

# Consumers, Contractors, and Contracts

Hawaii Contractors  
License Board

"Protecting the public  
interest under the law . . ."

## **Your Contractor Checklist**

In the planning of work, during the progress of work, and after the completion of work on your home – from the smallest paint job to a major remodeling or the installation of a pool – have you:

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Gotten at least three written estimates for the job?

Verified the licenses of the contractors and any subcontractors by calling 587-3222?

Checked with the Regulated Industries Complaints Office for any prior complaints about the contractor by calling 587-3222 (press 1)?

Asked the contractor for references?

Requested a list of subcontractors if any are to be used?

Drawn up a written contract?

Read the entire contract and understood all of its terms and conditions?

Purchased performance, material and completion bonds through the contractor?

Obtained the appropriate building permits?

Seen and understood any plans and blueprints before approving them?

Periodically checked on the progress of the work?

Gotten lien releases from subcontractors and material suppliers?

Kept copies of all documents and correspondence?

Published a notice of completion in the newspaper once the job was done?

(This printed material can be made available for individuals with special needs in braille, large print or audiotape. Please submit your request to the Complaints and Enforcement Officer at 587-2666)

## **INTRODUCTION**

This brochure is a brief summary of some of the things that you, as a homeowner, can do to avoid costly mistakes and misunderstandings in dealing with a contractor.

If you are seriously considering a home remodeling job or thinking of installing a swimming pool, then you will probably hire a contractor to do the work.

As licensed contractors have met experience and examination requirements, and are required to maintain worker's compensation insurance and liability insurance, it is wise to insist that the contractor you hire be licensed. However, because you may be undertaking a substantial investment, you should do your homework, and enter into any contract in a "buyer beware" manner.

### **For inquiries regarding license status, contact:**

*Phone:* 587-3222, (press 1)

### **For filing complaints against licensed or unlicensed contractors, contact:**

Regulated Industries Complaints Office  
Consumer Resource Center  
235 S. Beretania Street, 9<sup>th</sup> Floor  
Honolulu, Hawaii 96813

*Phone:*

Oahu . . . . .	587-3222 (press 2)
Kauai . . . . .	274-3200
Maui . . . . .	243-5808
Hilo, Hawaii . . . . .	933-8846
Kona, Hawaii . . . . .	329-6684

## THE LAW

The law and rules regulating the licensing and conduct of contractors in the State of Hawaii are contained in Chapter 444 of the Hawaii Revised Statutes and Chapter 77 of the Hawaii Administrative Rules. The purpose of the law is to protect the public and to provide remedies for consumers when a licensed contractor has violated the law.

With limited exceptions, all contractors are required to be licensed. Unlicensed contracting activity is illegal in Hawaii and is prosecuted by the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs. Under Section 444, Hawaii Revised Statutes, a citation containing an order of abatement may be issued to the unlicensed contractor on the job site.

Complaints against licensed contractors also are prosecuted by the Regulated Industries Complaint Office. These complaints may result in sanctions imposed by the Contractors License Board which is placed under the Department of Commerce and Consumer Affairs for administrative purposes.

## HIRING A CONTRACTOR

**Get at least three bids.** Before hiring any contractor, get at least three written bids or estimates for your project. Provide the contractors with accurate plans or drawings to enable them to determine the scope of the work and the costs involved. If the prices differ by a wide margin, you may consider obtaining additional bids. Beware of any bid which is substantially lower than the others – it may indicate that the contractor has made a mistake or has not included all the work quoted by the other contractors.

**Ask for references.** Ask potential contractors for references in writing. Call the contractor's previous customers and ask if they were satisfied with the contractor's work. Go out and look at the contractor's work yourself.

**Hire a licensed contractor.** While even licensure cannot guarantee satisfaction, a licensed contractor has met experience and examination requirements and must fulfill certain conditions in order to maintain the license. The licensed contractor must have workers' compensation insurance and liability insurance. Furthermore, a licensed contractor is regulated by the Contractors License Board, and a licensed contractor who violates the licensing laws may be disciplined by the Board. Finally, a homeowner may recover from the Contractors Recovery Fund only when the contractor hired by the homeowner is licensed.



