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ATTORNEY GENERAL'S MODEL HOME CONSTRUCTION OR REPAIR CONTRACT

§ 18. 1. Introduction

This consumer rights chapter provides information on the State's requirement that home construction or repair work costing more than \$3,000 be based on a written contract. It contains the following sections:

§ 18. 2. Description of Home Construction Contract Law

§ 18. 3. 10 M.R.S.A. c. 219-A, Home Construction Contracts

§ 18. 4 The Attorney General's Model Home Construction Contract and Change Order

§ 18. 2. Description of Home Construction Contract Law

The Maine Home Construction Contracts Act¹ requires that any home construction or repair work for more than \$3,000² in materials or labor must be based on a written contract containing specific information such as price, a description of the work and estimated completion date. Further, any "change orders" that change the contract price must also be in writing. If contractors do not use a written contract to meet the requirements of this law they are subject to civil penalties (payable to the State) of up to \$1,000. Further, consumers dissatisfied with construction work can claim in court that their contractor committed an Unfair Trade Practice by failing to use a written contract that meets the State standards.

This construction written contract law is *not* inflexible. Section 1489 allows the contractor and the homeowner to agree to *exempt* themselves from the law in part or even entirely. However, in order to properly qualify for an exemption, the contractor must specifically inform the homeowner of the homeowner's rights under this law. The parties must then mutually agree to a contract or change order that does not meet the requirements of the written contract law.

¹ 10 M.R.S.A. §§1486-1490. This 1988 law has been the subject of numerous Maine court decisions. *See e.g., Strouts v. Craig and MacIntosh*, No. CV-96-179 (Me. Super. Ct., Penob. Cty., April 28, 1998) (plaintiff is entitled to attorney fees directly attributed to enforcement of Home Construction Contracts Act); *VanVoorhees v. Dodge*, 679 A.2d 1077 (Me.1996) (builder violated Home Construction Contracts Act and Unfair Trade Practices Act; attorney fees of \$3,500 and damages of \$73,000); *William Mushero, Inc. v. Hull*, 667 A.2d 853 (Me. 1995) (violation of Home Construction Contracts Act and Unfair Trade Practices Act; damages and attorney fees awarded); *Dudley V. Wyler*, 647 A.2d 90 (Me.1994) (even though Home Construction Contracts Act violated, consumer denied relief because he had not suffered a loss of money or property); *Parker v. Ayre*, 612 A.2d 1283 (Me. 1992) (after violating Home Construction Contracts Act builder received damages only on basis of *quantum meruit*).

² Effective September 13, 2003, this amount was increased from \$1,400 to \$3,000.

Another important feature of this law is that it allows (but does *not* require) the parties to select one of three dispute resolution options (*e.g.*, mediation or arbitration).³ If the parties do select one of these options, disputes may be more readily resolved than through the use of the court system.

At the end of this chapter (§ 18.3), there is a copy of this written contract law. You should read it carefully and make certain that the contract you are contemplating meets its requirements. Also included (§ 18.4) is a model construction contract designed to meet the requirements of this law. If there are provisions a contractor does not wish to have in its standard contract, the contractor should make clear to the homeowner precisely which requirements of the new law are not met by its contract, so that if the homeowner enters a contract that falls short of the statutory requirements, it is done knowingly.

Perhaps the best way to accomplish this would be for the contractor to design and have printed a contract that specifically states the parts of the new State law that its contract does *not* meet. For example: the new home construction contract requires that the contract state that the initial down payment cannot exceed *one-third* of the total contract price. What should a contractor do whose normal operating procedures require an initial down payment of 40% of the total contract price? This contractor could have a printed contract which requires a 40% down payment and which also specifically discloses to the homeowner that State law limits the down payment to one-third of the contract price but that the homeowner explicitly agrees to exempt himself from that statutory provision.⁴

Contractors could also use another exemption method: design a contract with a blank section allowing for exemptions to be inserted as the need arises. For example, such a section might look like this:

