



LEGAL GUIDE TO **HOME** **REMODELS**

LAW OFFICES OF
PETER N. BREWER
Real Estate Law - From the Ground Up®

BY CHARLIE
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ABOUT THE AUTHOR



**CHARLIE
BRONITSKY, ESQ.**

29 Years
Experience

Charles S. Bronitsky has been a practicing attorney for over 25 years. He holds a Bachelor of Arts degree, with Academic Distinction, from the University of California, Berkeley and earned a Juris Doctor degree from the University of California, Berkeley Boalt Hall School of Law. Mr. Bronitsky is admitted in all of the courts of the State of California, in the Ninth Circuit Court of Appeal, in the Second Circuit Court of Appeals in New York City, and in the United States Supreme Court.

Mr. Bronitsky has helped clients in solving business and real estate related problems. With experience ranging from cases involving hundreds of parties in class action securities matters to single family residential non-disclosure cases, Charles Bronitsky has represented clients of all sizes.

In addition to being an attorney, Mr. Bronitsky is an entrepreneur and experienced businessman, having formed, operated, and restructured a diverse number of businesses. In fact, he has been directly involved in some of the largest and most complex financial transactions and restructurings in U.S. History.

Mr. Bronitsky has a high technical expertise in not only the use, but development of technology, and consistently uses this expertise to bring more efficient services to the firm's clients.



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REMODELING INTRO

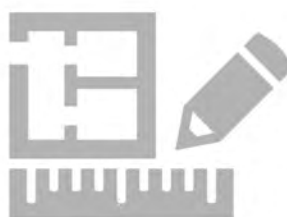


Many of us have done some amount of remodeling in our home and most of us have had a good experience, but unfortunately that is not always the case.

The best way to ensure that your remodeling experience will be a good one is to get some basic knowledge about your contractor and the construction process, and then start with a written contract that protects you in case something goes wrong.



LEARN ABOUT
YOUR CONTRACTOR



UNDERSTAND THE
CONSTRUCTION PROCESS



HAVE A
WRITTEN CONTRACT



California law provides some amount of consumer protection for homeowners who want to remodel. The primary protections are set out in California Business & Professions Code § 7159, which applies to most home remodeling projects.



In addition, contractors are regulated by the Contractors State Licensing Board, which is another good resource if you run into problems.

A skilled construction law attorney should be well-versed in the regulations and industry practices surrounding home remodels, including recent case developments and local factors. Home remodels may involve hiring multiple contractors, obtaining permits, and negotiation contracts – an experienced construction law attorney can help ensure that your interests are reflected and advanced during these proceedings.

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 **\$500**
IF PROJECT EXCEEDS \$500,
CONTRACTOR MUST HAVE
VALID LICENSE



Permits

You should not do anything that requires a permit without getting a permit. Certain types of construction work, such as structural work, electrical work, and plumbing work – require permits. If the contractor does not get a permit, you have no guarantee that the work is being done to current codes and you are putting yourself and your family at risk of damage and injury. The permit process does have costs, but its benefits are that you know that your job was done to current building and safety codes and you and your family are as safe as possible. It is also much easier when you want to sell when your remodel was permitted.



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CONSTRUCTION CONTRACTS

California law requires that all home remodel contracts be in writing. That doesn't mean that if you do not have a written contract that you can stiff the contractor. A recent California Court of Appeal case held that an oral home improvement contract can still be enforced against a homeowner; in that case, the Court awarded the contractor several hundred thousand dollars of damages, interest, and attorneys' fees! A written contract will protect you and set out everyone's expectations before the project starts.

Many different complications can occur during a remodel. If you are a homeowner looking to enter into a construction contract, there are a number of items you need to look out for before signing a construction contract. In general, there are two types of construction contracts: fixed price contracts and cost plus contracts.

Fixed Price Contracts

Fixed price contracts are where you give the contractor the design and the contractor tells you what the entire project will cost. Beware, however, that just because a contractor gives you a price for the entire project does not mean that you have a fixed price contract in place. Often, homeowners who thought they had a fixed price contract are stupefied when the contractor provides documentation showing that what the contractor provided was an estimate, not a fixed price. That is why it is important to set out specific pricing terms in writing in the contract.

