

Hiring a contractor

Hiring a residential building contractor

The *Hiring a residential building contractor* guide offers useful information, including: how to select a contractor, how to solicit bids, what to include in a contract, how to understand a mechanic's lien and how to file a complaint against a contractor.

Do your homework before work begins on your home -- (option: go to quick tips)

The Minnesota Department of Labor and Industry reminds homeowners to do some homework before hiring a building contractor after a storm ... or anytime.

Most contractors are reputable. However, some unscrupulous operators may attempt to take advantage of storm victims. Before hiring a contractor, call the Department of Labor and Industry to verify the contractor is licensed and to learn if there is a history of disciplinary action with that contractor. Do not sign *anything* presented by a contractor unless you read the document very carefully and have made a firm decision to hire that contractor. Generally speaking, if you sign a piece of paper, it is a contract, regardless of what the salesman tells you, and you are then obligated to its terms.

In some cases, a salesman for the contractor will explain that the company will work with the homeowner's insurance carrier to get a good settlement and that the homeowner will not have to pay any more than the amount of their deductible. The salesman will then ask the homeowner to sign an authorization form to allow the salesman to contact the insurer. Many of the forms state that by signing, the homeowner agrees to have the contractor perform the work allowed by the insurance company in exchange for the insurance claim proceeds.

The homeowner may be left with the mistaken impression that they are still free to pursue bids from other contractors, even after signing the document. However, some of these contract forms contain small print (usually on the back of the document) that says if the homeowner cancels the contract after three business days, the homeowner will owe the contractor a percentage (usually from 15 to 50 percent) of the total claim settlement.

This becomes a problem when the homeowner finds another contractor they prefer over the original contractor.

The Minnesota Department of Labor and Industry licenses residential builders, remodelers, roofers and manufactured home installers. To work in Minnesota, these professionals must be licensed. If you hire an unlicensed contractor, you will not have access to the Contractor's Recovery Fund, which is available to compensate consumers who have suffered losses due to a contractor's fraudulent, deceptive or dishonest practices.

Quick tips

Before you hire a contractor, the Department of Labor and Industry suggests the following.

- Ask for the contractor's license number and contact the Department of Labor and Industry at (651) 284-5065 or 1-800-342-5354 to verify the builder is currently licensed and to find out if they have a disciplinary history.
- Ask the contractor how long and where they have been in business.
- Ask for references and check with former customers to see if they were satisfied with the work.
- Ask for a Minnesota business address other than a post office box.
- Ask for a local phone number where the contractor can be reached during normal business hours.

Avoid contractors that:

- arrive in an unmarked truck or van;
- ask you to sign an estimate or authorization before you have decided to actually hire them;
- appear to be willing to do the job at an unusually low price;
- only provide a post office box for their business address;
- require full or substantial payment before work begins;
- refuse to provide you with a written estimate or contract;

- refuse to provide you with a license number issued by the state of Minnesota;
- refuse to provide you with references;
- show up at your door unsolicited; or
- use high-pressure sales tactics.

Before you sign a contract, make sure it includes:

- a detailed summary of the work to be done;
- a description of materials;
- the total contract price or how the price will be calculated; and
- specific timelines and provisions that address what will happen if the contractor fails to meet the contractual deadlines.

What is the Contractor's Recovery Fund?

The purpose of the Contractor's Recovery Fund is to compensate consumers who have suffered losses due to a licensed contractor's fraudulent, deceptive or dishonest practices, conversion of funds or failure to perform. All licensed contractors are required to pay a fee to the fund.

The total amount that can be paid out against any one licensed contractor is \$75,000. If multiple claims are filed against the same contractor, they are prorated. In these situations, you may not be able to recover your entire loss. To better protect yourself, you may wish to request your contractor obtain a performance bond for your specific project, in case the contractor does not perform. A performance bond would provide a specific level of protection for your specific project.

If you have a problem or complaint with a residential building contractor:

- call the Department of Labor and Industry Residential Building Contractors unit at (651) 284-5065 or 1-800-342-5354. You will be able to discuss your situation with an investigator who may offer suggestions about how to resolve the dispute. If you cannot resolve the dispute, you may submit a written request for a formal investigation.



top

Planning to build a new home or remodel your present home?

