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HOME CONSTRUCTION & REPAIR

This chapter provides information on issues related to the construction or repair of your home. It contains the following sections:

§ 1. You Must Have a Written Contract for any Home Construction or Repair that Costs More than $3,000

§ 2. Find Out if Your Municipality Has a Building Code

§ 3 What to Do About Unsatisfactory or Incomplete Construction or Repair Work

§ 4. What to Do About Unsatisfactory Plumbing, Electrical or Septic System Work

§ 5. Suing Your Contractor

§ 6. Beware of Mechanic's Liens

§ 7. The Attorney General's Model Home Construction Contract and Model Change Order

§ 1. You Must Have a Written Contract for any Home Construction or Repair that Costs More than $3,000

Buyer Beware. In Maine, general contractors, and trades such as roofing and framing, are not licensed or regulated. While there are many excellent contractors in Maine, they can be difficult to find and when found are often too busy to take on additional work in short order. This can be a problem for the unwary, particularly for newcomers who are used to living in states with strict regulatory regimes. Below is a short discussion of the law in Maine that applies to home construction. We urge consumers to do a lot of research before choosing a contractor to build or repair your home.

Maine law requires a written contract between a contractor and homeowner or lessee for any home construction or repair work that costs more than $3,000.[1] "Home construction" means any work that involves building, remodeling or repairing a residence, including electrical, plumbing, and heating work, as well as nonstructural work, such as installing carpets or window replacements. The contract must have certain provisions, including the total contract price, the estimated dates when the work will begin and end, a description of the work and materials, and an express warranty of good workmanship. The contractor can't require you to pay more than 1/3 of the contract price as a down payment unless you and

[1] See 10 M.R.S. § 1487 of Chapter 219-A ("Home Construction Contracts," 10 M.R.S. §§ 1486 – 1490). The requirement for a contract applies whether you own your home or rent it.

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the contractor agree to exempt yourself from this requirement. Any change in the work or materials that changes the contract price must be stated in a written change order that is signed by both parties; and both the previous contract price and the revised price must be stated.[2]

You and your contractor can agree to exempt yourselves from any or all requirements of the Home Construction Contracts Act ("HCC Act"), but only if the contractor has informed you of your rights under this law, and you both agree to a contract or change order that doesn't contain a required provision.[3] Make sure you understand what you are giving up if the contractor asks you to agree to an exemption from a required provision. Look at the Attorney General's model home construction contract and the model change order in § 7 at the end of this chapter to see the provisions that are required by law.

A contractor's failure to have a written home construction contract is a violation of the HCC Act. There is no specific remedy set forth in the HCC Act, but a violation of that Act is *prima facie* evidence of a violation (which means a violation is presumed) of the Maine Unfair Trade Practices Act. A *prima facie* violation of the HCC does not entitle the consumer to a remedy. In order to recover the consumer must show an injury or a substantial loss of money or property resulting from the failure to memorialize the parties agreement in writing.[4]

In the absence of a written agreement, courts may nonetheless find that there is an implied agreement and award compensation to a contractor for work performed.[5]

§ 2. Find Out if Your Municipality Has a Building Code

Any municipality that has more than 4,000 residents must enforce the Maine Uniform Building and Energy Code (the "MUBEC"), which imposes statewide minimum requirements for all new construction and additions to existing buildings.[6] Developers and builders should make sure that their plans and specifications are compliant with its provisions if applicable. When you hire a contractor for any home construction or repair work, insist that the contract have a provision that the work shall be done in accordance with the MUBEC.[7]

§ 3. What to Do About Unsatisfactory or Incomplete Construction or Repair Work

The problems that consumers have with their contractors over home construction and repairs usually fall into three categories, which are set forth below along with our suggestions on how to deal with them:

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[2] 10 M.R.S. § 1488.

[3] 10 M.R.S. § 1489.

[4] *Sweet v. Breivogel,* 2019 ME 18, 201 A.3d 1215. Although finding no compensable injury stemming from the lack of a written agreement, the court warned that the absence of a written contract can lead to unfulfilled expectations, immense confusion and costly litigation

[5] *Id.* ¶ 17.

[6] 10 M.R.S. §§ 9721-9725.

