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2011 Hawaii Code

DIVISION 2. BUSINESS

TITLE 25. PROFESSIONS AND OCCUPATIONS

444. Contractors

§444-25.5 Disclosure; contracts.

Universal Citation: [HI Rev Stat § 444-25.5 \(2011 through Reg Sess\)](#)

§444-25.5 Disclosure; contracts. (a) Prior to entering into a contract with a homeowner involving home construction or improvements and prior to the application for a building permit, licensed contractors shall:

(1) Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract including the homeowner, the contractor, any subcontractor or any materialman supplying commodities or labor on the project;

(2) Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner and the approximate expense of the bond; and

(3) Disclose all information pertaining to the contract and its performance and any other relevant information that the board may require by rule.

(b) All licensed contractors performing home construction or improvements shall provide a written contract to the homeowner. The written contract shall:

(1) Contain the information provided in subsection (a) and any other relevant information that the board may require by rule;

(2) Contain notice of the contractor's right to resolve alleged construction defects prior to commencing any litigation in accordance with section 672E-11;

(3) Be signed by the contractor and the homeowner; and

(4) Be executed prior to the performance of any home construction or improvement.

(c) For the purpose of this section, "homeowner" means the owner or lessee of residential real property, including owners or lessees of condominium or cooperative units.

(d) Any violation of this section shall be deemed an unfair or deceptive practice and shall be subject to provisions of chapter 480, as well as the provisions of this chapter. [L 1975, c 183, §4; am L 1984, c 95, §8; am L 1989, c 306, §1; am L 1995, c 20, §7; am L 2004, c 119, §3]

Case Notes

Where plaintiff did not provide to homeowners the lien disclosure notices before or upon signing of the contract or prior to the commencement of the work as required by subsection (a), plaintiff's conduct was an unfair or deceptive practice that rendered its contract void and unenforceable at law or in equity under §480-12; thus, plaintiff was not entitled to a lien upon homeowners' property under §507-42, and trial court did not err in dismissing its lien application. 111 H. 349, 141 P.3d 996.

As §480-12 voided the contract between homeowner and contractor, §§507-42 and 480-12 precluded the imposition of a §507-42 lien upon the homeowner's property by contractor who failed to comply with the requirements of this section. 96 H. 365 (App.), 31 P.3d 222.

In light of the purpose of this section and the specific duties it explicitly imposes on "any licensed contractor entering into a contract involving home improvements", the law does not permit a homeowner to waive his or her rights specified therein. 96 H. 365 (App.), 31 P.3d 222.

Subsection (d) and §480-12 do not preclude some recovery in quantum meruit from a homeowner by a contractor who fails to comply with the requirements of this section; the amount cannot exceed the amount that would have been due the general contractor under the contract had the contract not been void, less the amount previously paid the

contractor and the total of the amount paid and owed to all subcontractors and materialmen. 96 H. 365 (App.), 31 P.3d 222.

Pursuant to §444-2(7), homeowners did not have the benefit of, and, as to homeowners, contractor was not obligated to comply with, the disclosure provisions of this section. 109 H. 96 (App.), 123 P.3d 691.

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NOTICE TO ALL ACTIVELY LICENSED CONTRACTORS

Access this form via website at: cca.hawaii.gov/pvl

Insurance Requirements

You must maintain your license requirements or face immediate forfeiture of the license. Section 444-11.1, Hawaii Revised Statutes, states that the failure, refusal, or neglect of any licensed contractor to maintain in full force and effect, the applicable workers' compensation insurance, liability insurance, or bond shall cause the **automatic forfeiture** of the license of the contractor effective as of the date of expiration or cancellation. Satisfactory proof of **continuous** insurance and bond coverage must be submitted to the board within 60 days or the license remains forfeited and the licensee must apply as a new applicant.

It is your obligation as a licensee to maintain and notify the board of your liability insurance, workers' compensation insurance, and bond coverage when applicable. To ensure receipt by the board of your insurance certificates, we suggest you have your insurance agency give you two copies of the certificate (rather than having the insurance agency sending the certificate directly to the board's office). Upon receipt from the insurance agency, you in turn should mail the original certificate to the board and retain a copy for your files. **We also recommend that you verify that we received your insurance certificate/bond by calling our Licensing Branch at (808) 586-3000 or viewing your license status via our website at: cca.hawaii.gov/pvl.**

License Identification

Section 16-77-83 of the Contractors License Board's Rules require a licensee to be identified as a licensed contractor by listing the name and license number of the contractor when advertising through any media, including newspapers, magazines, radio, television, the Internet, and yellow page directories.

License Renewal

All contractor licenses expire on September 30 of the even-numbered year. To ensure receipt of a renewal application, notify the board of any change of address. Failure to renew the license by September 30 will result in the forfeiture of your license. If you do not restore your forfeited license within 60 days, you will be required to apply as a new applicant.

A current tax clearance (within 6 months of renewal) from the Department of Taxation is required to renew sole proprietor and contractor entity licenses. All licensees (including RMEs) with tax liens must provide proof of a lien release or current payment arrangement.

Electrical and Plumbing Contractors

All individuals performing electrical and plumbing work must be licensed by the Board of Electricians and Plumbers (Hawaii Revised Statutes, Chapter 448E). The C-13 Electrical and C-37 Plumbing contractor classifications do not replace the electrician and plumber licenses.

