

CONSUMER TIPS:

Rebuild Contracts and Contractor Issues

This guide explains the role of the contractor, describes common types of construction contracts, and summarizes our identified best practices for hiring a contractor, reviewing the construction contract, managing a rebuild, and avoiding and reporting suspected construction scams. **These tips are intended for homeowners who need to rebuild their homes due to destruction caused by a disaster.**

The information provided in this document is for informational purposes only and does not constitute legal advice. You should consult with a qualified attorney for advice regarding your specific circumstances.

1. The Contractor

- **Role:** The contractor (also called the “general contractor”) manages and performs the core construction work in a home rebuild, including coordinating labor and subcontractors, sourcing materials, scheduling trades, and ensuring that the project is completed according to plans, code, and safety standards.
- **Limitations:** The contractor does not typically handle design decisions, financing, insurance claims, or tasks outside the construction scope unless specifically included in the construction contract. The contractor also does not act as your legal, tax, or insurance adviser, and they rely on the owner for timely decisions, access, and payments.
- **Comparison to Architect:** The contractor builds the project according to plans, while the architect (if involved) creates and coordinates those plans to guide how the project should be built.
 - If an architect is involved, the architect will help the owner envision and design the project, including by developing drawings that show how the home will look and function. The architect then coordinates the necessary engineers and specialists to turn the design into a buildable set of plans and manages the permitting process with the local agencies. During construction, the architect may also visit the site, answer design

questions, and review proposed changes to ensure that the project is built according to the approved plans.

- An architect may assist clients during the construction phase by overseeing the contract between the owner and contractor and supporting its proper execution. This includes interpreting the contract documents, reviewing submittals, supervising work for general conformance with the design intent, and providing other services to ensure the project is delivered in accordance with contract provisions.

2. Types of Construction Contracts

- **Fixed-Price Contract**

- The owner pays the contractor a single, predetermined total price for the entire project, and the contractor is obligated to complete the work for that amount.
- A fixed-price contract often includes “allowances,” which are essentially budget placeholders that allow the contractor to adjust the final price to reflect the actual cost.
- A fixed-price contract is generally preferable for simpler rebuilds where the owner is concerned about managing the budget.

- **Cost-Plus Contract**

- The owner pays the contractor (i) the actual, documented costs of labor, materials, and services plus (ii) an agreed fee or percentage.
- A cost-plus contract is generally preferable for more extensive rebuilds where the owner requires additional flexibility.

- **Consortium Contract**

- The owner pays the consortium a predetermined, lump-sum price, and the consortium rebuilds the home using a pre-approved plan.
- There is often little (or no) flexibility to negotiate the terms of a contract provided by a consortium, but the price is even more certain than in a fixed-price contract and the rebuild may be faster.
- A consortium contract is generally preferable for smaller homes in tract developments where the owner is very concerned about the timing of the rebuild and managing the budget.

3. Hiring a Contractor

- **Only hire a licensed contractor.**
 - Licensed contractors must post a \$25,000 bond with the **California Contractors State License Board (CSLB)**, but the industry standard is that licensed contractors will post at least a \$500,000 bond.
 - You can file a claim against their bond if you have problems with the work that a licensed contractor performs.
 - To confirm a contractor's license, call the CSLB at **1-800-321-2752** or visit its website at:
<https://www.cslb.ca.gov/OnlineServices/CheckLicense/CheckLicense.aspx>
 - Ensure that the identity of the contractor matches the license by checking that the contractor's signature on the contract matches their signature on file with the CSLB.
 - In addition to the general contractor, check whether the main subcontractors (plumbing, electrical, and mechanical) are also licensed.
- **Check the contractor's other credentials.**
 - Confirm that the contractor has workers' compensation insurance. A contractor must have workers' compensation insurance unless the contractor does not have any employees.
 - When hiring a general contractor, look for "B" (General Building) on the contractor's license, which is the classification for home construction. The general contractor may subcontract with other specialty trades as needed for other projects in the home.
 - Check with the **Better Business Bureau** for any history of unsatisfied complaints at bbb.org. Also ask the contractor if they have ever been involved in a dispute or lawsuit with a client, as well as whether they have ever had to file a mechanic's lien.
 - Confirm that the contractor has general liability insurance of at least \$1,000,000.
 - Verify that the contractor's permanent business address is in California.
- **Get at least three bids, and check referrals.**

- Visit the homeowners they have done work for and review the quality of the work. Ask the homeowner if the work was done on time and if problems were resolved in a timely manner.
- **Get a written contract.**
 - **DO NOT** sign a contract before you've had time to think it over and compare bids.
 - See below for tips for reviewing the contract.