Your first concern should be to make sure the contractor is licensed to work in Minnesota. If you hire an unlicensed contractor, you will not have access to the Contractor's Recovery Fund. This is a fund that all licensed contractors pay into and it is used to compensate consumers who suffer a loss due to the contractor's actions.

The Department of Labor and Industry licenses residential builders, remodelers, roofers and manufactured home installers. Before hiring a contractor, the department recommends you ask for the contractor's license number and contact the Department of Labor and Industry to verify the builder is licensed. You can also find out if he or she has been the subject of any disciplinary action.

The department also advises consumers to ask the contractor for references and check with former customers to see if they were satisfied with the quality of work performed. Ask how long the contractor has been in business and where, and ask for a Minnesota business address other than a post office box. Also ask for a local phone number where the contractor can be reached during normal business hours.

When shopping for a contractor, avoid hiring any contractor who:

- arrives in an unmarked truck or van;
- appears to be willing to do the job at an unusually low price;
- requires full or substantial payment before work begins;
- refuses to provide you with a written estimate or contract;
- refuses to provide you with a license number issued by the state of Minnesota;
- refuses to provide you with references;
- shows up at your door unsolicited; or
- uses high-pressure sales tactics.

Before signing a contract, make sure it includes a summary of the work to be done, a description of materials, the total contract price or how the price will be calculated, and specific timelines and provisions that address what will happen if the contractor fails

to meet these deadlines.

Consider a performance bond

Consumers are also advised to be aware that although the Contractor's Recovery Fund helps consumers recover losses from licensed contractors, the total amount that can be paid out against any one licensed contractor is \$75,000. If multiple claims are made against the same contractor, they are prorated; therefore, an individual consumer may not recover the full loss. To provide additional protection, you may request that your contractor obtain a performance bond, which would provide a specific level of protection for your project.

If you have a problem or complaint with a residential building contractor, you should call the Department of Labor and Industry Residential Building Contractor unit at (651) 284-5065 or toll-free at 1-800-342-5354. A department representative will discuss the situation with you and give you information about how to resolve the problem. You may also submit a written complaint for formal investigation.

▲ top

Contractor's Recovery Fund

The Contractor's Recovery Fund compensates owners or renters of residential property in Minnesota who have lost money due to a licensed contractor's fraudulent, deceptive or dishonest practices, conversion of funds or failure of performance. This packet contains everything needed to apply to the fund.

▲ top

What

you

need

to

know

C

WINNERS ONLY
DIVERSITY
CAREERS

HIRING A

RESIDENTIAL

CONTRACTOR

The Minnesota Department of Commerce has prepared this guide to help you better understand hiring a residential contractor. It gives you information on choosing a contractor and on steps to take to protect yourself from loss.

In addition to licensing residential building contractors, the Department of Commerce has the authority to initiate administrative disciplinary action and/or impose civil penalties against the licensees. The Department also has regulatory responsibilities in the insurance, banking, energy, real estate, securities, and telecommunications industries. If you have a question about Minnesota consumer protection laws regarding any of these industries, please call one of the numbers listed on the back of this publication.

The Minnesota Department of Commerce regulates insurance agents, agencies, adjusters, and companies operating in Minnesota. If they are licensed to do business in the State, they are responsible for adhering to the laws and rules that govern the industry. This guide does not list all of these regulations. If you have a question about your insurance, please contact the Department's Consumer Response Team at 651-296-2488, or toll free 800-657-3602.

Duplication of this guide is encouraged. Please feel free to copy this information and share it with others.

Department of Commerce

PLANNING ON BUILDING OR REMODELING YOUR HOME...

Few business transactions are more important than the one you make with a residential building contractor. Having a comfortable and well built home—as well as protecting a considerable financial investment—all rely on having a job well done. For these reasons, the state of Minnesota establishes standards and safeguards to help homeowners avoid hiring disreputable or unqualified contractors, and to protect them against sloppy or poor quality construction.

The Minnesota Department of Commerce is the agency responsible for licensing residential building contractors; it has the power to assist consumers by investigating complaints and taking action against contractors who violate state laws and rules. The Department also licenses roofers and manufactured home installers.

