



ESTATE PLANNING

Ronald S Thompson

THOMPSON STEWART, P.C., OF COUNSEL
TO MORELLO LAW GROUP, P.C.

EDUCATION

J.D., University of Detroit School of Law; M.B.A., Boston University; B.G.S. in Business and Psychology, University of Michigan

AREAS OF PRACTICE

Estate; Business Succession and Asset Protection Planning; Real Estate and Construction Law; Corporate Law and Contracts; Commercial Litigation; and Employment Law.

CAREER

Mr. Thompson served as assistant dean at the University of Detroit School of Law and is the author of several University of Detroit Law Review articles.

Mr. Thompson is admitted to practice in the Western and Eastern Federal District Courts of Michigan, in addition to the State Courts of Michigan and Ohio. He is also a licensed real estate broker and licensed builder.

Mr. Thompson also served 12 years as a commissioned officer in the United States Marine Corps.

ADVICE

Ten things to consider when hiring a construction contractor

Thompson Stewart, P.C., of Counsel to Morello Law Group, P.C.
Ronald S. Thompson

Hiring the wrong construction contractor can become a disaster on several levels. However, even hiring the right contractor under the wrong terms can likewise become a major problem. Over the last 27 years of representing both contractors and homeowners in disputes, I have found that following basic rules when

engaging a construction professional can eliminate most if not all problems.

**FIND THE RIGHT PROFESSIONAL**

The first step is determining who you need to hire. Plumbers, electricians and heating and cooling professionals all have their own specific trade licenses and should be hired if your problem relates to one of those systems. Some general contractors and many handyman will offer to do this work but if they do not have that particular trade license, their completion of that work is not only illegal, it is dangerous. If the work involves roofing, carpentry, painting, window replacement or general construction over \$600, the person doing the work must have either a Residential Builders or Maintenance and Alter-

ation Contractors license, or be working under someone with that license. Hiring a contractor who has made the choice to work without proper licensing in place is asking for trouble.

DEAL WITH COMPANIES NOT INDIVIDUALS Most established and organized construction professionals work under a corporation or limited liability company. Companies are more likely than individuals to have proper insurances in place and hiring a corporation also insulates you from personal liability if one of the contractor's workers gets hurt on your jobsite. It is also easier to check out a company with the state of Michigan on their corporate website. If a construction company has been incorporated and is in good

standing for a period of 10 years or more, they are probably reputable. If the contractor has a permanent office other than at his home or at a model, that is also a plus.

MAKE SURE THE CONTRACTOR IS PROPERLY LICENSED

Before hiring a construction contractor, you should confirm he has the required licenses to complete the work contracted for. Unless the project is less than \$600 or involves plumbing, electric or heating and cooling, he should have a Residential Builders License and that should be confirmed through the State of Michigan DLEG website. While on the website, you should also check discipline history to determine whether the contractor has been the subject of any licensing complaints.

KNOW YOUR CONTRACTOR'S PERFORMANCE HISTORY

You should always hire a contractor based on a referral from a trusted friend or family member who has had a positive experience with that contractor in the past. If you cannot obtain a referral from a trusted source, make sure you get at least two customer references from the contractor (for which the contractor has completed similar work to your project) and be sure to contact those references. Ask them about their experience, whether they would hire that contractor again and, the most important question, if they could do it over with that contractor what would they have done differently? If your project is more than a simple repair involving major construction, remodeling or especially building a new home, you should visit one or more past projects completed by that contractor. Reviewing photographs provided by the contractor or even walking through a builder's model does not often show you the quality and workmanship of his "typical" work. I do not recommend use of websites such as Angie's List as those open forum sites often fail to paint an accurate portrayal of the contractor in question.

GET EVERYTHING IN WRITING The two most common contractor problems are disputes over the nature of the work and money disputes. When you hire a contractor, you must ensure that everything you expect to receive is specifically stated in writing in a contract signed by the contractor. Items depicted in brochures and installed in models are often upgrades or extras not included in your job unless specifically listed. Likewise, if you are expecting a particular brand, model, color or material, it must be specified in writing. This, and other important terms, should be laid out in a contract signed by both parties. These items can also be specified in a separate set of signed drawings, plans or specifications, but in that case the contract needs to specifically reference those drawings, plan or specifications. If the contractor does not have his own contract, you should obtain one from your attorney.

HAVE THE CONTRACT REVIEWED BY A CONSTRUCTION ATTORNEY Most experienced construction professionals have attorneys that draft their contracts to be fairly one sided. They often contain provisions in the fine print that most people, if they really understood what they were signing, would never agree to. Before you sign a construction contract for work over \$2,000, have it reviewed by an attorney who has construction law experience. As stated earlier, everything you expect to receive should be contained in that contract or in plans, drawings and/or specifications specifically referenced in the contract and signed by the contractor.

AVOID GETTING BEHIND THE DOLLARS In Michigan, it is a felony

for a contractor to use money received from a property owner for some other purpose than paying subcontractors, suppliers and laborers who have supplied labor and/or materials on that specific job. However, violation of this law is common practice among many construction contractors. If you are building a new home, the considerations relating to payment terms are well beyond the scope of this article and should be discussed specifically with your construction attorney. For small projects however, the general rule is to avoid paying beyond actual project costs. Best practice is to pay the initial deposit only when job materials are actually delivered to the jobsite in an amount roughly approximating the cost of those materials. From there, progress payments should continue to match level of work completed. Putting it another way, the contractor should be paid 50% when the project is 50% complete and 100% ONLY when 100% complete.

MAKE SURE YOU HAVE A DEADLINE One of my contractors once educated me on what he called "construction speak". He noted that when a construction contractor says "tomorrow" he means really means "next week", and when he says "next week" he really means "next month". Make sure a hard deadline for completion is specified in the contract otherwise you are at the contractor's mercy.

DEMAND SWORN STATEMENTS AND WAIVERS OF LIEN Most construction professionals hire others to complete all or a portion of their work. Those other workers who are laborers, subcontractors and suppliers have a right to demand payment from you if the contractor fails to pay them and do so by recording a construction lien against your property. If you fail to properly protect yourself, you could end up paying twice for the work, once to the contractor and a second time to all of his subcontractors and suppliers. Under the Michigan Construction Lien Act, you have the right to demand that your contractor provide you with sworn statements and waivers of lien. Sworn statements require the contractor to state, under oath and in a statutory written format, the names of all subcontractors and suppliers providing labor and/or materials to your job, the amounts of their contracts, and how much they have been paid to date. Waivers of lien are written confirmations from those same subcontractors and suppliers, also in a statutory form, that they have been paid the amounts shown on the last sworn statement. If you pay the contractor only upon receipt of these documents you protect yourself from liens and having to pay twice.

CHECK WITH THE CITY TO CONFIRM NECESSARY PERMITS

Many contractors will attempt to complete construction projects requiring municipal permits without properly obtaining those permits. If the work requires a construction permit, that means the work will be inspected by a municipal building inspector and presumptively will have been completed pursuant to code and in a workmanlike fashion. If the work required a permit and a permit was not issued, you may be stuck later being forced by the municipality to remove and/or reconstruct the entire project. If your contractor claims no permit is required, contact your local building department and confirm that to be the case.

Getting involved in a construction project can be blessing or a curse. Which direction that goes depends on whether you take the time and effort to follow these recommended steps.

For more information visit www.thompsonstewart.com