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## **MANDATORY RESIDENTIAL CONTRACT PROVISIONS**

Texas law imposes strict contractual requirements on Contractors who construct or repair residential Properties. The requirements are even more stringent when the residence is a homestead Property. Failure to follow these contractual requirements can result in voiding the Contract; violating the Deceptive Trade Practices Act (“DTPA”); civil penalties; and loss of the right to record a mechanic’s Lien in the event of non-payment. Therefore, if you are in a dispute with a Remodel Contractor, knowing whether these mandatory requirements have been violated can strengthen your claim and provide leverage in negotiating resolution of a dispute.

**Know Your Rights Warning:** Pursuant to Texas Property Code, Section 41.007(a)(3), when improvements are made to an existing homestead Property, the Contract must contain the following Notice printed, stamped or typed in a size equal to at least 10-point **bold** type or computer equivalent. Failure to include this Notice is a violation of the Deceptive Trade Practices Act.

**IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.**

**Mandatory Three Day Right to Cancel:** Pursuant to Business and Commerce Code, Chapter 601, if: (1) a Contractor *solicits* business from a homeowner at any location other than the Contractor’s office; and (2) the Contract is executed anywhere other than at the Contractor’s office, then the Homeowner has the absolute right to cancel the Contract within three business days after executing the Contract. If the Homeowner exercises this right, any deposits paid by the Homeowner to the Contractor must be returned within no later than 10 days from when the Contractor receives a formal written Notice of Cancellation. The Contractor is not entitled to compensation for services performed under the Contract; unless the services improved the Property. If the Contractor delivered materials to the Property prior to the cancellation, then the Homeowner must make the materials available to the Contractor; however, if the Contractor fails to recover the materials within 20 days from cancellation, then the materials automatically become the Homeowner’s property. A Contract subject to Chapter 601 must contain the following mandatory Notice in at least 10 font boldface type located just **below** or **above** the signature lines:

**YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME**

**PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.**

In addition, the Contract must include a detachable Notice of Cancellation Form containing the following information: (1) the Contractor's company name and address, (2) the date the Contract was executed, (3) the date within which the customer can cancel the Contract and receive a refund of any monies paid, and (4) the following Notice in at least 10 font boldface:

**NOTICE OF CANCELLATION**

**YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK. IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).**

**I HEREBY CANCEL THIS TRANSACTION.**

**(date)**

**(buyer's signature)**

Failure to include the mandatory Notice and the Notice of Cancellation Form renders the Contract void and unenforceable and subjects the Contractor to actual damages suffered by the Homeowner, if any, and reimbursement of reasonable attorneys' fees and court costs. Moreover, failure to include the mandatory Notice in the Contract will invalidate an otherwise valid constitutional mechanic's Lien. (See Texas Constitution Article 16, Section 50(a)(6)(Q)(viii).)

**RCLA—Chapter 27 Notice:** Pursuant to Texas Property Code, Chapter 27, referred to as the "Residential Construction Liability Act" ("**RCLA**"), every Contract for either new construction or improvements to an existing residence (even non-homestead Properties), must contain the

following Notice in at least 10 point boldface font. Failure to include this Notice entitles the Property Owner to a \$500.00 civil penalty from the Contractor.

**THIS AGREEMENT IS SUBJECT TO CHAPTER 27 OF THE TEXAS PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER MAY AFFECT YOUR RIGHT TO RECOVER DAMAGES ARISING FROM A CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT AND THAT DEFECT HAS NOT BEEN CORRECTED AS MAY BE REQUIRED BY LAW OR BY AGREEMENT, YOU MUST PROVIDE THE NOTICE REQUIRED BY CHAPTER 27 OF THE TEXAS PROPERTY CODE TO THE CONTRACTOR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, NOT LATER THAN THE 60TH DAY BEFORE THE DATE YOU FILE SUIT TO RECOVER DAMAGES IN A COURT OF LAW OR INITIATE ARBITRATION. THE NOTICE MUST REFER TO CHAPTER 27 OF THE TEXAS PROPERTY CODE AND MUST DESCRIBE THE CONSTRUCTION DEFECT. IF REQUESTED BY THE CONTRACTOR, YOU MUST PROVIDE THE CONTRACTOR AN OPPORTUNITY TO INSPECT AND CURE THE DEFECT AS PROVIDED BY SECTION 27.004 OF THE TEXAS PROPERTY CODE.**

**Conspicuous Binding Arbitration Provision:** Binding arbitration is typically the preferred forum for resolving construction-related disputes because unlike our civil courts: (1) there is no public record of the proceeding; (2) there is no docket or backlog in arbitration and the hearing is scheduled according to the arbitrator's and parties' availability; (3) the parties can select an arbitrator who is experienced in construction law; (4) possible costs savings as a result of limited discovery; and (5) the decision/award is very difficult to overturn on appeal. If the parties agree or if the Contract mandates filing with the American Arbitration Association ("AAA"), then the parties can take advantage of AAA's Home Construction Arbitration Rules, which provide special rules and procedures for resolving residential construction disputes in an expediated and cost-efficient manner.

