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HOME REPAIR AND REMODELING UNDER NORMAL CIRCUMSTANCES AND/OR IN THE EVENT OF CASUALTY LOSSES

By: Kevin F. Jursinski, B.C.S.

This Article addresses some key points essential to home remodeling and construction under normal circumstances but also addresses issues that are important in the event of a casualty loss.

The points set herein below address tips for home remodeling and reconstruction as well as home remodeling and reconstruction precipitated by a casualty loss.

Some of the points are safeguards to avoid scams after a casualty loss but are equally applicable to home remodeling and home reconstruction efforts.

INITIAL CONCEPT:

Mitigation of Damages:

Notwithstanding anything set forth herein below, the overarching theme, certainly in reference to both a pragmatic standpoint as well as a legal standpoint is that, in Florida, every party to a loss or damage claim, even if it is the non-breaching party or party suffering a casualty loss (the other party breaches the contract or an innocent party) suffers a casualty loss still, nonetheless, has a duty to mitigate damages. The duty to mitigate damages means that a reasonable person under the same circumstances should take appropriate and necessary steps to minimize and mitigate the loss occasioned by either by the other parties breach and by the casualty loss.

An easy example of mitigation of damages is a water damage loss either caused by another party's breach or by a casualty. In such circumstances, the non-breaching party or the party suffering that loss still, nonetheless, has to take immediate steps to try to minimize and mitigate the losses. Therefore, it is important at the onset that you create a list of appropriate suppliers, vendors and services representations who can assist you in the event a loss occurs and make sure that those individuals' information have been fully reviewed as well as their background checked so that in the event of such situation, you can reach out to those individuals to provide you with an immediate inspection of the damage claim or; alternatively, can remediate and stabilize the situation in the form of water removal or protection of your property from further damage.

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Some of the professionals that we utilize include home inspectors, who are licensed general contractors, as well as a loss remediation company and such names are attached hereto in our Appendix to this Article. The important take away point on this is to make sure that you have fully checked and reviewed these individuals and have their contact information readily available since the very first step in situations in which you suffer a loss is to minimize the damage to both protect yourself and your property but also to be in compliance with your obligations to do so under Florida Law and, most likely, under your insurance policy.

COMMON HOME REPAIR SCAMS AFTER CASUALTY LOSS:

After a casualty loss such as major storm damage or casualty loss due to a fire or flood, many homeowners are approached by unscrupulous contractors who may offer their services, starting with water or damage remediation and immediate site cleanup and then reconstruction work.

BE CAUTIOUS AND INVESTIGATE!

Here are some warning signs when approached after a casualty loss:

1. You are advised that you need to act immediately, they can assist since failing to act can compound your problem and they will get started to avoid the potential loss and health hazard such as mold. They will attempt to frighten you by claiming that your house contains health hazards or code violations that must be fixed immediately.
2. Unscrupulous contractors might offer "leftovers" from a larger job and can do the repair work for you at a discount.
3. They might claim to be a representative of your insurance company in an attempt to get you to agree to work they say your insurance policy will pay for.

In general, some fundamental warning signs to watch for as to home repair contractors:

1. Contacts you or comes to your home uninvited;
2. Tells you that you need to make repairs immediately or your safety may be in danger;
3. Pressures you to sign papers today or talks too quickly, attempting to confuse you;
4. Tells you that he or she is doing work in your neighborhood and claims to have "extra materials" left over from another job;

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5. Quotes a price that's out of line with other estimates;
6. Offers to drive you to your bank to withdraw funds to pay for his or her work;
7. Can be reached only by leaving messages with an answering service;
8. Drives an unmarked vehicle or has out-of-state license plates; or
9. Asks you to pay for the entire job up front.

INITIAL STEPS WHEN ADDRESSING A CASUALTY LOSS OR CONSTRUCTION REPAIR PROJECT:

Duty to Mitigate Damages:

As specified above, every affected party, even an innocent party which the opposing party is in breach or default, has a duty to mitigate damages. The key is to have quality professionals readily available to assist you and which requires the compilation of such information and representatives prior to any event of default (again, See Appendix for suggested professionals to consider).

Determine:

1. Scope of work;
2. Identify specifications;
3. Obtain bids by locating competent contract;
4. Evaluate the work needed and the proposals received;
5. Determine whether your insurance policy will cover the loss and take appropriate steps to comply with notice requirements under your policy; and
6. Get legal advice as to the contract you are signing

When Finding a Contractor to do your repairs:

1. Obtain background information.
2. Get references and recommendations.
3. Interview customers and trades that work with the contractor.

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4. Get estimates that match up to the work to be done and compare.
5. Identify contractor licensing and/or certificate of competency. General Contractor license must be on contract. Verify the license at Florida Department of Business and Professional Regulation's website:
<https://www.myfloridalicense.com/wl11.asp>
6. Contact County for Certificate of Competency:
Lee County: <http://www.leegov.com/gov/dept/dcd/Permitting/ContLicensing>
Collier County: <http://www.colliergov.net/>
Charlotte County: <http://www.charlottecountyfl.com/bcs/License/>
7. Contact local building department.
8. Determine if there are any pending claims or administrative actions.
9. Obtain list of suppliers normally used.
10. Obtain list of subcontractors that General Contractor normally uses.
11. Verify permitting requirements and governmental inspections.
12. Verify appropriate personal liability, property damage and workers compensation for General Contractor and his subcontractors/workers to go on your job site. Get a copy of contractor's proof of insurance.
13. Verify contractor with your insurance company.
14. Follow up with internet search to determine other issues (Angie's List, Better Business Bureau, etc.)