4. Reviewing the Construction Contract

Take your time, read the contract carefully, and **DO NOT** sign the contract unless you understand the terms! If you have an architect, have them review the construction contract with you. Note that AIA (American Institute of Architects) standard contract provisions are highly recommended by industry experts as examples of acceptable contract language (see aicontracts.com).

- **Overview:** Your home improvement contract should always be in writing, legible, easy to understand, and inform you of the right to cancel or rescind the contract.
- **Financial Terms**
 - **Price:** All contracts must include the agreed-upon price.
 - **Down Payment:** If the contract calls for a down payment before work starts, the down payment cannot be more than \$1,000 or 10% of the contract price, whichever is less, excluding finance charges.
 - There are **NO** exceptions for special order materials.
 - There is an exception to this rule for about a dozen contractors who have filed a blanket performance and payment bond with the CSLB Registrar. This information is noted on the contractor's license detail page on the CSLB's website.
 - **Payment Schedule:** A home improvement contract must include a payment schedule. It should show the amount of each payment and explain what work, materials or services are to be performed for that particular payment.
 - Payments to the contractor cannot exceed the value of the performed work. Before making a payment, check that the payment

and work performed are consistent with the payment schedule in your contract.

- **Finance Charges:** Any finance charges must be calculated and laid out in detail, separate from the contract amount. Finance charges generally include interest and related service fees.
- **Other Material Terms.**
 - **Job Description:** Unclear language causes disputes! The contract should be as specific as possible regarding all materials to be used, such as the style, brand, model, quality, quantity, weight, color, size, or any other description that may apply.
 - **Good Example:** “Install upper and lower maple kitchen cabinets, manufactured by Company XYZ, model 01381A, style/color 0123, hinge and hardware selection, as per the plan dimensions.”
 - **Bad Example:** “Install kitchen cabinets.”
 - **Start and Completion Dates:** The contract should set a clear project timeline.
 - **Warranties:** Any warranties for labor or materials should be in writing and, if a warranty is provided, the contract should clearly state what is guaranteed, who is responsible, and how long the guarantee is valid.
 - **Labor:** Consistent with California law, builders provide certain warranties for new homes, including a one-year warranty for any “fit and finish” issues involving cabinets, mirrors, flooring, interior and exterior walls, countertops, paint finishes, and trim, a 4-year warranty for any defective installations of plumbing, sewer and electrical systems and a 10-year warranty for any structural issues.
 - **Materials:** A warranty is often included for certain materials, such as appliances and roofing materials.
 - **Check:** Does the warranty also cover subcontractors?
 - **Mechanics Lien:** The contract must include a Mechanics Lien Warning.
 - A mechanics lien is a claim made against the property by the person who was not paid, and is recorded with the county.

- Anyone who helps improve property but is not paid, may place a “mechanics lien” on the property and sue the property owner in court to foreclose the lien. **This includes contractors, subcontractors, suppliers, and laborers—even if you pay your contractor in full!**
- To avoid a mechanics lien:
 - Obtain a list from the contractor of all subcontractors and material suppliers who will work on the project, along with the dates they will start and finish the work.
 - Use joint checks. A joint check is made to both the general contractor and subcontractor. A joint check prevents subcontractors from filing liens on the property if the general contractor fails to pay them.
 - Require lien releases. When their portion of the work is completed and prior to payment, require that each subcontractor and material supplier sign a **conditional** lien release. After payment, require that each subcontractor and material supplier sign an **unconditional** lien release.
 - A conditional lien release is “conditional” because the lien is only released once the relevant payment has been made.
- **Permits:** The contract should identify what permits should be obtained, who is responsible for securing them, and who will pay the fees.
 - If the contractor is responsible for obtaining the permits, ask for final paperwork and receipts.
- **General Conditions:** The contract should provide details about on-site management practices, such as where tools and materials should be stored, as well as the standard of care.
 - This provision also often specifies that the contractor will take reasonable precautions to perform with the skill and knowledge normally possessed by members of their trade and to prevent damage, injury, or loss to employees or other nearby persons.