[7] Log homes, manufactured housing, post and beam or timber frame construction, or warehouses or silos used for crop storage are excepted from the MUBEC's requirements. 10 M.R.S. § 9724(5).

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1. Your contractor (including any subcontractor) did some work that was satisfactory, but he or she didn't complete the work or failed to do some of it correctly.

Write a letter to the contractor describing all the work that he or she agreed to perform but failed to do, or to do correctly, and ask him or her to tell you within 10 days when the work will be finished. Keep a copy of your letter. The contractor should complete the work within a reasonable time after you send your demand - 10 to 30 days would be reasonable depending on how much is left to be done. If the contractor doesn't respond or tells you that he or she isn't going to do any more work, you're free to hire someone else to finish the work. You can then sue the contractor for your damages (financial loss), including the cost of repair.[8]

2. Your contractor (including any subcontractor) did poor work throughout and/or used defective materials.

The quality of the work that was done by your contractor or subcontractor is best judged by a qualified independent contractor and not by you. Ask an independent contractor to inspect the work and give you a written report of the work that was done, its value, and the cost to correct it. Once you have the report, write to your contractor to explain what's wrong with the work and to demand that he or she pay you the money you're owed based on the opinion of your independent contractor. Keep a copy of your letter. You don't have to let the contractor return to try to fix the work as it may only make matter worse. If you're not satisfied with his or her response, you can sue your contractor for your damages.

3. Your contractor (including any subcontractor) didn't do any work.

Send a letter to your contractor stating that you're cancelling the contract and you want your money back. Keep a copy of your letter. Give him or her a reasonable time to respond - 14 to 30 days. If your contractor doesn't return your money, you can sue him or her for the return of your money. You can also file a report with the police for home construction or repair fraud.[9] If the police consider it to be a civil contract matter, however, they may decline to pursue a criminal charge against the contractor.

§ 4. What to Do About Unsatisfactory Plumbing, Electrical or Septic System Work

The State of Maine licenses plumbers and electricians, who are subject to disciplinary action by their licensing board if they violate the board's rules or law. Site evaluators, who design septic systems, must be licensed by the Division of Environmental and Community Health in the Maine Department of Health

[8] The measure of recovery for defective performance under a construction contract is the difference in value between the value of the work contracted for and the value of the work actually performed. That difference may be proved by evidence of reduction in market value or of the amount reasonably required to remedy the defect. *Van Voorhees v. Dodge,* 679 A.2d 1077, 1081 (Me. 1996).

[9] Pursuant to 17-A M.R.S. § 908(1)(C), a home construction or repair "seller" is guilty of home construction or repair fraud if the seller intentionally promises performance under a contract that he or she doesn't intend to perform or knows won't be performed. See § 908 for other acts by a seller of home construction or repair that constitute fraud.

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and Human Services ("DHHS"). Septic system installers, however, don't have to be licensed.[10] If you have a complaint about any plumbing, electrical or septic system work that was done at your home, we suggest that you take the following steps:

1. Plumbing Complaints

1. Contact the business to try to resolve your complaint.

2. If the business doesn't satisfy your complaint, contact your municipality's plumbing inspector to ask for an on-site inspection and a written opinion on the quality of the plumbing that was done.

3. Contact the Plumbers' Examining Board at (207) 624-8527 in the Office of Professional and Occupational Regulation ("OPOR"). Ask for an on-site inspection and a copy of the written inspection report.

4. Contact at least one other plumber to get a written estimate for any work that is necessary to correct the problem.

2. Electrical Complaints

1. Contact the business to try to resolve your complaint.

2. If the business doesn't satisfy your complaint, contact your municipality's code enforcement officer to ask for an on-site inspection and a written opinion on the quality of the electrical work that was done.

3. Contact the Electricians' Examining Board at (207) 624-8457 at OPOR. Ask for an on-site inspection and a copy of the written inspection report.

4. Contact at least one other electrician to get a written estimate for any work that is necessary to correct the problem.

3. Septic System Complaints

1. Contact the business to try to resolve your complaint.

2. Obtain the certified site evaluation plan from the site evaluator or engineer who designed your septic system.

3. Contact your municipality's plumbing inspector to ask for an on-site inspection and a written opinion on the quality of the work that was done on the septic system. If you don't get a response, contact the State Plumbing Inspector/Site Evaluator in the Division of Environmental and Community Health at (207) 592-7376.