Contract Law Exemptions. The Maine Home Construction Contracts law at 10 M.R.S.A. § 1489 specifically allows the parties to agree to exempt themselves from its contract requirements. The parties hereby agree to exempt themselves from the following requirements of this law:

Finally, a form contract could also have a section for “additional provisions” that deal with such issues as whether “time is of the essence” in completing the contract; when the contract is to be considered completed (*e.g.*, “This contract will be considered completed upon approval of the homeowner or lessee, provided that approval cannot be unreasonably withheld”); whether the homeowner is entitled to damages if the work is completed later than estimated; and how removal of debris is to be handled (*e.g.*, “At the end of each day’s work the contractor agrees to clean all debris from the work area”).

Please do not hesitate to contact the Attorney General’s Consumer Mediation Service if you have any questions concerning home construction contract law.

³ For a list of possible mediators or arbitrators, contact the Office of Court Alternative Dispute Resolution (207-822-0792, <http://www.courts.state.me.us/courtservices/adr>). The Administrative Office of the Courts maintains a list of persons skilled in dispute resolutions.

⁴ If a down payment is required, you should ask for copies of receipts in order to confirm that the needed materials have been paid for.

§ 18.3. 10 M.R.S.A. c. 219-A, Home Construction Contracts

The provisions of this statute, 10 M.R.S.A. c. 219-A, are reproduced below. To repeat: the law requires that home construction work for a price exceeding \$3,000 be based on a written contract containing the information required by §§ 1487-1488. *Change orders must also be in writing and contain the revised contract price.* Such contracts are mandatory unless the parties specifically agree to alter or ignore altogether the required terms.⁵ Violations of this statute constitute *prima facie* evidence of an unfair trade practice.⁶

10 M.R.S.A. Chapter 219-A is enacted to read:

CHAPTER 219-A

HOME CONSTRUCTION CONTRACTS

§ 1486. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

1. Change orders. “Change orders” means a written amendment to the home construction contract which becomes part of and is in conformance with the existing contract.
2. Down payment. “Down payment” means all payments to a home construction contractor prior to or contemporaneous with the execution of the home construction contract.
3. Materials. “Materials” means all supplies which are used to construct, alter or repair a residence.
4. Home construction contract. “Home construction contract” means a contract to build, remodel or repair a residence, including not only structural work but also electrical, plumbing and heating work; carpeting, window replacements; and other non-structural work.
5. Residence. “Residence” means a dwelling with 3 or fewer living units and garages, if any. Buildings used for commercial or business purposes are not subject to this chapter.

⁵ A contract in violation of the Home Construction Contracts Act can be considered an “illegal” contract and you can argue that the court should refuse to enforce it. *See Allstate Insurance Co. v. Elwell*, 513 A.2d 269, 272 (Me. 1986) (“A contract that contravenes public policy will not be enforced by our courts.”) Nonetheless, contractors may be able to recover some of their expenses under the equitable theory of *quantum meruit* (“as much as deserved”). *See Parker v. Ayre*, 612 A. 2d 1283, 1284-85 (Me. 1992).

⁶ Private remedies under the Maine Unfair Trade Practices Act include damages or restitution and attorney fees (*see* 5 M.R.S.A. § 213). In the case of *Gillespie v. Sparks*, No. CV-89-253 (Me. Super. Ct., Kenn. Cty., July 31, 1990), the Court awarded attorney’s fees of \$7,900 for a violation of the Home Construction Contracts law. In *Parker v. Ayre*, 612 A.2d 1283, 1284-85 (Me. 1992), the court found that the contractor did not violate the Maine Unfair Trade Practices Act because the consumer had not suffered any “loss” as required by 5 M.R.S.A. § 213. The contractor was entitled to reimbursement due to the theory of *quantum meruit*. *But see Kinney v. Daggett and Laplante*, No. SKO-91-CV-481 (Me. Dist. Ct., 12, Som., May 3, 1993), in which the contractor’s *quantum meruit* award was decreased by \$400 because the homeowner reasonably believed he was due that much in savings and was, therefore, harmed by the lack of a written contract.

