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Choose Your Home Contractors Wisely

Homeowners regularly hire general contractors and subcontractors to work on their homes but are often unaware of the large exposures that could result in hiring an unlicensed or uninsured contractor, particularly for large projects. For example, an uninsured roofer working on your home may sue you for damages if he is injured on the job. The following key rules should thus be followed when selecting a contractor to work on your home.

- Be wary of contractors who solicit business door-to-door or via cold calls. In addition, avoid contractors who quote you a price that will automatically go up the next day or week if you don't accept it immediately.
- Obtain recommendations from friends, family members, and neighbors about experienced and reputable contractors who have performed excellent work for them.
- Ask for a written estimate from the contractor that includes any oral agreements the contractor makes in this process. The estimate should contain a line-by-line breakdown of costs, including materials and labor.
- Verify that the contractor is licensed, bonded, and properly insured. Ask for certificates of insurance for workers compensation and general liability policies. You should also

receive these certificates for any subcontractor the general contractor may hire to work on your home.

- Contact the Better Business Bureau to see if complaints have been filed against the contractor. This can be performed via the bureau's Web site at www.bbb.org.
- Get a copy of the proposed contract. Ideally, it should include a hold harmless clause in your favor, particularly for major work such as when heavy equipment will be used in constructing a swimming pool. A hold harmless clause specifies that the contractor will indemnify you with respect to your liability to members of the public who are injured or whose property is damaged during the course of the contractor's operations. The contract should also explicitly establish an independent contractor relationship.
- Ask a knowledgeable friend, relative, or attorney to review the home repair contract before you sign.

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Damages from Contractor's Negligence Excluded

A California appellate court recently ruled that property damage proximately caused by a contractor's negligence was excluded by a homeowners policy. The case is *Freedman v. State Farm Ins. Co.*, ___ Cal. Rptr. 3d ___ (Cal. Ct. App. May 5, 2009).

A contractor hired to renovate the insureds' bathroom accidentally drove a nail through a pipe while hanging new drywall. The nail caused no leak at the time and went unnoticed until years later, when corrosion around the nail caused a leak and extensive water and mold damage. The insurer denied coverage on the ground that damage arising from third-party negligence was excluded whenever it interacted with an excluded peril, including corrosion or leakage of water. The insureds filed suit, arguing that the contractor's negligence in driving the nail through the pipe was a covered peril and was the efficient proximate cause of their loss. Under the efficient proximate cause doctrine, when a loss is caused by a combination of covered and excluded risks, the loss is covered if the covered risk was the efficient proximate cause of the loss.

On appeal, the court noted that the efficient proximate cause doctrine was superseded

by the California Supreme Court's analysis in *Julian v. Hartford Underwriters Ins. Co.*, 110 P.3d 90 (Cal. 2005). In *Julian*, the court held that an insurer is not prohibited from drafting and enforcing policy provisions that provide coverage for some, but not all, manifestations of a particular peril. Thus, the *Freedman* court held that the homeowners policy effectively excluded coverage for consequential damage arising from a contractor's negligence (a covered peril) whenever it interacted with an excluded peril, such as corrosion or water leakage.

This case provides another example about why it is wise for homeowners to pick their contractors carefully.

Go to *Freedman v. State Farm Ins. Co.* for more details.



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