4. Contact at least one other contractor to get a written estimate for any work that is necessary to correct the problem.

[10] A septic system installer may obtain a voluntary certification as a certified installer from the Division of Environmental and Community Health upon completion of the required training.

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§ 5. Suing Your Contractor

Before you sue your contractor, we suggest that you read Chapter 1 in the *Consumer Law Guide* on "How to Resolve a Consumer Complaint." If your claim is for less than $6,000, you can sue your contractor yourself in Small Claims Court. Information on the process and the forms that you'll need are online at: http://www.courts.maine.gov/maine_courts/small_claims/index.shtml. If your claim is for more than $6,000, you should consult with an attorney about bringing the case in either District Court or Superior Court. You may have a private cause of action under 5 M.R.S. § 213 of the Unfair Trade Practices Act, which would allow you to ask for your reasonable attorney's fees and costs in addition to your damages. Keep in mind that you must subpoena for, or otherwise arrange to have at, your trial any person you're relying on to help prove your case. For example, you can't offer your independent contractor's written report as evidence to prove that your contractor did poor work and owes you money because the report by itself is hearsay that would be excluded. Your independent contractor must appear to testify so the court can consider the information in his or her report in making its decision.

§ 6. Beware of Mechanic's Liens

A mechanic's lien is a security interest in property for the benefit of the lienor (lien holder) who wasn't paid for his or her labor or materials that improved the property. Anybody who provides labor or materials, with the owner's consent, for a building, or for the land in or around a building, can obtain a mechanic's lien on the property.[11] Maine's law on mechanic's liens covers not only the contractor who works on a building, but also others such as engineers, architects, landscapers, and building movers.[12] A contract isn't necessary for a person to claim a mechanic's lien, so long as the owner consented to the work or materials provided.

The lienor must comply with the technical requirements of the statute, including the deadlines for filing the mechanic's lien in the appropriate county Registry of Deeds and bringing an action in the appropriate Superior Court or District Court to enforce it. If the lienor successfully enforces the lien and obtains a judgment from the court, the property may be sold to pay the bill.

To avoid a mechanic's lien on your property, ask for a lien waiver when you make a payment to, or for, a person who's worked on your property. A lien waiver is evidence that the person who gave the waiver received payment in the amount indicated. Because a mechanic's lien can have serious consequences for you as a homeowner, contact an attorney immediately if you find out that one has been filed on your property.

§ 7. The Attorney General's Model Home Construction Contract and Model Change Order

You're free to copy and use the Attorney General's model home construction contract and model change order in this section for your home construction project. The model contract meets the current statutory requirements for a written home construction contract, which is required for any job that involves building, remodeling or repairing a residence, including nonstructural work such as electrical, plumbing or heating, or installing carpeting or window replacements.[13] Any part of the contract that contains language required by the law on home construction contracts is in quotes. The model change order meets the current statutory requirements for a change order to a home construction contract, which must be in

[11] 10 M.R.S. §§ 3251 through 3269.
[12] Jason R. Heath, *Observations on Maine's Mechanic's Lien*, 29 Me. Bar J. 182 (2014).
[13] 10 M.R.S. § 1487.

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writing and becomes a part of, and conforms to, the original contract.[14]

Maine law requires that additional provisions be included in any contract for sales that are regulated by the consumer solicitation sales law and the home solicitation sales law;[15] and in any contract for the installation of insulation in an existing home.[16] [17]

MODEL HOME CONSTRUCTION CONTRACT

Contract No. _____

1. Parties to this Contract.

Contractor

Ash Cove Construction - Scott McLeod (Name) 207-432-2404 (Phone)

65 Avenue A, Acton, ME 04001 (Address)

Homeowner or Lessee

_____ (Name) _____ (Phone)

_____ (Address)

2. Location of Work. Michael's Place, Lot #

3. Work Dates.

Estimated date of beginning _____

Estimated date of substantial completion _____

4. Contract Price. This is the total contract price, including all costs to be incurred to properly perform the job. If the contract is a "cost-plus" contract, provide an estimate of the actual cost of labor and materials and the agreed-upon fixed fee that will be added for the contractor's overhead and profit.

