

MOBILE HOME REPLACEMENT PROGRAM CONSTRUCTION CONTRACT

This Contract is based on the Maine Attorney General's model contract for home construction, repair, or remodeling drafted by the Public Protection Unit of the Maine Attorney General in an attempt to meet requirements of 10 M.R.S.A. §§ 1486-90, Home Construction Contracts. Neither the Maine Attorney General nor the Home Repair Network Program guarantees that this contract satisfies all legal requirements. This Contract also contains provisions to ensure compliance with United States Department of Housing and Urban Development (HUD) regulations regarding home rehabilitation projects financed with HUD monies.

1. PARTIES TO THIS CONTRACT

This Agreement is between the following APPLICANT(S) (Owner) and CONTRACTOR:

APPLICANT (Owner):

First Name MI Last Name

Mailing Address

City State Zip

Telephone Number

CONTRACTOR:

Contractor Name

Contractor Mailing Address

City State Zip

Contractor Telephone Number

CO-APPLICANT (co-Owner):

First Name MI Last Name

Mailing Address

City State Zip

Telephone Number

ESCROW AGENT:

Community Action Agency (CAA) Name

CAA Mailing Address

City State Zip

CAA Telephone Number

2. LOCATION OF WORK AND CONTRACT PRICE

Contingent upon receipt of funds, the APPLICANT intends to replace an existing mobile home with a new stick built home on the "Property" located at:

Property Street Property City Property State Property Zip

The Contract price as set forth in the CONTRACTOR's bid is \$_____ all in accordance with the *Floor Plans*, and *Construction Specifications* which are attached hereto as Exhibit A and expressly incorporated herein by reference and made a part hereof. **If APPLICANT does not receive financing to cover the cost of the contractor's bid, this contract is null and void.**

3. COMMENCEMENT AND COMPLETION DATES

CONTRACTOR shall start work on or about _____.

The CONTRACTOR shall thereafter diligently pursue and execute the work, weather permitting, and complete the work prior to _____.

It is further agreed that failure of CONTRACTOR to perform any work under this contract for a period of five (5) consecutive working days at any time after commencement of the work, without written consent of APPLICANT, shall constitute a breach of the contract and APPLICANT may, by written notice terminate his obligations hereunder and contract for or otherwise effect the completion of any of the work then uncompleted by the CONTRACTOR and/or assess liquidated damages in the amount of \$50.00 per day for every working day that CONTRACTOR is not at the site without Owner approval until such time the contract is terminated. Any liquidated damages recovered shall be applied as a principal reduction to the outstanding balance of the loan or if a grant shall be refunded to Maine State Housing Authority. APPLICANT may set-off against the contract price the cost and expenses of completing such work. In the event APPLICANT has at the time of the breach and termination paid to CONTRACTOR an amount in excess of the fair value of the work then completed, CONTRACTOR shall refund to APPLICANT promptly upon demand an apportioned amount of the total sum paid by APPLICANT subject to the Arbitration provisions of Section 13 below.

4. METHOD OF PAYMENT

The ESCROW AGENT is holding the funds for the performance of this contract. CONTRACTOR and APPLICANT agree to comply with the terms of a Construction Escrow Agreement among the ESCROW AGENT, the CONTRACTOR and APPLICANT of near or even date herewith. CONTRACTOR shall be compensated for his/her services in accordance with the Construction Escrow Agreement. The ESCROW AGENT shall disburse funds only for any of the Work which is (a) completed, (b) approved by the Owner, (c) inspected by the ESCROW AGENT, and (d) approved by the ESCROW AGENT. No monies will be disbursed up front in advance of the work. A sum of ten percent of the total contract amount shall be withheld by ESCROW AGENT until completion and approval of all work.

5. ACCESS TO CONTRACTOR'S RECORDS

APPLICANT and the ESCROW AGENT shall be afforded access at all times to inspect the work and they may at times inspect CONTRACTOR's books, records, correspondence, construction drawings, receipts, vouchers, payrolls, and agreements with sub-contractors relating to this contract. CONTRACTOR shall preserve all such records for a period of two (2) years after final payment hereunder.

6. LIENS

CONTRACTOR agrees to keep the Property free from recorded mechanics' liens arising out of this contract. As a condition to receiving final payment hereunder, CONTRACTOR shall deliver to APPLICANT a complete release of all liens arising out of this contract.

7. WARRANTIES

The CONTRACTOR provides the following express warranty:

CONTRACTOR warrants all work for a period of one year.

