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HOME CONSTRUCTION CONTRACTS

(as of August 2015)

The Maine legislature has passed several laws governing home construction and the disputes that inevitably arise over the course of constructing or renovating a home. Specifically, the Home Construction Contracts Act, Unfair Trade Practices Act, and Prompt Payment Act contain significant provisions affecting the rights of the interested parties and the legal recourse they may seek. If you are a contractor, subcontractor, supplier or homeowner, we recommend taking the time to familiarize yourself with the legal issues that arise in home construction projects.

HOME CONSTRUCTION CONTRACTS ACT
(10 M.R.S. §§ 1486 - 1490)

If there were one piece of legislation in the area of construction law to familiarize yourself with, this would be it. The act is broad in scope, covering all contracts to build, remodel or repair a residence, including not only structural work but also electrical, plumbing, and heating work, carpeting, window replacements, and other nonstructural work. The general rule is this: any contract for more than \$3,000 in materials or labor 1) must be in writing and signed by the contractor and the homeowner; and 2) must contain the essential elements of the deal, as listed in the statute. Furthermore, any change order must be set forth in a signed writing. Each violation results in a civil penalty of \$100-\$1000. Moreover, failure to abide by these rules constitutes “prima facie evidence” of a violation of the Unfair Trade Practices Act, which carries harsh penalties as discussed below. Importantly, the parties may exempt themselves from any of these requirements by mutually agreeing to do so.

UNFAIR TRADE PRACTICES ACT
(5 M.R.S. §§ 205-A - 214)

A violation of this act carries with it both public and private repercussions. The AG’s Office is authorized to enforce this law (and seek an injunction or other court order/judgment to remedy any damages sustained by the homeowner) when it would be in the public interest. The homeowner himself may also file suit against the contractor within six years of the violation to recover actual and restitution damages and for any other equitable relief deemed necessary and proper by the court. Attorney’s fees and costs of suit are also recoverable.

As summarized in the section above, a violation of the Home Construction Contracts Act is presumptive evidence of a violation of this act – and therefore subjects the defendant contractor

to liability under this act and exposure to its corresponding penalties. Other unfair¹ or deceptive² acts or practices also constitute a basis for which a contractor can be sued under the UTPA.

PROMPT PAYMENT ACT (10 M.R.S. §§ 1111 - 1120)

This Act contains powerful provisions protecting a contractor and subcontractor's right to be paid in a timely manner. Unless the contract stipulates otherwise, payment of interim or final invoices is due from the owner within 20 days after the end of the billing period or delivery of the invoice, whichever is later. If payments are delayed, the owner must pay the contractor interest on the unpaid balance.

A contractor must disclose to a subcontractor the due date for receipt of payments from the homeowner. Once the homeowner has made interim or final payments to the contractor, the contractor has seven days to pay the subcontractor the full or proportional amount received for the subcontractor's services provided, with interest for any delayed payments.

If a good faith dispute has arisen under the contract, it may be permissible to withhold payment. If a court finds wrongful (i.e. bad faith) withholding, however, the prevailing party is entitled to damages, attorney's fees, and a penalty in the amount of 1% per month of all sums wrongfully withheld.

MECHANIC'S LIENS (10 M.R.S. §§ 3251 - 3269)

If a homeowner refuses or is otherwise unable to pay for work completed on his/her home, the contractor, subcontractor, or supplier who has performed services or supplied materials may file a mechanic's lien on the property to ensure they get paid. There are deadlines and recording requirements that must be strictly complied with in order to safeguard your lien rights.

CONCLUSION

If you are a contractor, subcontractor or homeowner who's contemplating having work done on your home, it is worth speaking with an attorney to ensure your interests are properly protected. Contractors or subcontractors carrying on business in Maine should review their insurance policies on a regular basis to make certain they're covered for the work they perform. Furthermore they should consider formally incorporating as there are often significant tax and other associated benefits. The firm has extensive experience preparing and reviewing contracts and advising clients on the intricacies of Maine construction law and business law in general. We encourage you to contact us if you have any questions or seek guidance in this area of the law.

¹ An act or practice is unfair if it causes or is likely to cause substantial injury to consumers; it's not outweighed by benefits to consumers or economic competition; and it's not easily avoidable by consumers.

² An act or practice is deceptive if it's a material representation, omission, act or practice that is likely to mislead reasonable consumers. A deceptive act can be found even if the contractor had no intent to deceive.

For more information on this topic, please see the following online resources:

- Maine AG's Home Construction & Repair website w/ various resources for consumers: http://www.maine.gov/ag/consumer/housing/home_construction.shtml
- Consumer Rights When Constructing or Repairing Your Home, Maine Consumer Law Guide: <http://www.maine.gov/tools/whatsnew/attach.php?id=27936&an=1>
- AG's Model Home Construction or Repair Contract, Maine Consumer Law Guide: <http://www.maine.gov/tools/whatsnew/attach.php?id=27938&an=1>
- The Maine Unfair Trade Practices Act, Maine Consumer Law Guide: <http://www.maine.gov/ag/dynld/documents/clg3.pdf>

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