THE CONSTRUCTION CONTRACT:

The key is to have a Qualified Attorney Prepare or, at least review your Construction Contract. You need to know your Construction Lien Rights (Florida Statute 713, et. seq.) and the proper method to make Payments.

Do NOT issue a Deposit prior to the recording of the Notice of Commencement.

The contract should contain all essential points of the job:

1. Scope of work.

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2. Specifications.
3. Time of completion.
4. Manner and method of making payments.
5. Compliance with Florida Statute 713 - Construction Lien Statute.
6. Verification of subcontractors and agreement to provide copy of contracts.

The Contract Should Also Contain:

1. The contractor's full name, address, and telephone number.
2. The Florida Contractor's License Number.
3. Request Statutory Notices for Residential Construction.
4. A description of the work to be performed.
5. A detailed list of all materials, including product, color, model, size, and brand name.
6. The total cost for work performed, including charges for estimates and additional labor.
7. All promises made by the contractor **TO BE IN WRITING**;
8. Change orders—The proper procedure and mark up.
9. Start and completion date: critical path management—schedule of work progress.
10. Payment schedule premised on partial waivers and releases from each party providing Notice to Owner.
11. Written guarantee of the work and assignment of any equipment warranties.

PAYMENTS AND PROCEDURES FOR HOME REPAIRS OR CONSTRUCTION:

The method of payment and procedures to be followed for home repairs or construction should always be made in compliance with Florida Statute 713:

1. Proper Payments made pursuant to Florida Statute 713.

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2. Notice of Commencement filed.
3. Identify all Notice to Owners received.
4. Issuance of Partial Release Form to be signed and delivered to owner by General Contractor reflecting partial release of all subcontractors and material suppliers at the time of each draw.
5. Monitor each and every draw payment.
6. Utilize demand for sworn statement of account.
7. Utilize demand for copy of contracts.
8. Obtain Contractor's Final Affidavit.

PROTECTING YOURSELF DURING THE CONSTRUCTION PROJECT:

Keep all paperwork related to your home repair project in one place. This includes copies of the contract, change orders (approving a substitution of materials or services) and correspondence with your contractors and suppliers.

Keep a log of all phone calls, conversations and activities associated with the project. You should also take photographs recording the work's progress. These records will prove important if problems arise with your project during or after construction.

INSPECTION OF PROJECT:

Hire your own Inspector unless you are qualified to inspect the work. Again, on the attached Appendix is a list of two qualified licensed home inspectors who are also general contractors and who have, likewise, been vetted and have acted as expert witnesses in the 20th Judicial Circuit which is critical in not only identify your claim but in the future stages in the event litigation is needed to establish the validity of your claim.

BEFORE MAKING FINAL PAYMENT:

1. Verify all Releases.
2. Verify Contractor's Final Affidavit.
3. Verify scope of work met.
4. Verify quality of work met.

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5. Identify that all requirements under the contract have been met.
6. Job site should be thoroughly cleaned up.
7. Punch list work noted in writing.
8. Work in excess of punch list addressed in escrow or retainage.
9. Disputes:

Handled through negotiation should be in contract.

Handled through mediation have an 80%-90% success rate and mediation would need to be engaged in even if a suit was filed. Do it pre-suit and get it into your contract!

Provide for Arbitration of Disputes rather than litigation. Construction litigation is time consuming and expensive. The trier of fact in an Arbitration could be a construction experienced Attorney versus a Court who does not have the same level of expertise.

SUMMARY:

A home repair, construction, home remodeling or reconstruction after a casualty loss can be overwhelming. Consider all factors and retain a qualified construction law attorney to help guide you through the process and protect your legal rights.

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APPENDIX

Recommended Home Inspectors and Licensed General Contractors to Inspect and Evaluate Damage Claims:

Stephen M. Pelle
Pelle Construction, Inc.
6914 Harbor Ln
Fort Myers, FL 33919
239-939-1912
<http://www.pelleconstruction.com>

Fred Sylvester
Accredited Building Consultants, Inc.
2343 Flora Avenue
Fort Myers, FL 33907
239-936-7579
<http://www.swflhomeinspection.com>

Recommended Loss Remediation Company:

Erickson's Drying Systems, Inc.
Fort Myers / SWFL Offices
12651 Metro Pkwy
Fort Myers, FL 33966
[239-277-7744](tel:239-277-7744)
<http://ericksonsdrying.com>

Tampa / ST. Petersburg Offices:
[813-277-7744](tel:813-277-7744)

Naples Office:[239-262-8711](tel:239-262-8711)

24 Hour Emergency Service:
[866-277-7744](tel:866-277-7744)