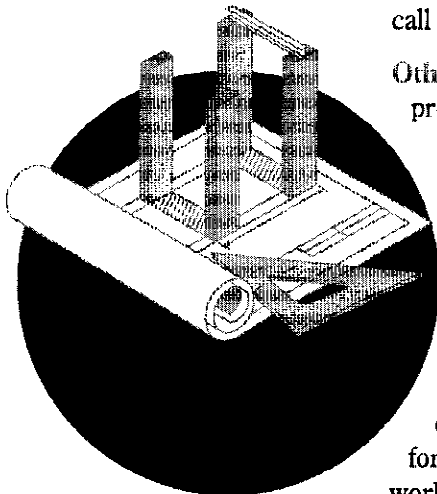
The Department has prepared this brochure principally for those planning to contract to have a new home built or their present home remodeled. It describes the state regulations regarding the licensing and performance of contractors, recommends steps to take to help ensure a satisfactory job, and tells what recourse the consumer has in cases where the results are less than satisfactory.

CHOOSING A CONTRACTOR...

Start with a licensed contractor. The Department strongly recommends that you hire a contractor who is licensed by the state of Minnesota. By hiring a licensed contractor, you ensure that the company has met certain requirements, including having a principal of the company pass an appropriate examination and having liability and property damage insurance. A licensed contractor must also take a certain number of continuing education classes each year.

Hiring a licensed contractor provides another very important benefit—it gives you access to the Contractors Recovery Fund, which reimburses consumers who suffer losses (see page 6). Minnesota law legally exempts certain contractors from the license requirement, among them contractors who gross less than \$15,000 annually, specialty contractors who provide only one skill, and homeowners doing work on their own homes. Although these contractors are operating legally without a license, if you hire an unlicensed contractor and suffer a loss, you will not have access to the Contractors Recovery Fund.

Check on the license status of a contractor by calling the Department of Commerce at 651-296-2488, or statewide toll free at 1-800-657-3602. The Department can verify if the contractor has a license and also if there are any actions or sanctions on record. For the names of licensed builders in your area, you can call the local chapter of the Builders Association of Minnesota.



Other steps to take. Consider the kind of home or remodeling project you are planning, and make inquiries about the names of builders who specialize or have experience in that type of construction. Ask friends or neighbors who have undertaken similar projects, or ask building supply companies or others in the industry. (If you are concerned about designing an energy efficient home or addition, you can call the Department of Commerce Energy Information Center (see sidebar, page 9) Call the Better Business Bureau to see if it has received any complaints against a particular contractor. Ask for references, and be sure to contact and ask former customers if they were satisfied with the quality of the work or if they encountered any problems. Ask the contractor

how long he or she has been in business and ~~where~~ and ask for a Minnesota business address other than a post office box. Also ask for a local phone number where the contractor can be reached during normal business hours.

WHAT TO

Following are some indications that the contractor may not be reliable. It is probably best to avoid working with a contractor who:

- Arrives in an unmarked van or truck.
- Appears to be willing to do the job at an unusually low price.
- Requires full or substantial payment before work begins.
- Refuses to provide you with a written estimate or contract.
- Refuses to provide you with a Minnesota Department of Commerce license number.
- Refuses to provide you with references.
- Shows up at your door unsolicited.
- Uses high pressure sales tactics.
- Asks you to obtain any necessary permits.

Ask for bids. Once you have the names of potential contractors you consider satisfactory, ask them to submit bids. You should receive at least three bids on any home construction or major remodeling project. The bids should be in writing and be fairly detailed in the scope of the work, type of materials, and total cost. If time is a factor, an approximate completion date should be included. Remember that the lowest bid may not necessarily be the best. If you are building a home, you will want to have a builders' risk or appropriately amended homeowner's policy in effect from the time construction begins.

THE CONTRACT...WHAT TO INCLUDE

The contract you sign with your builder or remodeler should be specific and fairly detailed. It should include the kinds of materials to be used and, when possible, specify brand names, colors, grades, styles, and model numbers. The contract should also include the names of any subcontractors and all material suppliers. This is especially important in case of any action against you by a contractor or subcontractor (see Mechanic's Lien page 7).

Other items to include are:

Building permits: The contractor should obtain the necessary permits so that the contractor is responsible for meeting all building codes; if you obtain the permits, you will be responsible.

Starting and completion date. Since delays can and do occur, however, a general statement allowing for reasonable delays is a good idea.

Change order clause. This is an agreement that the contract cannot be modified without the written consent of both parties.

Schedule of payments. A down payment is customary, but it should not be more than a modest percentage of the total job. Since many contractors are small businesses and need some influx of cash to buy material and pay wages, a payment schedule might be set up based on the amount of work done to date.

