



The Letter of the Law



THE SHAFER LAW FIRM

LAWYERS WHOSE PRACTICES HAVE BEEN BUILT ONE REFERRAL AFTER ANOTHER

CONTRACTING TO BUILD YOUR OWN HOME



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One of the most important decisions that a person faces is whether to build a new home for themselves and their family. Not only will the decision involve, perhaps, the single most expensive purchase in one's lifetime, it involves hundreds, if not thousands, of decisions throughout the process.

If this process is successful, owners receive their dream home to enjoy for a lifetime. However, if the process is somehow derailed and problems arise, the dream home can turn into a nightmare. Remember "The Money Pit", starring Tom Hanks and Shelly Long? In the movie, Hanks and Long contracted to renovate a dilapidated mansion. The movie is a series of comic missteps and nightmares which result in the house becoming a "money pit", sacrificing their marriage and sanity.

If the owner's decision is to build a new home, they must educate themselves on the various construction options. Owners should fully investigate potential home layouts, material specifications, and decorating options. The more detailed choices that the homeowner is able to make will go a long way in avoiding potential pitfalls.

The next step in the process is finding a contractor. Owners will want to investigate each contractor by speaking with people who have

previously completed the process or are professionally involved, such as attorneys, architects, lenders, and zoning officers. Be sure to personally contact prior customers of the contractor and view the contractor's work.

After finding a contractor, the next step is to engage legal counsel to assist in drafting a construction contract between the owner and the builder. I suspect most people's reaction to the word "contract" is the same - a lengthy document containing small print and incomprehensible legalese. However, the construction contract does not have to be full of obscure Latin terms and small print. A well-drafted construction contract can be presented in clear, plain language that fully sets forth the responsibilities of the contractor and the owner. The more details and specifications set forth in the contract will ultimately help to avoid any potential disagreements with the contractor. All copies of the suggested layout, material specifications, and design choices should be included in the contract. Any items that the owner is to purchase directly, or outside the contract, should be clearly set forth.

Most often, the homeowner will be obtaining financing through a lender. The lender will request a copy of the construction contract. In fact, the lender will typically require the owner to execute a construction loan agreement which sets forth the payment terms, or draws, to be paid during the course of the project. These

payment terms should be restated or incorporated into the construction contract executed with the builder.

Once the construction contract has been executed and the funds obtained, if necessary, the project is ready to commence. Now the question becomes: what role does the owner play in the construction of the home? If you are like most of the Swick family, the closest we come to lumber or building materials is an occasional trip past the Home Depot or 84 Lumber. If you fall into this category, do not let your lack of experience intimidate you into refraining from injecting yourself into the construction process. You should visit the site often and engage your contractor on a regular bases. Again, education is the key.

The homeowner should closely monitor each draw payment to the contractor to ensure that the items that are to be completed prior to payment have, in fact, been satisfactorily completed. If third party financing is involved, the owner should insist that the bank issue the draw checks to the owner and the contractor as dual payees. This insures the owner's continual involvement in the payment process.

Throughout the course of the construction project, numerous decisions will need to be made collectively by the owner and contractor. No matter how detailed the construction contract is drafted, certain situations not contemplated will arise, necessitating changes. The owner and contractor should try to document any additions or deletions to the contract as thoroughly as

possible. The effect of the changes on the total contract price and the length of the construction period should be documented. This is the area, more than any other, that results in disputes between the owner and contractor.

Near the end of the construction period, the owner and contractor should coordinate a "turnover" date. This date coincides with the contractor completing the project and the owner moving in and taking control of the home. Prior to this date, the contractor and the owner should conduct an extensive "walkthrough" of the house. The purpose of the walkthrough is to create a "punch list" of items that need to be completed or corrected by the contractor prior to the move-in date. Most significantly, however, the owner should retain some funds, typically 10%, as a "hold back" from payment to the contractor until all punch list items are completed. Once the contractor receives all of his money under the construction contract, the likelihood of the completion of the punch list items is significantly decreased.

After the completion of the punch list items, and after all of the helpful steps that I have provided have been followed, you will be moving into your dream home for years of enjoyment and comfort.