§ 1487. Home Construction Contracts

Any home construction contract for more than \$3,000⁷ in materials or labor must be in writing and must be signed by both the home construction contractor and the homeowner or lessee. Both the contractor and the homeowner or lessee shall receive a copy of the executed contract prior to any work performance. This basic contract must contain the entire agreement between the homeowner or lessee and the home construction contractor and must contain at least the following parts:

1. Names of parties. The name, address and phone number of both the home construction contractor and the homeowner or lessee;
2. Location. The location of the property upon which the construction work is to be done;
3. Work dates. Both the estimated date of commencement of work and the estimated date when the work will be substantially completed. The estimated date of commencement of work and the completion date may be changed if work cannot begin or end due to circumstances beyond the control of the contractor, including, but not limited to, the lack of readiness of the job site or the unavailability of building materials;
4. Contract price. The total contract price, including all costs to be incurred in the proper performance of the work, or, if the work is priced according to a “cost-plus” formula, the agreed-upon price and an estimate of the cost of labor and materials;
5. Payment. The method of payment, with the initial down payment being limited to no more than one-third of the total contract price;
6. Description of the work. A general description of the work and materials to be used;
7. Warranty. A warranty statement which reads:

In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract;

8. Resolution of disputes. A statement allowing the parties the option to adopt one of 3 methods of resolving contract disputes. At a minimum, this statement must provide the following information:

If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

- (1) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator’s decision (_____);
- (2) Nonbinding arbitration, with the parties free to not accept the arbitrator’s decision and to seek satisfaction through other means, including a lawsuit (_____);
- (3) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences (_____);

⁷ Effective September 13, 2003, this amount was increased from \$1,400 to \$3,000.

9. Change orders. A change order statement which reads:

Any alteration or deviation from the above contractual specifications that result in a revision of the contract price will be executed only upon the parties entering into a written change order;

10. Door-to-door sales. If the contract is being used for sales regulated by the consumer solicitation sales law, Title 32, chapter 69, subchapter V or the home solicitation sales law, Title 9-A, Part 5, a description of the consumer's rights to avoid the contract, as set forth in these laws;
11. Residential insulation. If the construction includes installation of insulation in an existing residence, any disclosures required by chapter 219, Insulation Contractors; and
12. Energy standards. A statement by the contractor that chapter 214 establishes minimum energy efficient building standards for new residential construction, and whether the new building or an addition to an existing building will meet or exceed those standards.

§ 1488. Change Orders

Each change order to a home construction contract must be in writing and becomes a part of and is in conformance with the existing contract. All work shall be performed under the same terms and conditions as specified in the original contract unless otherwise stipulated. The change order must detail all changes to the original contract that result in a revision of the contract price. The previous contract price must be stated and the revised price shall also be stated. Both parties must sign the change order.

§ 1489. Exemption

Parties to a home construction contract may exempt themselves from the requirements of this chapter only if the contractor specifically informs the homeowner or lessee of his rights under this chapter and the parties then mutually agree to a contract or change order that does not contain the parts set forth in sections 1487 and 1488.

§ 1490. Penalties

1. Violation. Any violation of this chapter shall constitute prima facie evidence of a violation of the Unfair Trade Practices Act, Title 5, chapter 10.

2. Civil penalty. Each violation of this chapter constitutes a civil violation for which forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. No action may be brought for a civil violation under this subsection more than two years after the date of the occurrence of the violation. No home construction contractor may be held liable for a civil violation under this subsection if the contractor shows by a preponderance of the evidence that the violation was unintentional and a *bona fide* error, notwithstanding the maintenance or procedures reasonably adopted to avoid any such error.

§ 18. 4. The Attorney General's Model Home Construction Contract And Change Order

This model contract was drafted by the Attorney General's Consumer Protection Division in an

attempt to meet the requirements for a written home repair contract, as mandated by 10 M.R.S.A. § 1486-90. This model contract does *not* satisfy the additional contract provisions required for door-to-door transient home repair contractors.