Holdback clause: This allows you to withhold payment until sometime after the job is completed, giving you time to inspect the job.

Clean-up. This should be included, especially if a project is likely to create debris.

CONSUMER PROTECTIONS AGAINST FAULTY WORK

Statutory Warranty.

Minnesota law requires Minnesota builders and remodelers to warrant that the new home or home improvement project is:

Free of major construction defects for 10 years. "Major construction defect" means damage affecting the stability and safety of the dwelling. It does not include damage caused by flood, earthquake, or other natural disaster.

Free for two years from mechanical defects caused by faulty installation of plumbing, electrical, heating, and cooling systems.

Free for one year from defects caused by faulty workmanship and defective materials.

This statutory warranty is in addition to any other warranty you may have with the contractor. It is in effect regardless of whether you have it in writing. The Department of Commerce has no authority to interpret or enforce this warranty law, however. If the contractor fails to meet the warranty, the homeowner has the right to pursue private, civil action to seek damages necessary to remedy the defect or to make up the difference between the value of the home without the defect and the value of the home with the defect. In the case of a home improvement project, damages are limited to the amount necessary to remedy the defect or breach.

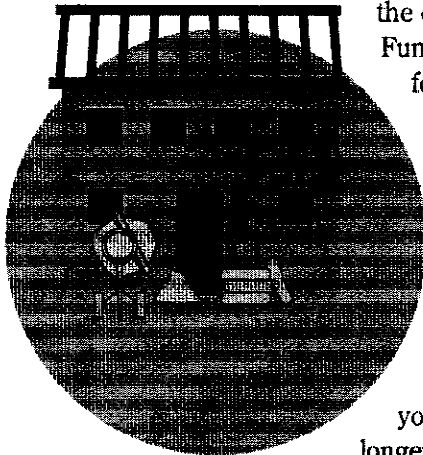
The warranty is limited to the items listed above; it does not extend, for example, to loss or damage caused by defects in design, installation, or materials supplied by the owner, or to damage resulting from negligence or improper maintenance by anyone other than the contractor. Nor does the warranty cover damage from dampness and condensation due to insufficient ventilation after occupancy. A complete list of exclusions is found in Minnesota Statutes Chapter 327A.

The Contractors Recovery Fund.

Despite taking care in selecting a contractor and writing a contract, you could end up with an unsatisfactory job or the contractor may not be able to complete the work. If either of these occur, your first step is to take legal action and obtain a judgment against the contractor. If you are unable to collect from the contractor, you can seek compensation through the Contractors Recovery Fund which is established and administered by the state (provided your contractor is licensed by the state).

First, as noted above, you must take action against the contractor and obtain a judgment in your favor.

Next, you must search for assets to pay your judgment; if the contractor has none, you must apply to the Recovery Fund within one year of your judgment. For application form and procedures, call the Department of Commerce (see section on how to make a complaint).



The next steps will depend on the amount of damages you are seeking and how many claims there are against the contractor. If you are seeking less than \$7,500, you may be able to receive the amount within three to six months. These accelerated payments, however, are limited to \$15,000 per contractor. If that amount has been paid out, or if you are seeking more than \$7,500, you will have to seek a standard recovery, which takes longer and requires a hearing in District Court. The Department of Commerce may support or oppose your request for payment, but the Court will make the decision. One important caution: there is a limit to the amount that can be paid out of the Recovery Fund against any one licensed contractor; it is possible, therefore, that you will not be able to recover your full judgment amount if multiple claims have been filed. Claims filed about problems occurring before Dec. 31, 2000, are limited to \$50,000 per contractor. Claims regarding work or problems occurring after Jan. 1, 2001, are limited to \$75,000. This limit is per builder, not per year. To better protect yourself, you may ask your contractor to obtain a performance bond for your project; the bond would provide a specific level of protection for your specific project.

Part 1 UNDERSTANDING A

Any contractor, subcontractor, or material supplier for a building project can go to court and try to take possession of your property if he or she is not paid. This is called a "mechanic's lien."

State law allows you to pay any subcontractor directly and deduct that amount from the total contract price; or you can withhold from the contractor, for 120 days after all work is completed, the amount needed to pay the subcontractors directly, unless the contractor has given you waivers signed by the subcontractors that give up their right to file a lien against your property.