The Contractors License Board licenses contractors in several different classifications:

1. "A" – general engineering contractor;
2. "B" – general building contractor; and
3. "C" Specialty contractors, such as roofing contractors, plumbing contractors, electrical contractors, swimming pool contractors, etc.

The type of contractor that you will hire will depend on the kind of work that you want done. For example, if you want only roofing work done, you would hire a contractor who is licensed as a roofing contractor. If the work you want done involves more than two types of work, then you may hire a licensed general building contractor who will coordinate the appropriate licensed specialty contractors.

Before signing a contract with a contractor, make sure that the contractor is licensed in the correct classification. Ask to see the contractor's license. Upon request, a licensed contractor must show you a contractor's license card. The license card will state the classification in which the contractor is licensed, followed by a number. If you have any questions as to the validity or status of a

license, call 587-3222, (press 1). If you would like to check on the contractor's complaint history, again call 587-3222, (press 1).

Finally, check out contractors with your local building department, trade association or union.

Information about the work history of contractors can sometimes be obtained from construction associations. Try such groups as the General Contractors Association, the Building Industry Association or specialty groups such as the Pacific Electrical Contractors Association, the Mason Contractors Association of Hawaii, the Painting and Decorating Contractors Association, the Hawaii Landscape Contractors Association, the Plumbing and Mechanical Contractors Association, the Sheet Metal Contractors Association, the Gypsum Drywall Contractors Association, the Pacific Bureau of Latherers and Plasterers Association, the Hawaii Flooring Association, the Hawaii Roofing Contractors Association, and the Pacific Insulation Contractors Association, to name a few.

**Disclosure prior to signing a contract** – Under section §444-25.5, Hawaii Revised Statutes, and §16-77-79, Hawaii Administrative Rules, when a contractor is performing home construction or renovation work, the contractor must provide the homeowner all of the following before they sign a contract and before applying for a building permit:

1. All information regarding the contract and its performance which might mislead the homeowner if not disclosed, including the lien rights of labor, suppliers and subcontractors;
2. A copy of the disclosure form on the file with the Board;
3. The approximate percentage of the work to be subcontracted;
4. Whether or not the contractor is bonded; and if the contractor is not bonded, the extent of the contractor's financial security available to assure the homeowner that the contractor will perform under the contract; and
5. The contractor's license number and classification.

**Always insist on a written contract.** It protects everyone concerned and prevents confusion if anything should go wrong. Be sure that the contract is dated and signed and specifies exactly what is being provided for your money. Do not assume or expect to be provided with anything not specified in the contract. Make sure that the contract has adequate plans and specifications or other adequate description of the scope of the work to be performed.

Pursuant to §444-25.5, Hawaii Revised Statutes, and §16-77-80 Hawaii Administrative Rules, all contractors performing new home construction, home improvement and renovation work are required to include the following in their contracts:

1. The contractor's license number and classification;
2. The exact dollar amount due from the homeowner under the contract;
3. The date work will begin and the number of days for completion;
4. The work to be performed and the materials to be used;
5. The approximate percentage of work to be subcontracted; and
6. A clear statement of the risk of loss of any payments made to a sales representative.

In addition, you may request that the contract include the following provisions which are common to all contracts:

1. The name and address of any salesperson who solicited or negotiated the contract, in addition to the name and address of the contractor;
2. A payment schedule that parallels the amount of work completed, and provides that 5 to 10 percent be withheld until all work is completed;
3. A description of what constitutes substantial completion of work;
4. The terms of any warranty offered;
5. A provision requiring the contractor to obtain lien releases from all subcontractors and material suppliers.

It may also be desirable for the contract to provide for arbitration or other reasonable, fair and economical methods of settling disputes between the contractor and the homeowner.

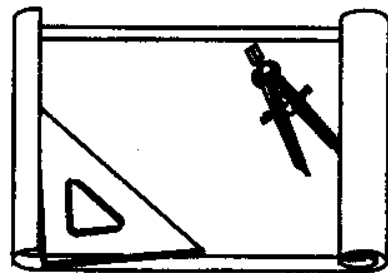
Finally, take time to review the contract and make sure that you understand the contract before you sign it. Don't let a contractor or salesperson rush you into anything. If you are confused about the provisions of the contract or have questions about lien rights or other matters, consider hiring an attorney to explain them to you.