You are free to copy the following model contract and change order and use them for your home construction project.

THE ATTORNEY GENERAL'S
MODEL HOME CONSTRUCTION CONTRACT

This model contract is for home construction, repair, or remodeling. It was drafted by the Consumer Protection Division of the Maine Attorney General in an attempt to meet the requirements of 10 M.R.S.A. §§ 1486-90, Home Construction Contracts. This contract is required to be used for home construction or repair projects costing more than \$3,000. You are free to copy this contract and use it for your home construction project. *The Maine Attorney General does not guarantee that this model contract satisfies all legal requirements.*

Contract No. _____

1. Parties To This Contract:

A. Contractor

_____ Name _____ Phone _____

_____ Address _____

B. Homeowner or Lessee

_____ Name _____ Phone _____

_____ Address _____

2. Location Of Work: _____

3. Completion Dates:

A. Estimated date of commencement _____

B. Estimated date of completion _____

4. Contract Price (if a "cost-plus" formula the cost of labor and materials must be estimated):

5. Method of Payment (initial down payment is limited to no more than 1/3 of the total contract price): _____

6. Description of the Work: _____

7. Warranties: The contractor provides the following express warranty: _____

In addition to any additional express warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract.

8. **Resolution of Disputes.** If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

(1) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator’s decision (_____);

(2) Nonbinding arbitration, with the parties free to not accept the arbitrator’s decision and to seek satisfaction through other means, including a lawsuit (_____);

(3) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences (_____);

The parties are *not* required to select one of these dispute resolution methods. They are optional. If the parties do *not* select one of these dispute resolution options, check here: _____.

9. **Change Orders.** Any alteration or deviation from the above contractual specifications that involve extra cost will be executed *only upon the parties entering into a written change order.*

10. **Additional Provisions:** _____

PLEASE NOTE: if this contract is being used by contractors who sell door-to-door it must meet any applicable requirements of the Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661-4671, the Door-to-Door Home Repair Transient Sellers Act, 32 M.R.S.A. §§ 14501-14512, and The Credit Home Solicitation Sales Act, 9-A M.R.S.A. §§ 3-501-3-507, including a description of the consumer’s 3 day right to cancel the contract. If this contract includes installation of insulation in an existing residence it must contain a detailed description of the insulation as required by 10 M.R.S.A. § 1482. If this contract includes construction of a new residential building or a new addition to an existing residence, it must contain a statement that 10 M.R.S.A. §§ 1411 - 1420 establishes minimum energy efficient building standards for new residential construction, and whether this building or addition will meet or exceed those standards.

11. **Contract Acceptance:**

Signature: _____ Date: _____
(Homeowner or Lessee)

Signature: _____ Date: _____
(Contractor)

EACH PARTY MUST RECEIVE A COPY OF THIS SIGNED CONTRACT BEFORE WORK CAN BE STARTED.

THE ATTORNEY GENERAL'S
MODEL HOME CONSTRUCTION CONTRACT
CHANGE ORDER

Pursuant to 10 M.R.S.A. § 1488, each *change order* to an existing home construction contract must be in writing and becomes a part of and is in conformance with the original contract. All work shall be performed under the same terms and conditions as specified in the original contract unless otherwise stipulated. The change order must detail all changes to the original contract that result in a revision of the contract price. The previous contract price must be stated and the revised price shall also be stated. Both parties must sign the change order.

Contract No. _____

1. Parties To This Change Order:

A. Contractor

Name Phone

Address

B. Homeowner or Lessee

Name Phone

Address

2. Date Original Contract Signed: _____

3. Changes in the Work Originally Contracted For: _____

4. Price Change:

A. Original Contract Price \$ _____

B. Revised Contract Price \$ _____

5. Acceptance of Change Order:

Signature: _____ Date: _____
(Homeowner or Lessee)

Signature: _____ Date: _____
(Contractor)

EACH PARTY MUST RECEIVE A COPY OF THIS SIGNED CHANGE ORDER BEFORE THE REVISED WORK CAN BE STARTED.