_____

_____

5. Payment. Describe the method of payment. The initial down payment is limited to no more than 1/3 of the total contract price.

_____

_____

6. General Description of the Work and Materials.

See Exhibit B - Building Specifications

_____

_____

_____

[14] 10 M.R.S. § 1488.
[15] 10 M.R.S. § 1487(10).
[16] 10 M.R.S. § 1487(11).
[17] For a description of a consumer's rights to avoid a contract that must be included in a contract for sales regulated by the consumer solicitation law, see Title 32, chapter, 69, subchapter V.

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_____

7. Warranty Statement. "In addition to any additional express warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract."

8. Additional Express Warranty (optional). The contractor provides the following additional express warranty:

_____

_____

_____

9. Dispute Resolution.* "If a dispute arises concerning the provisions of this contract or the performance by the parties that may not be resolved through a small claims action, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

A. Binding arbitration under the Maine Uniform Arbitration Act, in which the parties agree to accept as final the arbitrator's decision (____);

B. Nonbinding arbitration, with the parties free to reject the arbitrator's decision and to seek a solution through other means, including a lawsuit (_x_);

C. Mediation, in which the parties negotiate through a neutral mediator in an effort to resolve their differences in advance of filing a lawsuit (____)."

*If the parties decide *not* to choose one of the dispute resolution options above, check here: (____).

10. Change Orders. "Any alteration or deviation from the above contractual specifications that results in a revision of the contract price will be executed only upon the parties entering into a written change order."

11. The Maine Uniform Building and Energy Code. The Maine Uniform Building and Energy Code (the "MUBEC") sets the minimum energy efficiency standards for new residential construction, including additions, alterations, renovations or repairs to an existing building. Choose one:

A. The construction done by the contractor will meet MUBEC's standards (_x_); or

B. The construction done by the contractor will exceed MUBEC's standards (_____).

12. Additional Provisions (optional).

_____

_____

_____

_____

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13. Consumer Protection Warning. This contract must include as an addendum a copy of the Attorney General's consumer protection information on home construction, which is available on the Attorney General's website at: https://www.maine.gov/ag/consumer/housing/home_construction.shtml.

14. Notice to Homeowner or Lessee. You are strongly advised to contact the Attorney General's consumer complaints hotline at 207-626-8849 (1-800-436-2131- toll free in Maine) or to visit the Attorney General's website at: http://www.maine.gov/ag/consumer/index.shtml to obtain current information on how to enforce your rights when constructing or repairing your home.
PLEASE NOTE: If this contract is used for sales regulated by the consumer solicitation sales law, Title 32, chapter 69, subchapter V, or the home solicitation sales law, Title 9-A, Part 5, you must include a description in the contract of the consumer's rights to avoid the contract. If the construction includes installation of insulation in an existing home, you must include the disclosures required by Title 10, chapter 219 for insulation contractors in this contract.[18]

15. Acceptance of Terms. By my signature below, I accept the terms of this Home Construction Contract.

Signature: _____ Date: _____
Homeowner or Lessee

Signature: _____ Date: _____
Contractor or Authorized Signatory

EACH PARTY MUST RECEIVE A COPY OF THIS SIGNED CONTRACT BEFORE WORK CAN BE STARTED.

[18] 10 M.R.S. § 1487(10) and (11).

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MODEL CHANGE ORDER

Change Order No. _____

1. **Parties to this Change Order.**

Contractor _____ _____
Name Phone

_____
Address

Homeowner or Lessee _____ _____
Name Phone

_____
Address

2. **Changes in the Work or Materials that Change the Contract Price.**

_____

_____

_____

_____

_____

_____

_____

3. **Price Change.**

Original Contract Price $ _____

Revised Contract Price $ _____

4. **Acceptance of Terms.** By my signature below, I accept the terms of this Change Order.

Signature: _____ Date: _____
Homeowner or Lessee

Signature: _____ Date: _____
Contractor or Authorized Signatory

EACH PARTY MUST RECEIVE A COPY OF THIS SIGNED CHANGE ORDER.