**Consider a performance and completion bond.** On bigger jobs, request a performance and completion bond. While there will be an additional charge for the bond, it provides assurance that your project will be completed. A reputable contractor will be bondable for a small additional fee.

## **AFTER YOU HAVE HIRED A CONTRACTOR**

**Before work begins, make sure that you have a complete and accurate set of contract documents.** These should include:

1. A complete set of plans showing exactly what you are going to build. It is suggested that you engage in the services of a licensed architect or engineer to prepare these or at least look them over to assure their accuracy and completeness. If you engage such services, be sure to document the arrangements on an owner-architect agreement form.
2. A complete set of specifications relating to the plans drawn. These also should be prepared or reviewed by an architect or engineer.
3. A detailed contract with a set of general conditions and specifications that has general acceptance. You may wish to have your attorney prepare these or review them prior to your signature.





No work should be allowed until all documents are completed to your architect's or attorney's and your satisfaction

Ask your contractor about inconveniences which may occur and plan for them.

If a building permit is required for the job, be sure it is posted at the job site.

**Keep a file of all papers relating to your project.** It should include:

1. The contract and all change orders;
2. Plans and specifications;
3. Bills and invoices;
4. Cancelled checks;
5. Lien releases from subcontractors and material suppliers;
6. Letters, notes and correspondence with your contractor;
7. A record of each subcontractor who works on your project, what part of the work the subcontractor did, and how long the subcontractor was on the job; and
8. A record of the material suppliers who make deliveries, including the company name, the date of delivery, and a general description of what was delivered.

When you receive lien releases from subcontractors or material suppliers, check them against your records. Your paperwork will help you to determine who has and has not been paid.

**Make sure all change orders are in writing.** Plan carefully and keep changes to an absolute minimum. Change orders are very expensive for both the homeowner and the contractor.

If you do not need to make changes, all change orders and any changes to the original specifications should be in writing.

**Make frequent inspections of the work.** Review the work as it is being completed. Do a final “walk through.”

## **IF YOU HAVE PROBLEMS**

If problems or disagreements occur, try to negotiate with the contractor first. If you have any complaints about the work, keep notes and notify the contractor directly. You may wish to document your concerns by writing a letter to the contractor. Any agreements you reach should be in writing. Remember to keep copies for your own files.

If you are not able to resolve your problems with the contractor and you feel there may have been a violation of the contractor licensing law, file a complaint with the Regulated Industries Complaints Office. There are offices in Honolulu, Hilo, Kona, Lihue, and Wailuku. Phone numbers for each office, as well as the address for the Honolulu office, are provided at the front of this booklet.



## **LIENS**

**Disclosure of Lien Rights** – As part of the disclosure prior to the signing of a contract, the contractor must inform the homeowner of the lien rights of labor, suppliers and subcontractors. Any person not paid for labor or materials furnished for a home improvement project may obtain a lien against the homeowner’s property. A subcontractor or material supplier who has not been paid by the prime contractor may obtain a lien even if the homeowner has paid the prime contractor in full.

**Avoiding Liens** – To protect yourself from having liens placed on your property, you may require lien releases from all parties in exchange for payment. Request partial lien releases for partial payments and a final complete lien release for final payment.

In addition, check with your prime contractor to see if the contractor will publish a notice of completion in the newspaper when the work is completed. If the contractor will not do so, do it yourself. To obtain a lien, a person claiming a lien must file an application with the court no later than 45 days after a notice of completion is published and section 507-43, Hawaii Revised Statutes is complied with. If no notice of completion is published, a person claiming a lien has up to one year after the completion of the project to file the application for a lien.

Also, discuss with the contractor the possibility of withholding a portion of the contractor's payment until after the 45 day period for filing a lien has expired. The amount withheld should be a figure sufficient to cover all claims which might be filed and should be one upon which both you and the contractor can agree.

Finally, if a lien is filed against your property, consult an attorney.

## **CONTRACTORS RECOVERY FUND**

The Contractors Recovery Fund is a service for homeowners that is wholly funded by Hawaii's licensed contractors and administered by the Contractors License Board.

The fund provides protection to homeowners who find that a licensed contractor has not performed as promised, has defaulted on the contract, or has violated some other provision of the law regulating contractors. A homeowner may recover up to \$12,500 per contract from the Contractors Recovery Fund on any judgement obtained against a licensed contractor.