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Home Construction and Improvement Contractors

Section 444-25.5, Hawaii Revised Statutes, requires that you do the following prior to entering into a contract and applying for a building permit:

1. Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract including the homeowner, the contractor, any subcontractor or any materialman supplying commodities or labor on the project;
2. Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner and its approximate expense; and
3. Disclose all information pertaining to the contract, its performance, and any other relevant information required by the board's rules.

Section 444-25.5, Hawaii Revised Statutes, also requires all licensed contractors performing home construction or improvements to provide a written contract to the homeowner which includes:

1. The above-described disclosure information;
2. Notice of the contractor's right to resolve alleged construction defects prior to commencing any litigation in accordance with Section 672E-11, Hawaii Revised Statutes; and
3. Signatures of the contractor and homeowner.

The contract must be executed prior to the performance of any home construction or improvement.

The notice of the contractor's right to resolve alleged construction defects must be conspicuously included in the contract and must be in substantially the following form:

"CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED YOUR HOME OR FACILITY. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, THE CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION."

DISCLOSURE OF LIEN RIGHTS

Access this form via website at: cca.hawaii.gov/pvl

HOMEOWNERS TAKE NOTICE

Any person who furnishes labor (prime or subcontractor) or materials (material supplier) for your home improvement or renovation project and is not paid can file a claim (lien) in Circuit Court against your property under Hawaii Revised Statutes ("HRS") Chapter 507. This is true even if you have paid the contract price in full to the prime contractor and the contractor fails to pay his subcontractors or material suppliers.

In order to obtain a lien against your property, a contractor, subcontractor, or material supplier must go to court and show that goods or services for the project have been supplied but not been paid for. You will be notified to appear and defend against these claims in court.

If a lien is obtained, you are entitled to prove in a later court proceeding that you paid your prime contractor in full. The court could then enter judgment in your favor against the prime contractor and direct payment out of the contractor's recovery fund up to the amount allowed by law, if the prime contractor was properly licensed at the time you entered into the contract with the prime contractor.

WHAT YOU CAN DO

Here is what you can do to help prevent problems:

- (1) Make certain that the contractor is licensed. Call 587-3295 to verify licensure.
- (2) On bigger jobs ask the contractor to explain to you about the possibility of providing a PERFORMANCE AND PAYMENT BOND which will guarantee completion of the project and payment of all liens. This Bond is usually provided by surety companies or material supply houses to qualified contractors. It may cost you approximately 5% of the project cost.
- (3) YOU SHOULD NOT MAKE ANY ORAL AGREEMENTS. Make sure everything is put in writing, including but not limited to the price, what work is to be done, any specific exclusions or restrictions, and the grade and brand of materials to be used, the length of the project, etc. See HRS §444-25.5 and the rules of the Contractors License Board. If you later agree to make any changes in the original specifications, THESE CHANGES SHOULD BE IN WRITING AS WELL.
- (4) TAKE TIME TO STUDY THE AGREEMENT. Do not let a contractor or salesman hurry you into signing a contract; especially when you feel pressured by emergencies.
- (5) REMEMBER, A CONTRACT IS A LEGAL, BINDING DOCUMENT. Make certain you understand the contract. If not, spend a few extra dollars to have an attorney explain it to you.
- (6) OBTAIN A LIEN RELEASE FROM SUBCONTRACTORS. A mechanic's lien could be placed on your home by a subcontractor if the general contractor fails to pay his bills--EVEN THOUGH YOU HAVE PAID FOR THE WORK. The same thing holds true FOR SUPPLIERS OF CONSTRUCTION MATERIALS INCORPORATED INTO YOUR JOB... GET A LIEN RELEASE! Contractors could provide you with a lien release form. This form will essentially state that you have paid or have entered into an agreement to pay the subcontractor or supplier for their work, and that the subcontractor or supplier therefore relinquishes their lien rights.
- (7) DO NOT APPROVE PLANS OR BLUEPRINTS unless you understand them.
- (8) PLEASE BE SURE YOUR CHECKS are made out to the CONTRACTOR, NOT TO A SALESMAN.
- (9) Make sure and publish a "NOTICE OF COMPLETION" in the newspaper as soon as the work is done. No lien may be claimed 46 days after the notice requirement (among other things) is completed in accordance with HRS §507-43.

- (10) Discuss with your contractor the possibility of withholding a portion of payment until the 45-day period for filing liens has expired. The amount withheld should be sufficient to cover all claims which might be filed. You and your contractor must agree on the amount.
- (11) If you have any questions about lien rights or other contract matters, DO NOT SIGN this or any contract. Review HRS Chapter 507 and/or contact an attorney first.

This form has been approved by the Contractors License Board; however, the Board suggests that a person become familiar with the laws and rules governing contractor's and mechanic's liens prior to entering into a contract with a contractor for new construction or improvements.

I (we) have discussed with the contractor the lien rights of those who will be supplying labor or materials to my (our) project as well as steps I (we) can take to reduce our lien liability. I (we) have read and understand this DISCLOSURE OF LIEN RIGHTS.

DATED this _____ day of _____, 20_____.

CONTRACTOR

OWNER

WITNESS

OWNER

Print Form