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## **How to prevent a dispute with a home contractor from blowing up in your face**



Not happy with a contractor's work on your house? Watch out! If you refuse to pay the invoice, you risk having a mechanic's lien attached to your property.

If you haven't heard of a mechanic's lien or don't understand the implications of a mechanic's lien, you may want to continue reading.

A lien creates an interest in your property to secure the performance of an obligation — in this case, the payment of a debt to a contractor. A mechanic's lien can ultimately result in a forced sale of your home to discharge the debt.

If you don't approve of this legislative right by contractors, you can blame our founding father, Thomas Jefferson.

Mechanic's liens were created by Jefferson to encourage construction right here in our own hometown — in the new capital city of Washington. They were established by the Maryland General Assembly — of which Washington was then a part — and were meant to give contractors assurance of payment for their labor at a time when commerce was in a state of chaos.

The economics of the construction business are no different today than at the founding of our country. Most contractors make improvements to a property and, thus, increase the value of a property before obtaining full payment for their labor.

The mechanic's lien was originally meant to (and still strives to) prevent unscrupulous homeowners from reaping the rewards of home improvements without making payment.

So back to my original question: What happens when you are unhappy with a contractor's work? If you refuse to pay, can a contractor file a mechanic's lien on your property and force the sale of your home?

The answer is yes, but not without much effort and expense.

"It seems like a wild, wild West remedy more than it really is," said Jodi Anderson, a partner with Alegi Anderson, a real-estate litigation law firm based in Rockville, Md.

"I have had calls from people asking me to file a lien against a property," Anderson said. "It is not as easy as people think it is."

Mechanic's lien laws vary from state to state regarding when and how one is filed, what information must be supplied and how notices are provided. What is common among all 50 states is that the requirements to file a lien are onerous.

If a contractor wants the protection of the mechanic's lien law, they must follow strict rules on conducting business and cumbersome procedures on filing one.

"If you are a homeowner on notice of a mechanic's lien, get an attorney," Anderson said.

Before a lien is actually attached to your property, a homeowner most likely will need to attend a hearing in court, during which the contractor must prove a right to the unpaid funds and the homeowner must prove a right to deny payment. The court then decides if a lien on the property is warranted.

A homeowner may need to bring in an expert witness to testify as to why the work was not done properly.

There are other options for both homeowners and contractors in a dispute.

"A homeowner can make a claim under the Consumer Protection Act," Anderson said. "And a contractor can sue for nonpayment if the time frame for filing a mechanic's lien has expired."

Read the contract. It is possible the contract states that the parties to the contract agree to go to arbitration first.

"Homeowners often make the mistake of paying too much up front," said Michael Rowan, an attorney in Rockville. "One of the most critical things is to make sure there is an amount as big as possible held back as retainage."

Rowan suggested making payments at the completion of stages in the construction process.

He offered another tip. "The lowest bid is not necessarily the most economical bid," Rowan said. "Compare apples to apples. And get as much detail as possible. For example, specify in the contract exactly what type of siding will be used."

How can a homeowner reduce the chances of having issues with a contractor?

"Do your due diligence before entering into a contract," Rowan said.

Here is what you need to do before hiring a contractor:

- Check with your jurisdiction's department of licensing and labor to find out whether a contractor is licensed and in good standing.
- Contact the Better Business Bureau to find out whether the contractor has been reported for unethical or dishonest business conduct.
- Ask friends and colleagues for references.
- Check on Yelp.com or Angie's List for reviews.
- Read the contract to understand the procedures for dealing with disputes.
- Negotiate payment in stages.

I also suggest you understand the recommended techniques for undertaking your project. For example, if you are hiring a contractor to install a new roof, take time to research the proper ways to install a roof, the best materials to use and the typical length of time and cost to do the job.

Having some information under your belt will give you leverage in the negotiating process and will reduce the likelihood of having issues later in the process.