The procedure for obtaining relief from the Contractors Recovery Fund is as follows.

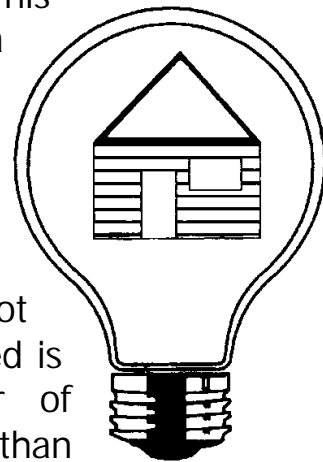
1. The homeowner must file a court action against the contractor.
2. The homeowner must notify the Contractors License Board of the court action at the time it is filed.
3. If the homeowner obtains a judgement against the licensed contractor and the licensed contractor lacks the assets to pay off the judgement, a claim against the Contractors Recovery Fund must be made.

You should consult with an attorney to ensure that all the procedural steps required to file a valid claim are satisfied.

The Contractor License Board has the right to intervene and defend the Contractors Recovery Fund in any way that it deems necessary.

## **OWNER/BUILDER**

**The Owner/Builder Exemption** – This exemption allows a property owner to act as a contractor when building or improving structures on the owner's property for the owner's own use or the use of the owner's immediate family. However, it does not apply to electrical and plumbing work. As a further limitation, the owner/builder exemption may not apply when the structure that is built or improved is offered for sale or lease within one year of completion, nor if the exemption is used more than once every two years.



**Qualifying as an Owner/Builder** – If, as a homeowner, you wish to do work under the owner/builder exemption, you must register for the exemption at the Building Permit office in your County Building office. Failure to register for an exemption is evidence that you are not entitled to the exemption.

**Acting as an Owner/Builder** – A qualified owner/builder may act as his own general contractor and work directly with licensed subcontractors. If you do this, make sure that you have a clear understanding with subcontractors as to who will obtain the necessary building permits.

In addition, you should have a complete contract with each subcontractor. You may also consider obtaining a completion of labor and materials bond from the subcontractors you hire.

While as an owner/builder, you are exempt from the contractor licensing requirements, you must still comply with State labor and other laws. Unless you have complied with the employer type requirements such as workers' compensation insurance, liability insurance, medical insurance, and employment taxes, you should avoid hiring labor directly. Other laws which you must observe include those dealing with the legal minimum wage and overtime hours.

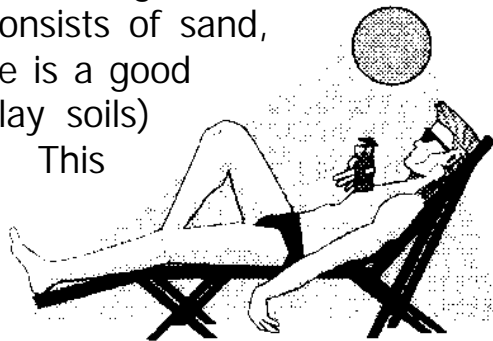
As more completely explained later, you should also avoid hiring an unlicensed contractor, builder or subcontractor.

## **INSTALLING A SWIMMING POOL**

If your swimming pool is to be designed and built by the same company or individual, be sure that the contract specifically assigns responsibility to that company or individual. The company or individual is then financially responsible for those things specifically stated in the contract. If a contractor designs your pool, be certain that the contractor is qualified as a designer.

A well-designed swimming pool can be a complex structure. An owner not knowledgeable in swimming pool construction might do well to hire a third party inspector to review the plans and specifications prior to the signing of the contract. The third party inspector may also represent the owner during construction.

Nearly all swimming pools have some leakage and/or water spillage. Unless a pool site consists of sand, rock, coral, or granular material, there is a good possibility that the soil (especially clay soils) will be "expansive" to some extent. This means that changing water content in the soil will change the soil volume. Changing soil volume often leads to sinking or lifting of pool decks, cracks in the structure, and broken water lines. If such a condition seems to be present, it may pay to seek the advice of a qualified soils engineer prior to construction.

