**MINIMIZING RISK IN HOME RENOVATION AND NEW CONSTRUCTION**

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A lot can go wrong with home renovation or new construction. When construction related problems arise, they can be expensive. Many of these problems can be avoided by proper attention.

Before even signing a contract, the owner should make sure the contractor is appropriately licensed. That can be done by checking the online records of Florida’s Department of Business and Professional Regulation. While on that website, check for any complaints against the contractor. Do not stop there, check the same website for the qualifying agent and officers of the Company to see if there are any problems with them or their licenses.

Check the clerk of courts records to see if there are any lawsuits involving the builder or its principals. Some lawsuits are unfounded, but if there are multiple lawsuits involving the same builder a troubling pattern exists that should be carefully investigated.

The owner should make sure a permit is obtained when a permit is required. Unscrupulous contractors will skip this requirement to save permit costs.

The contract itself can be the source of problems. There are plenty of things an owner should require or ask for and to list all of them would exceed the length of this column. But, I will list some important items the contract should address from an owner’s standpoint.

How will contract cost be calculated? A lot of builder contracts now have clauses that allow the builder to charge more money if material or labor costs increase. Those clauses should be read carefully. In a time of supply chain disturbances, they can be expensive.

Confirm how extras and change orders will be invoiced. Most builder contracts provide that extra and change orders will be billed at cost plus a certain percentage. There is no incentive for a subcontractor to give a low bid for such a change and most contractors are happy to add a percentage to the higher cost. The owner should make minimal changes by working with the builder to have the original contract specifications as close to “perfect” as possible.

Cost-plus contracts can be particularly dangerous. When a builder works under a fixed price contract, the builder has an incentive to get subcontractors to submit lower bids and to shop for materials at the lowest possible cost. If the builder makes profit and overhead no matter what cost might be, that incentive is lost. A cost-plus contract may sound like a fair deal to an owner, but it is often an invitation for an unscrupulous builder and subcontractors to inflate costs.

Completion date is rarely firm in local construction contracts. Most have “weasel” verbiage that makes the completion date whenever the job is finished as opposed to a deadline. That means projects can take far longer than an owner plans. The property may not be available to use or rent plus the owner may be paying loan interest for an incomplete building. Even if the contractor will not agree to a firm completion date, an owner should at least get a clause mandating there be continuous work on the project with pictures provided by the builder. With some builders, the only time work gets done is when the owner is coming into town.

Payments to the contractor are a frequent problem area. Most builder contracts ask for payments before any work has started and draws as work progresses. The contracts are drafted by and usually favors the builder. All of the builder profit might be built into the early draws. In some cases, the builder will actually have to pay more to finish a job than the builder will get in the last draw or draws. That not only reduces incentive to work, but also can result in the builder abandoning jobs. That is especially true if the builder underbid to start or costs have increased.

Contractors pay the subcontractors after the owner pays the contractor. The owner cannot count on the contractor paying subcontractors and material suppliers, but should make sure (at a minimum) subcontractors are paid from previous draws.

Florida law requires subcontractors and material suppliers provide a notice to owner that they are on the job within 45 days after they start on the job or they lose lien rights. Once the owner receives a notice to owner, the owner must make sure the subcontractor or supplier gets paid or the owner risks the subcontractor or supplier filing a lien. Subcontractors and suppliers get information about the owner from a notice of commencement signed by the owner and which the contractor is required to post on the job site. The owner must make sure that is done.

As each draw payment comes due, the owner should also require the contractor provide a release of lien from all subcontractors and suppliers who have provided a notice to owner. Since the subcontractors and suppliers are generally a draw behind, the releases will only be through the previous draw but that will minimize lien rights to the current draw amount. The releases should be carefully reviewed as some in common usage are conditioned on receipt of payment and are not actual releases. The owner should also check the building department records to make sure all inspections have passed.

At end of the job, the owner should require a final contractor’s affidavit in which the contractor confirms that all subcontractors and suppliers have been paid in full or lists those that are unpaid. As long as the owner has final releases from all subcontractors and suppliers that provided a notice to owner and the final contractor affidavit states all subcontractors and suppliers have been paid, the owner can make the final payment and any subcontractor or supplier who did not serve a notice to owner loses lien rights. At the time of final payment, the owner should also get a final release of lien from the contractor and make sure any permits are properly closed out with the local government.

Dealing with contractors and contracts can be expensive if not done correctly. Unfortunately, many owners treat building and remodeling a home as if it is as simple as buying groceries.

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