Cost Plus Contracts

A cost plus contract is where the homeowner agrees to pay the contractor's costs, plus overhead and a service fee. Homeowners should not enter into cost plus contracts without a good understanding of the risks. The largest risk is that you have agreed to pay whatever the project costs and, in fact, you may be paying more than that without knowing it. Labor rates and mark-ups of subcontractor and supplier bills are common areas where homeowners can get charged more than they are expecting to pay. Be very wary of entering into cost plus contracts.





CONTRACT TERMS

Written Contract

California law requires a written contract between you and your contractor for any work that cost more than \$500. By law, the contract must contain:

- (1) the Price
- (2) a Schedule of progress payments
- (3) a List of the contract documents (including things such as the architect's plans)
- (4) the Contractor's address and license number



PRICE



SCHEDULE



LIST OF
DOCUMENTS



CONTRACTOR
ADDRESS

Timing

The written contract should have provisions for the start and completion of construction, including an approximate start date and an estimated date of completion.

Payment Terms

Payment terms are, of course, critical to the process of successfully completing a remodel. California law sets out the parameters for how the payment process is required to be set out in the written contract and it is designed to make sure that you are getting what you are paying for. Following the State requirements is a must. For example, it is illegal for a contractor to bill you in advance of completing any particular portion of the work. That means a contractor cannot bill you for work that has not been done or material that has not yet been delivered.



CONTRACT TERMS

Deposit

Under California law, the deposit that can be charged can be no more than 10% of the purchase price, up to a maximum of \$1,000. Thus, do not pay more than \$1,000 for your deposit.

10%
OF THE PURCHASE PRICE is
the maximum that can be
charged for a deposit

\$1,000
MAXIMUM you can pay for
deposit, under California law

Change Orders

The contract should also include terms for the process of dealing with unexpected conditions and changes from the initial plan. In the industry, this is known as the “change order” process whereby the contractor submits a request for more time or more money (although sometimes less) resulting from a change from the plan or the discovery of some unexpected condition. It is critical to set out this process in the written contract so that you do not end up getting a change order from your contractor after the work is done and the costs incurred. Often times there are alternatives that may cost less and you will want to know that before the work is done.

There should also be language about how to keep your project free of liens from not only the contractor, but from the subcontractors and material suppliers. You should make it a requirement of your contract that you get periodic lien releases every time you make a payment and final lien releases when the project is completed.

Liability Insurance

You should require that your contractor provide liability insurance and that it has the legally required workers’ compensation insurance. If a contractor does not have these types of insurance and something were to happen during the scope of the remodel, you could be held responsible.



How To **PROTECT** **YOURSELF**

There are a few steps you can take to protect yourself, to prevent problems from arising during your remodel.

Change Order Process

The most important thing to do is to make sure that your contract provides for a change order process. What that means is that if and when something changes – i.e. hidden damage, hard rock drilling, upgrading appliances – your contract should have a process whereby the contractor must provide you with a written “Change Order”, stating what the problem or change is, and itemizing how much it is going to cost. Perhaps even more importantly, your contract should provide that, until you sign the Change Order, the contractor cannot do the work. What you are trying to prevent is a situation where the work is done before you have approved it and you are stuck with the bill.

Lien Releases

In California, your contractor, the subcontractors and even the material suppliers can place a lien on your property if they are not paid. Thus, it is essential that when you pay the contractor, the contractor provide you with releases from the subcontractors and material suppliers so that you know that they too are paid. There are forms that can be used for this and your contract should incorporate those forms. Further, you should insist on getting the lien releases when you pay your contractor, to avoid having your property liened and being stuck paying twice.

Joint Checks

Another way to protect yourself is to ensure that your construction contract allows you to issue joint checks. Joint checks allow you to pay subcontractors and material suppliers directly, instead of passing through the general contractor, so you know where your money is going. Once you see that there are potential problems with the project, having joint checks can provide you with some additional protection beyond the lien releases.

Construction Attorney

A construction law attorney can provide a qualified legal review of your contract before you sign it. By having a legal expert read over the terms, it helps ensure you understand the terms and that your interests are protected beforehand, instead of having to deal with litigation after a problem occurs.



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