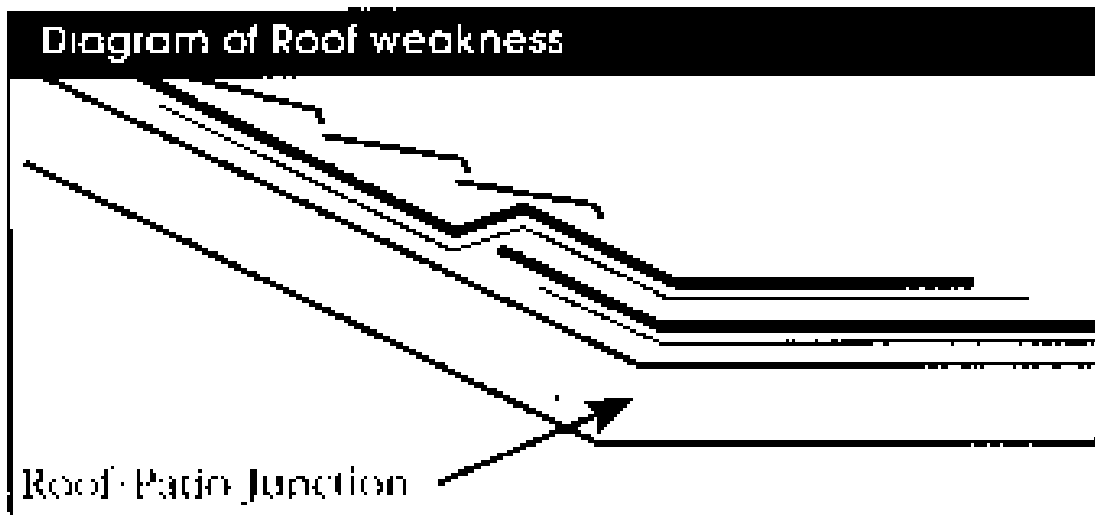


## **ROOFING TIPS FOR OWNERS**

The Contractors License Board and Hawaii Roofing Contractors Association have identified the following points as important for homeowners to know about roofing.

## When your Roof Leaks . . .

- Call the original roofer first.
- Check your guarantee – you may still be covered. Ask for the original roofing contractor's opinion and advice. Ask questions.
- Get opinions and advice from other roofing contractors. Listen with care and skepticism. Sales agents acting for roofing companies do not always have technical knowledge. Compare and evaluate the various opinions and advice; then make your decision.
- When you have decided what type of roof you want, get estimates from three or more roofing contractors. Compare the prices and what you will receive for what you pay. Keep in mind the cheapest estimate may not necessarily be the best.
- Consider the "tie-in" of different types of roofing materials or levels. Adding a flat patio roof to a shingle roof is one common example of where future leakage may occur even with the best of workmanship. Where a flat roof butts into a pitched roof, the "tie-in" area should be made waterproof at the junction. Problems may develop due to the different types of roofing materials that meet at the "tie-in." Additional "tie-in" problems may develop where existing roofing connects with new roofing of a different material.
- Stay off your roof unless it is absolutely necessary. When you walk on the roof, your weight may cause cracking, especially to older materials or may void your warranty.
- If there is no emergency involved, wait for good weather when contractors are not as busy. You'll likely get better prices and a less hurried job.



**Read and Understand Your Roofing Guarantee.** In roofing, there are usually two guarantees – the manufacturer's and the contractor's.

Most guarantees from manufacturers are for merchantability – the product is what they say it is. This has nothing to do with the way it performs.

Contractor guarantees usually have to do with workmanship and usually apply only to watertightness and not appearance. Any contractor's guarantee that is valid for a period greater than seven years must be accompanied by a bond.

Know the terms of your guarantee:

1. Is it transferable to the next owner?
2. Does it call for maintenance on your part?
3. Is it cancelled if the roof is penetrated in any way, like adding solar energy devices?

**REMEMBER:** A guarantee is only as good as the company that issues it. If the company goes out of business – your guarantee becomes ineffective.



## UNLICENSED CONTRACTORS

You should avoid hiring unlicensed contractors. Because they are not licensed, you are taking on personal risks and liability by hiring them. An unlicensed contractor may not carry worker's compensation and liability insurance as a licensed contractor is required to do, and this may affect your potential liability. Furthermore, access to relief from the Contractors Recovery Fund is not available when an unlicensed contractor is used.

All unlicensed contracting activity should be reported to the Regulated Industries Complaints Office.