- **Insurance-Related Provisions**

- If you are rebuilding with insurance proceeds held by a lender, payments should be conditioned upon the contractor's compliance with any lender-imposed requirements (e.g., lien releases and completion of required inspections).
- If there is a delay in payment or otherwise, the contractor should not be excused from its obligations if the delay is attributable to the lender (rather than the homeowner).
- **Changes (also called Amendments):** Any changes to the terms of the contract (including the price) must be in writing and signed by you and the contractor.
- **Retention:** A retention clause allows you to withhold a certain amount (approximately 5-10% of the project's total value) until the contractor completes the project. This withheld amount acts as a financial incentive for the contractor to finish the project properly, address deficiencies, and complete all punch list items before receiving the final release of funds.
- **Termination for Convenience:** The contract should include a provision that lets you cancel the contract without proving "cause" (i.e., that the contractor did anything wrong), which avoids the risk of you having to pay the contractor for any profits that the contractor would have earned if the project had continued. Instead, if this provision is included, you would only pay for the work already completed and the materials already ordered.
 - If this provision is included, it is typically fair for the contractor to request a small termination fee.
- **Cancellation:** Once you receive a written Notice of Right to Cancel from the contractor, you typically have **SEVEN (7) days** to cancel your contract without penalty. See Section 7159(e)(7) of the California Business and Professions Code.
 - To cancel, send the contractor a written notice of cancellation by certified mail to the address listed on the contract. You **CANNOT** cancel by telephone.
 - To be valid, your cancellation must be sent by midnight of the seventh day.

5. Managing A Rebuild

- **Set expectations for communications.** Discuss who will be the main point of contact during the project, frequency of communications/updates, and how you

will be communicating. Discuss whether the contractor will help you select materials and finishes.

- **Be present.** Attending meetings with your contractor and building inspectors will enable you to better monitor progress and understand any issues that arise.
- **Never pay cash.** Obtain proof of payment by paying with checks, money orders, electronic payment methods, or credit cards (unless there is a credit card fee). Keep records of all payments that you have made.
- **Know when to make your final payment.** Make sure you are satisfied with the work before signing a Completion Certificate. Do not make the final payment until the job is completely finished.
- **Complaints and disputes:**
 - If you are not satisfied with the work, file a complaint by calling the CSLB at **1-800-321-2752** or visiting its website at: www.cslb.ca.gov/Consumers/Filing_A_Complaint
 - **Mark Your Calendar:** You typically have **FOUR (4)** years from the date of the suspected violation to file a complaint with the CLSB about a faulty project, but the 4-year deadline can be extended if additional warranties are included in the contract.
 - **Be Aware:** To resolve the dispute, the CSLB may recommend mediation or arbitration, which are processes for resolving disputes outside of court. However, if the contractor does not have a history of repeated acts and the estimated financial injury is less than \$12,500, the CSLB may provide you with information about how to pursue financial compensation through small claims court or the contractor's license bond.
 - If the CSLB is unable to resolve the dispute, you may still be able to sue the contractor. The nonprofit law firm Bet Tzedek ([323-939-0506](tel:323-939-0506)) may be able to advise you if you have a serious dispute with your contractor that has led to a lien on your home or otherwise threatens your ability to stay in your home.
- **Which court?** For individuals in California, (i) claims for \$12,500 or less are generally handled in small claims court and (ii) claims exceeding \$12,500 are generally handled in other civil courts within the Superior Court.

- We encourage you to contact an attorney if you believe that legal action is warranted, especially if your claim exceeds \$12,500. For a list of recommended attorneys, please refer to the **LA County Bar Association's Lawyer Referral Service** (1-866-SMARTLAW, www.smartlaw.org).
- **Records and Receipts:** Keep and organize all records and receipts associated with the rebuild.

6. Avoiding and Reporting Contractor Scams

- **Be careful who you share personal information with and avoid rushing into decisions.** Do not trust vendors who approach you at evacuation centers or hotels. Instead, research online for reliable help.
- **Do not give out insurance details to contractors whom you do not have a contract with.** Do not provide details of your insurance, like the policy number or coverage details, to anyone unless you have signed a contract with them.
- **Be careful of door-to-door offers and aggressive marketing for construction or assistance.** After a disaster, reputable home repair contractors may be slow in performing because of the large amount of other work and shortages in building materials. Be wary of “storm chasers” that show up after a disaster and go door-to-door, create flyers, or otherwise aggressively market their services, often with professional-looking business websites or Facebook pages with phony customer reviews. These scammers often take payments in advance, do little or no work, ask for additional payments, and then disappear.
- **To report a possible scam,** contact the **California Attorney General** at www.oag.ca.gov or the CSLB at **562-345-7600**.