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. PERMITS AND FEES

CONTRACTOR shall comply with all applicable building, zoning, environmental, and land use laws, regulations, and ordinances. CONTRACTOR shall give all notices required by and comply with all applicable laws, ordinances and codes of the municipality where work is being performed and the State of Maine. CONTRACTOR shall at his/her own expense secure and pay fees or charges for all permits required for the performance of the work. CONTRACTOR shall provide copies of such notices and permits to the APPLICANT and the ESCROW AGENT. CONTRACTOR shall provide proof of disposal of pre-1976 mobile home before final payment will be issued.

9. INDEMNIFICATION AND INSURANCE

CONTRACTOR shall indemnify and hold APPLICANT, ESCROW AGENT, the Maine State Housing Authority, the United States Department of Agriculture, Rural Development, and the Maine Department of Economic and Community Development harmless for liability for any bodily injury, property damage or other claims or demands of third parties resulting from performance of the work by CONTRACTOR. CONTRACTOR shall obtain, maintain and furnish evidence of general commercial liability insurance coverage in an amount no less than \$1,000,000 aggregate coverage and \$500,000 for each occurrence for bodily injury, death and property damage arising out of the work to be performed by CONTRACTOR and shall procure any worker's compensation insurance required by law.

10. CHANGE ORDERS

Any alteration or deviation from the cost estimate and/or floor plan specifications require written change order approved and signed by the ESCROW AGENT, the CONTRACTOR and the APPLICANT prior to CONTRACTOR's performing any additional work.

11. RESOLUTION OF DISPUTES

Disputes between the APPLICANT and the CONTRACTOR may arise from time to time during the life of the rehabilitation project. Under Maine law 10 M.R.S.A. §§1487 (8), the parties to a home construction contract may agree to settle disputes arising under the contract by jointly paying for one of the following: 1) binding arbitration as regulated by the Maine Uniform Arbitration Act with the parties agreeing to accept as final the arbitrator's decision; 2) non-binding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit; and 3) mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences.

MaineHousing, which finances this work, requires disputes to be resolved through arbitration with the parties agreeing to accept as final the arbitrator's decision. The APPLICANT and the CONTRACTOR agree to use the dispute resolution process set forth in the Construction Escrow Agreement.

12. ADDITIONAL PROVISIONS

The CONTRACTOR shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 94B; 62 Stat. 862; Title U.S.C., Section 874; and Title 40 U.S.C., Section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto and shall be responsible for the submission of statements required of subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions from the requirements thereof.

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. CONTRACTOR will take affirmative action to ensure that employees and applicants for employment are treated during employment without regard to their race, color, religion, sex or national origin.

The CONTRACTOR, by execution of this contract, certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

NOTE: If this contract is being used by contractors who sell door to door it must meet any applicable requirements of 32 M.R.S.A. §§ 4661-4671, Consumer Solicitation Sales Act; 32 M.R.S.A. §§ 14501-14512, Door to Door Home Repair Transient Sellers; and 9-A M.R.S.A. §§ 3-501-3-507; Home Solicitation Sales, including a description of the consumer's right to avoid 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.

13. ASSIGNMENTS

CONTRACTOR shall not assign the benefits of the contract nor delegate its duties thereunder without written consent of APPLICANT and ESCROW AGENT.

14. MAINE ATTORNEY GENERAL ADVISORY

APPLICANTS ARE STRONGLY ADVISED TO VISIT THE MAINE ATTORNEY GENERAL'S PUBLICLY ACCESSIBLE WEBSITE TO OBTAIN CURRENT INFORMATION ON HOW TO ENFORCE THEIR RIGHTS WHEN CONSTRUCTING OR REPAIRING A HOME AT:
http://www.maine.gov/ag/consumer/housing/home_construction.shtml OR CONTACT THE ATTORNEY GENERAL'S OFFICE BY MAIL OR TELEPHONE AT: 6 STATE HOUSE STATION, AUGUSTA, MAINE 04333 (207) 626-8800 / TTY # (207) 626-8865.

APPLICANT

Signed by all owners of the property:

Signature of Applicant

Date

Signature of co-Applicant

Date

CONTRACTOR

Signature of Contractor Representative

Date

Contractor Representative Name

CONTRACT ADDENDUM MAINE ATTORNEY GENERAL HOME CONSTRUCTION WARNING STATEMENT

If you are thinking about building a new home or repairing your existing home, here are some things you should know.

