

ARTICLES

Avoiding the Heartache of the Home Renovation

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Upon starting a major construction project, people follow a series of steps that at first glance appear to be completely logical. They will interview and hire a contractor, maybe an architect or, currently gaining in popularity, a design-build firm (D/B) - 'one-stop shops' that provide both project design & construction services. These seem like natural first steps - but are exactly the wrong ones to take as they can lead to an avalanche of problems.

Your first step should be to contact an attorney specializing in drafting construction contracts for residential property owners, and your homeowners' insurance broker. Contacting attorneys and insurance agents may not sound as fun as choosing hardwood flooring to match the quartz countertops in your Smart Kitchen, but it's really important. Let's delve into why.



Insurance

The 11th commandment is 'Always Read Thy Policy Contract'. Many people do not realize that not all homeowner's policies will cover construction projects. So, regardless of project size, it is critical that you notify your broker when planning a project so appropriate coverages can be put in place *prior* to the start of the job. For larger projects, a separate course of construction policy (COC) should be purchased.

Neglecting to notify your insurance carrier also puts you at risk of having claims denied or your deductible dramatically increased. Some contracts explicitly state that failing to notify the carrier of a contracting project can result in an increase in the deductible from a flat number to upwards of 5% of the total value of the house.

Say, for example, a subcontractor leaves behind oily rags overnight that ignite and burn down your home, which is valued at \$2,000,000. By failing to notify your carrier about the project, you not only lose the home, the deductible could increase from \$2,500 to \$100,000.

Construction Contracts

When planning a project, it is vital to understand how title insurance and your mortgage work. When you

purchase a home, you are really purchasing the title to that property – meaning the right to occupy and use the space. Unlike homeowner’s insurance, which protects against loss from possible *future* events, title insurance, protects against loss from hazards and defects that already *exist* in the title.

Why is this important in a kitchen remodel?

“Banks want to be indemnified first,” says [Simon Mazzola](#), a construction law expert and founder of [The Mazzola Law Office, P.C.](#) in San Bruno, CA. “Priority is given to the mortgage. Banks do not like it when another entity supersedes their ‘place in line’.” For example, the government can put a lien on a property for unpaid property taxes. If that property changes title and loans need to be paid off, the government gets paid first – not the bank. Mechanics liens get the same preference; they ‘cut in line’.

“Large construction projects generally involve both general and subcontractors; each subcontractor is entitled to file a mechanics lien against the property to protect their personal interests. In order to protect title, and before you can proceed with the different phases of the job, liens must be released. If a project goes wrong halfway through the job, you must be able to prove to the title insurance company that the liens have been released to prove payment,” says Mazzola. For larger projects, this can be quite a mine field. More importantly, title insurance can be lost if the liens are not released – *meaning they could foreclose on your home.*

According to Mazzola, “banks that issue construction loans have processes in place to protect the homeowner against mechanics liens.” If you are not taking out a loan, however, a document properly drafted by an attorney well versed in construction law is your only defense against the contractor(s) coming back and asking for more money after the fact and, essentially, holding your property hostage. Without it, you’re putting yourself and likely your largest asset at risk. In Mazzola’s experience, “most people back into the process – that is they start with the contractor and only seek out the attorney once the process has gone south with delays and inflated costs.” A good contract upfront decreases the likelihood of that taking place.

There is a large financial, and even greater emotional, attachment to the building you call home. Your insurance broker and attorney are key members of your team to ensure that it is properly protected – make sure they are just as involved with the work as your contractor.

Want to learn more?

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