? (red flag item).

Are you insured for builder's risk, workers compensation and general liability?

Are you willing to give lien waivers at the beginning of the contract and on each progress payment?

STEP THREE: THE CONTRACT

- 1) Home Improvement Practices regulations *N.J.A.C. 13:45A-16.1 -16.2*, authorized by the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8-1 et seq*, require that any home improvement contract for more than \$500 be in writing. The contract will be the most important document between you and the contractor. Often it's not what the contract says, rather what it does not say that causes problems down the road. The two page contract with a brief statement of services and a price is obviously open to a lot of interpretation and potential argument. It most likely does not include many of the consumer protections required by the law. A contract that provides both sides with as complete an understanding of the deal as possible will eliminate problems of interpretation.

- 2) Contractors may prefer a short form agreement, but you should prefer an agreement that touches as many bases as possible. The American Institute of Architects (AIA) publishes construction contract documents and other forms for all sorts of construction projects from relatively small home improvements to full scale commercial buildings. Generally, the AIA forms include the

services of an architect. These forms are widely accepted in the industry and can easily be used or adapted to your project. AIA Form 105 will work well for most Sandy home repair contracts. The form can be purchased at www.aia.org. Many other forms that provide the level of detail needed are available from other companies on the internet.

3) What should be in the contract? The contract terms listed below are drawn from best practices or are required by New Jersey laws.

Complete names and addresses of the contracting parties.

Starting date and ending date.

List of permits and whose responsibility it is to apply for them and to pay for them.

Complete description of the work contractor agrees to perform, including a list of what is included and what is not included in the total contract price.

Complete lists, by trade, line item or other measureable breakdown of each item to be provided by the contractor and the cost of each line item.

Complete list of utilities and appliances including brand, model number and warranty descriptions.

Phased payment schedule based on progress milestones. For example, one-quarter at start and agreed upon partial payments when agreed upon milestones are reached and a final overall 10% holdback to be released by you upon completion, final approvals from the municipality and any other agreed upon parties, such as an architect, and

acceptance by you that the work is satisfactory and fully complete.

Procedures for requesting, approving and documenting change orders.

Termination provisions. The contract should include provision for you to terminate it if the contract is in substantial breach or exceeding the time limits set to finish the work or phases of the work. Termination terms should include the notice requirements.

Lien waiver language. You will want assurances that subcontractors and suppliers have been paid and will not place N.J. Construction Lien Law liens (sometimes called "mechanic's liens") on your home.

Warranties for workmanship and manufacturers as applicable, length and terms of warranties.

Describe the exact method by which changes to the contract are proposed and accepted, including written agreement as to an increase or decrease in total contract price.

It is very important to check the payment and disbursement requirements of any insurer or grantor if you will be receiving funding for Sandy repairs. These have to be included in the contract if the payment will be, to any extent, subject to third-party review and approval.

In addition to the foregoing, the Consumer Fraud Act, the Contractor's Registration Act (part of the Consumer Fraud Act) and the Home Improvement Regulations of the Division of Consumer Affairs, require that all contracts with home improvement contractors are subject

to or must include specific information. Failure of the contractor to strictly comply with the requirements of these laws will result in counsel fees and costs being awarded to the homeowner and if there are ascertainable damages the courts can award up to treble damages against the contractor. Case law has made it clear that the Consumer Fraud Act is remedial legislation that must be construed liberally by the courts and that the plaintiff does not have to prove defendant's intent or ascertainable damages in order to be awarded attorney's fees, filing fees or costs of suit.

The following is a list of some of the requirements of the Consumer Fraud Act and the Home Improvement Practices Rules, which should also be recited in the contract:

The contractor must be registered as a Home Improvement Contractor with the New Jersey Division of Consumer Affairs (registration can be verified at www.njconsumeraffairs.gov/hic/ contractor must provide toll free number for Consumer Affairs)

The contract must include the name and address of the contractor.

The contract must state the contractor's registration number.

Contract must include a copy of contractor's certificate of general liability insurance showing a minimum coverage of \$500,000 per occurrence.

Contract must include the telephone number for the contractor's insurance company.

Contract must set forth the full price of the complete work.

Contract must state the date that the work will start and the date that it will end (when the work will be finished).

Contract must provide a three day Right to Cancel in the format provided by the Consumer Fraud Act.

Contract must identify the brand, type and quality of materials to be provided.

Contract must state the warranties for goods and materials that are to be provided.

Contract must be signed by both parties.

Contract modifications must be in writing signed by both parties.

Contractor's communications including letters and invoices must contain the contractor's registration number.

Contractor must not begin work until all required permits are obtained.

Contractor must not begin work until the contract is complete and signed by both parties.

Contractor may not require that the homeowner pay in full prior to completing the work.

Contractor's vehicles must display the company's registration number.

STEP FOUR: PAYING FOR THE WORK, AND PREVENTING & RESOLVING DISPUTES

Your contractor should request payment when the agreed upon milestones have been accomplished, and inspected, by you or your architect or construction advisor and all municipal and other required signoffs as may be required have been obtained. Continuous communication between you and the contractor is important so that unanticipated problems can be addressed as they arise. Delays can be costly and may cause the construction project to get out of sync or give the contractor an excuse to focus on other projects. Therefore, it is essential that changes to the original plans for whatever reason be made known immediately and addressed immediately by both you and the contractor. Requests for change orders by you or the contractor must be discussed in advance and, if agreed to, expressed in writing with a full description of the change and the agreed on price. Overpayment in advance will reduce your leverage so it is important to stay in balance with the progress payment schedule agreed to in your contract.

Make sure that the contractor has filed all warranty registrations with the vendors of goods and materials installed in your home. Call the provider of the warranty to make sure that the warranty is properly registered.

New Jersey Consumer Fraud Act,
N.J.S.A. 56:8-1 et seq.

Home Improvement Practices
regulations, *N.J.A.C. 13:45A-16.1 et
seq., N.J.A.C. 13:45A-17.1 et seq.*

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Collingswood@chlp.org



The Community Health Law Project is a non-profit legal services organization which provides advocacy and legal assistance to individuals with disabilities.

RESOURCES:

New Jersey Division of Consumer Affairs (800) 242-5846 www.njconsumeraffairs.gov

County Community Affairs Offices www.njconsumeraffairs.gov

Ocean County Department of Consumer Affairs (732) 929-2105
www.co.ocean.nj.us/consumer/MainPage.aspx

Monmouth County Division of Consumer Affairs (732) 431-7900

American Institute of Architects www.aia.org

Ocean County Long Term Recovery Group www.ocltrg.org *Case management*

✓ Monmouth County Long Term Recovery Group www.mcltrg.org

Middlesex County Long Term Recovery Group www.middlesexltrg.org

Atlantic County Long Term Recovery Group (Facebook)

Atlantic City Long Term Recovery Group www.atlanticcityrelief.org

Cape May County Long Term Recovery Group (Facebook)

Bergen County VOAD www.bergenvoad.org

Essex County Long Term Recovery Group (Facebook)

Hudson County Long Term Recovery Group (Facebook)

Cumberland County Long Term Recovery Group www.cumberlandltrg.org

Union County Long Term Recovery Group www.unioncountyltrg.org

Builder's League of South Jersey www.blsj.com

Volunteer Lawyers for Justice (973) 645-1955 www.vljnj.org

Ocean-Monmouth Legal Services:
Monmouth County (732) 866-0020
Ocean County (732) 341-2727

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