Minnesota law provides a number of procedures and conditions that protect you, the homeowner, from being the target of an unfair mechanic's lien.

In most cases, your contractor must give you written notice of an intent to file a lien if the contractor is not paid. This notice is required whenever subcontractors or material suppliers are employed; it must either be included in the written contract or delivered separately to you within 10 days after the work is agreed upon. The notice must explain that subcontractors and suppliers may also have a lien on your property if they are not paid, and it must also state the Minnesota law cited above that allows you to pay the subcontractors directly. This contractor's notice must be given properly for the contractor to have the right to a lien against your property.

Subcontractors and suppliers must also give you a specific notice within 45 days of the time the subcontractor first furnishes labor or materials.

If you obtain a lien waiver from the subcontractor, or if you pay the contractor in full before receiving notice from the subcontractor, you cannot be forced to pay for materials or services a second time if the contractor fails to pay the subcontractor. If you pay the subcontractor directly, be sure to get a lien waiver from the subcontractor.

To protect yourself from having liens filed against your property, you should have the contractor list in the contract the names of all subcontractors and material suppliers. In addition, keep track

of any subcontractor notices you may receive before final payment, since some subcontractors might not be listed in the contract. Then, before making final payment, be certain you receive lien waivers signed by each of the subcontractors.

PROBLEMS OR COMPLAINTS...

The Minnesota Department of Commerce helps consumers with questions about laws concerning industries regulated by the Department. If you have a dispute with a residential contractor, call the Department at 651-296-2488 or 1-800 657-3602. A Department representative will discuss the situation with you and offer suggestions on ways to resolve the matter. If your efforts are unsuccessful, you have the opportunity to submit a written complaint, with all the relevant information, requesting that the Department initiate a formal investigation.

When filing a complaint:

- Write in your own words the details of the dispute.
- Include as many details as possible: dates, what was said, policy and claim numbers, etc.
- Provide copies of the contract and other relevant documents.
- Include a phone number where you can be reached and your return address.

Submit the complaint to:

Minnesota Department of Commerce
Enforcement Division
85 7th Place East, Suite 500
St. Paul, MN 55101-2198

Keep in mind that we will likely send a copy of your complaint letter to the contractor in order to elicit a clear and complete response. Although we do not have authority to compel a contractor to provide the specific remedy you seek, we can initiate disciplinary action against the contractor's license if we determine that he or she has engaged in violations of the contractor licensing laws and rules.

Energy Efficient Construction

In addition to licensing residential building contractors and enforcing these regulations, the Department of Commerce has information on the latest developments in energy efficient home construction.

If you are building a new home or planning a remodeling project, the Department's Energy Information Center has a number of publications that will be useful to you. For free copies, call the Center at 651-296-5175, or statewide toll free 1-800-657-3710.

The publications are also available on the Department's web site at www.commerce.state.mn.us

DEPARTMENT OF COMMERCE CONSUMER CONTACTS

Enforcement Division: 651-296-2488 (800-657-3602)

Helps resolve conflicts between consumers and the following industries:

- Insurance
- Financial Services
- Securities
- Real Estate
- Notaries
- Residential Building Contractors
- Cosmetologists
- Appraisers
- Abstractors

Licensing Division: 651-296-6319 (800-657-3978) or email: licensing.commerce@state.mn.us

Provides confirmation of license status for individuals in the industries we regulate.

Unclaimed Property Division: 651-296-2568 (800-925-5668)

Call to find out if you are the rightful owner of any of Minnesota's unclaimed property.

Energy Information Center: 651-296-5175 (800-657-3710)

Energy experts answer questions and distribute information about:

- Home energy conservation practices
- Residential Building Energy Code requirements
- Minnesota's alternative energy sources

Telecommunications Division: 651-296-7107

Answers questions or complaints about:

- Minnesota's Telecommunications companies and services
- Minnesota's Telecommunications Regulatory Policy

TACIP (Telecommunications Access for Communication Impaired Persons)

The following two programs administered by the DOC utilize "communication specialists" to transliterate telephone conversations between hearing or speech impaired individuals and other non-impaired individuals.

- Minnesota Relay Service (for hearing impaired): 800-627-3529
- Speech-to-Speech (for speech impaired): 877-627-3848

Minnesota Department of Commerce

85 Seventh Place East

St Paul, MN 55101-2198

651-296-4026

www.commerce.state.mn.us

020515 Department of Commerce