Pursuant to Texas Property Code, Section 41.007(3)(c), for improvements made to a homestead Property, a binding arbitration provision is only valid and enforceable if it is conspicuously printed, e.g., in all caps, or typed in at least 10-point bold font. There are many different ways to draft a valid binding arbitration provision, but at a minimum, an enforceable provision for a Home Improvement Contract might read as follows:

**THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF OR IN ANY WAY RELATED TO THE RIGHTS AND OBLIGATIONS OF THIS CONTRACT, SHALL BE SUBMITTED TO BINDING ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA") AND SUBJECT TO THE HOME CONSTRUCTION ARBITRATION RULES AND MEDIATION PROCEDURES.**

**Waiver of List of Subcontractors and Material Suppliers:** For new or existing residential construction projects, pursuant to Texas Property Code, Section 53.256, unless otherwise waived as described below, before work begins, the Original Contractor must: (1) provide the Homeowner with a written list that identifies by name, address, and telephone number each Subcontractor and

Material/Equipment Supplier who the Contractor intends to hire for the Project; and (2) provide the Homeowner with an updated list not later than the 15th day after the date a Subcontractor or Material/Equipment Supplier is added or deleted from the list. The list must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent:

**NOTICE: THIS LIST OF SUBCONTRACTORS AND SUPPLIERS MAY NOT BE A FINAL LISTING. UNLESS YOU SIGN A WAIVER OF YOUR RIGHT TO RECEIVE UPDATED INFORMATION, THE CONTRACTOR IS REQUIRED BY LAW TO SUPPLY UPDATED INFORMATION, AS THE INFORMATION BECOMES AVAILABLE, FOR EACH SUBCONTRACTOR OR SUPPLIER USED IN THE WORK PERFORMED ON YOUR RESIDENCE.**

Most homeowners want to know the identity of the Subcontractors and Suppliers who are providing labor or material to their home; however, complying with this mandatory requirement can become quite onerous for a Contractor. As such, the Contractor may request the Homeowner to waive this requirement (which is actually very common on new construction Projects), by either: (1) including a waiver in the Contract; or (2) by having the Homeowner sign a separate document. Either way, the waiver should be in at least 10-point bold-faced type and substantially similar to the following:

**WAIVER OF THE LIST OF SUBCONTRACTORS AND SUPPLIERS. AN OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY SECTION 53.256, PROPERTY CODE, TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS. BY SIGNING THIS DOCUMENT, I AGREE TO WAIVE MY RIGHT TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS. I UNDERSTAND AND ACKNOWLEDGE THAT, AFTER SIGNING THIS DOCUMENT, THIS WAIVER MAY NOT BE CANCELED AT A LATER DATE. I HAVE VOLUNTARILY CONSENTED TO THIS WAIVER.**

**Designation for Both Spouses' Signatures:** One of the primary requirements for obtaining the legal right to record a mechanic's Lien against a homestead Property, is that the Contract was signed by both spouses, if a married couple. Therefore, the Contract should contain signature lines for two Homeowners and a box for the Homeowner to check confirming whether the home is owned by a married couple.

**Residential Disclosure Statement:** Pursuant to Texas Property Code Section 53.255, **before** a Residential Construction Contract is executed, the Contractor is required to provide the Property Owner with a Disclosure Statement containing the following information:

**KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW.** You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

**CONVEYANCE TO CONTRACTOR NOT REQUIRED.** Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

**KNOW YOUR CONTRACTOR.** Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

**GET IT IN WRITING.** Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory reservation of funds and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas law.

**READ BEFORE YOU SIGN.** Do not sign any document before you have read and understood it. **NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT.** Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

**GET A LIST OF SUBCONTRACTORS AND SUPPLIERS.** Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

**MONITOR THE WORK.** Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

**MONITOR PAYMENTS.** If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payment from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

**CLAIMS BY SUBCONTRACTORS AND SUPPLIERS.** Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should reserve or cause your lender to reserve 10 percent of the amount of payments made for the work performed by your contractor. If you choose not to reserve the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to reserve.

"If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

**SOME CLAIMS MAY NOT BE VALID.** When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have withheld the 10 percent of the contract price or

value of work, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

**OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT.** When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

**OBTAIN TITLE INSURANCE PROTECTION.** You may be able to obtain a title insurance policy to ensure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement.

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