

General Contractor Wants To Know What He Can Do If Not Being Paid?

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Dear Ask the Attorney:

I am a General Contractor with a home renovation business. We finished a renovation to a home in which we added a huge kitchen to a house. I had a signed contract with the homeowner. The client's were not the easiest to work with as they requested change after change. I explained that each change carried a charge and the homeowner agreed to the charges. I did not have them sign any Change Orders. Now they are claiming that they didn't get what they want and are withholding their final payment which equals about \$35,000. It's been 4 months since we finished and got them a CO on the kitchen

What is my next step?

N.T.

Our guest blogger is Timothy J. Ford, Esq. an associate with the firm of Einhorn, Barbarito, Frost & Botwinick, PC Tim practices in the closely held business group concentrating on employment law, general and commercial litigation, construction law and working with owners/managers of assisted living facilities.

Dear N.T.

You are faced with a difficult dilemma and perhaps a learning experience. New Jersey law places a heavy burden on contractors, with numerous regulations that you must adhere to. In New Jersey, under the Home Improvement Practices Act, all contractors who make or sell home improvements on residential dwellings must be licensed as home improvement contractors. Failure to be licensed

constitutes a violation of the New Jersey Consumer Fraud Act.

All home improvement contracts in excess of \$500 and change orders must be in writing and signed by both parties. Failure to provide a written contract is a per se violation of the Consumer Fraud Act. Not only must these contracts and change orders be in writing, all home improvement contracts must include a detailed description of the work to be performed, materials used, a start and end date, the total cost and the warranty.

It is essential that you have a written signed contract for all projects in excess of \$500. However, that alone is not necessarily sufficient. You must get signed change orders from the homeowner. Although it can be difficult in the middle of a project to demand a signed change order, it is a must. Otherwise, you may not be able to collect for any labor and materials that fall under the change in the scope of work.

Your options may be limited, and you should seek legal representation. You can either negotiate a settlement with the homeowner or file a lawsuit or claim for arbitration. Generally, it is unlikely that you will be able to collect for any work where you did not have a signed change order. If you file a complaint, the homeowner may file a counterclaim under the New Jersey Consumer Fraud Act. If successful, the homeowner may be entitled to three times their actual damages plus attorneys' fees! In addition, it is likely that the homeowner will claim that your work was done improperly or that you deceived them. As a result, you should evaluate your exposure and calculate the amount that you are seeking to determine what amount is in the form of unsigned change orders. You should also consult with an attorney to evaluate what, if any, portion of the homeowners attorneys' fees (if successful) you may be responsible for.

Although this may be a tough pill to swallow, make sure it is your last dose.