Contractors Are Not Licensed – Buyer Beware!

While there are a great many competent, ethical home contractors in Maine, it is up to you, the consumer to find one. Home contractors are not licensed or regulated by the State of Maine. The old saying “Buyer Beware” applies. You should also keep in mind that the lack of state licensing allows the worst contractors to compete for your business alongside the best. The Attorney General’s Consumer Mediation Program ranks home contractors among the top three most complained about businesses every year. Although home construction contractors are not licensed, some building trades are licensed.

Architects, engineers, plumbers, electricians, oil burner technicians, manufacturers, dealers and installers of mobile and modular homes are licensed in Maine. For more information on these licensed trades, go to: www.maine.gov/pfr/.

When hiring a contractor, we recommend that you: Seek referrals and keep good notes. The best source of references may be: Friends, co-workers, independent trade contractors, engineers, family, building material suppliers, neighbors, architects, home inspectors, local lenders, banks, and contractor’s existing customers. When meeting with a builder, be sure to ask for: Number of years in business, permanent business location, proof of general liability insurance, professional affiliations, educational designations, list of last 5 customers and proof of workers’ compensation insurance for employees and liability insurance.

We ***strongly*** recommend that you ask any contractor you are considering hiring for several references and that you follow up on them.

Building Codes

While some towns and cities have adopted building codes and enforced them, others have not. We recommend that you talk to your town’s code officials before you begin construction.

Written Contracts Are Required

For all home construction and home improvement projects over \$3,000, Maine law requires a written contract with a specific provision that prohibits payment up front of more than one third of the contract price. When a contractor asks you for any money up front, make sure that the money is being used to purchase materials for your project. Ask for receipts and for a lien waiver from subcontractors. A model home construction contract that meets State law can be found in Chapter 18 of the *Maine Attorney General’s Consumer Law Guide*. Go to http://www.maine.gov/ag/consumer/law_guide_article.shtml?id=27938

Be Careful with Construction Loans

If a lender is financing your construction project, make sure that you know your lender and that you understand how your loan proceeds will be disbursed and how subcontractors will be paid.

Home Contractors Complaints Received by the Attorney General

You can find out if a particular contractor has been the subject of a consumer complaint that the Attorney General attempted to mediate by contacting the Attorney General’s Consumer Protection Division at 1-800-436-2131 or at consumer.mediation@maine.gov. Keep in mind that just because the Attorney General has accepted a complaint for mediation does not necessarily mean the consumer was right and the contractor was wrong.

Home Contractors the State Has Sued

In the recent past the State has successfully sued the following home contractors for poor workmanship or failure to complete jobs: *State of Maine v. Daniel B. Tucci, a/k/a Dan the Handyman, and TPDF, LLC*; *In re: Thomas J. Hutchinson Contractor, Inc. and Thomas J. Hutchinson*; *State of Maine v. Joel David Poirier*; *State of Maine v. Joel D. Poirier and Poirier Construction Company, Inc.*; *State of Maine v. Maine Coast Log Homes, Timber Pine Construction, and Mark A. Holmes*; *State of Maine v. CBS Enterprises (Kimberly Mark Smith and David J. Blais)*; *State of Maine v. Frederic Weinschenk d/b/a Ric Weinschenk Builders Inc.*; *State of Maine v. Stephen Lunt d/b/a Lakeview Builders, Inc.*; *State of Maine v. Albert H. Giandrea d/b/a AG’s Home Quality Improvements, Inc.*; *State of Maine v. Al Verdone*; *State of Maine v. Mikal W. Tuttle, d/b/a MT Construction, DMI Industries, and MT Construction, Inc.* *State of Maine v. Jeffrey C. Scott, d/b/a Molunkus Stream Construction*; The Androscoggin County District Attorney has obtained theft convictions against Harold Soper. **Even when our law suits have been successful, we have been unable to collect a significant portion of the judgments because the builders are bankrupt, judgment proof, or have left the state. We strongly recommend that you research a contractor’s record before you begin any construction project.**

Your Home Construction Rights

Chapter 17 of the *Maine Attorney General’s Consumer Law Guide* explains your rights when constructing or repairing your home. Chapter 18 of the *Consumer Law Guide* is a model home construction contract that meets the statutory requirements for any home construction contract over \$3,000.

As of September 1, 2006, this entire statement must be an addendum to any home construction contract for more than \$3,000, as required by 10 M.R.S.A. Chapter 219-A. For updates to this warning go to <http://www.maine.gov/ag/>.