

**MASSACHUSETTS HOME IMPROVEMENT SAMPLE CONTRACT WITH
COMMENTS**

By Attorney Jonathan Sauer

(Note: This form of contract *generally* follows the requirements of the Massachusetts Home Improvement Contractor Statutes and is based on information obtained from State website(s), the accuracy of which is not guaranteed in any way by Jonathan Sauer or by Sauer & Sauer. You may wish to see <http://www.mass.gov/Eoca/docs/sampcont.pdf>. Further, no warranty or representation is made by Jonathan Sauer or by Sauer & Sauer or by its attorneys and employees that this form complies with any or all applicable statutes/regulations/applicable court cases and this form is solely provided and can only be received or used for educational purposes only and/or for general information and is not being provided for the purposes of the giving of any legal advice. Be advised that legal requirements can be subject to changes in the underlying state statutes, regulations and as decisions are issued by Massachusetts courts, which events can happen as frequently as *daily*. Seek legal advice if you do not understand your legal rights or obligations under these legal authorities, which are substantial and complicated. This contract does not preclude parties from adding language to protect their specific interests. Specific trades may have specific requirements, including specific permitting and the acceptability of materials by local inspectors, which should be considered for inclusion in your contract. Information contained in “Notes” are for guidance only and are not intended to be part of the actual contract form. This form in its present format is substantially longer than your actual contract because of all of the explanatory material. Please note that there will be a requirement(s) that certain information appears on the first page of the contract (i.e. the notice of the right of cancellation) so that the contract length should be adjusted to meet such requirement(s). Please note that this form does not specifically favor either contractors or homeowners and the form might be adjusted, as long as it is done so permissibly, in either’s direction. It should be understood, however, that such permissible changes may be more liberally made in favor of the rights and obligations of homeowners, whom these statutes and legal authorities seek to protect. **Contractors:** The Commonwealth of Massachusetts is *very* serious about your compliance with these requirements. Violations of these requirements, particularly deliberate ones, may be found in court to be unfair and deceptive trade practices under MGL C. 93A, subjecting you to double or triple actual damages and responsibility for the homeowners’ counsel fees in any legal action surrounding this contract form and relationship. Further, there is legal authority which says that a homeowner may cancel a home improvement contract at any time until the contractor provides the homeowner with a contract meeting the laws’ several requirements. In all of my years of reviewing home improvement contracts prepared by home improvement contractors, I have not found even *one* that fully complies with all of these various requirements and most are not even *close*. **Consumers:** Before agreeing to any home improvement work on your residence, you may wish to obtain a free copy of “a Consumer’s Guide to Home Improvement Contractor Law” by calling the Office of Consumer Affairs and Business Regulation’s Information Hotline at 617-973-8787. Also, consumers/homeowners, there is an old saying that an attorney who represents himself in a legal action has a fool for a client. From my viewpoint with 34 years of experience, a homeowner who allows the contractor to prepare the plans and specifications for any

significant improvement without having this reviewed by an architect or other design professional is probably the first cousin to that lawyer! *Capisci?*)

Homeowner Information

Name:

Street Address: (not post office box)

City/Town State Zip Code

Contractor Information

Company Name:

Contractor/Owner Name

Business Street Address

City/Town State Zip Code

(Note: You need full names, federal id # and addresses (not PO Boxes) of the parties, which must appear in the contract. Don't forget to include names of any salespersons involved and Contractor's Registration Number (on the first page of contract))

Salesperson (s): _____ Contractor Registration #: _____

Exp. Date: _____

WORK TO BE PERFORMED AND MATERIALS TO BE USED

Contractor agrees to do the following work for homeowner:

(Note: Describe in DETAIL the work to be completed. The less description you have, the more potential ambiguity there is in your contract. Like anything else, ‘the devil is in the details’.)

Materials Expected to be used:

(Note: Provide a DETAILED description of materials to be used, specifying the type, brand, and grade of those materials. Contractors, remember that homeowners will always want you to supply the very best materials. While you may have priced a Ford Focus, they are thinking you are going to supply a Lincoln Town Car. So, inclusion of a description of your materials protects you from claims that the materials don’t comply with the contract. Homeowners, remember that contractors are used to the idea of supplying the bare minimum materials that will comply with the contract documents inasmuch as the criteria for contract award is generally to be the low bidder. Therefore, if you specifically require a certain level of quality of materials, this is where you want to provide for this. Contracts must include details of work to be performed and materials to be used. Every contract must include total amount agreed to be paid, a time schedule of payments and dollar amount of those payments - including finance charges. Always include the dates work is to begin and end. All contracts over \$1000.00 must be in writing. Always include the dates work is to begin and end. The date of the execution of the contract must be in the contract and on the form. The following schedule will be adhered to unless circumstances beyond the contractor’s control arise.)

Work Scheduled To Begin: **(Note: This is the date contractor will begin contracted work.)**

Expected Date of Completion: **(Note: This is the date when contracted work will be substantially completed, meaning that the work is sufficiently completed to a point of completion where the home improvement can be used or occupied by the homeowner.)**

TOTAL CONTRACT PRICE AND PAYMENT SCHEDULE

The Contractor agrees to provide the work, furnish the material and labor specified above for the sum of \$_____. *(Include all finance charges in this amount.)*

Payments will be made according to the following SCHEDULE:

\$_____ upon signing the contract.

(Note: the deposit shall not exceed 1/3 of the total contract price OR the cost of special order items, whichever is greater.)

\$_____ by ___/___/___ or upon completion of _____

\$_____ by ___/___/___ or upon completion of _____

\$_____ upon completion of the contract. **(Note: The law forbids demanding full payment until the contract is completed to both parties satisfaction. Put another way, if the homeowner is not satisfied with the contractor’s services, the contractor is not entitled to final payment.)**

In order to meet the completion schedule, the following material/equipment must be special ordered before the contracted work begins:

DO NOT SIGN THIS CONTRACT IF THERE ARE ANY BLANK SPACES

(Note: Identical copies of the contract should go to the homeowner and the contractor.)

Homeowner’s Signature

Contractor’s Signature

Date

Date

You may cancel this agreement if it has been signed by a party thereto at a place other than at the address of the seller, which may be his main office or branch thereof, provided you notify the seller in writing at his main office or branch by ordinary mail posted, by telegram sent or by delivery, not later than midnight of the third business day following the signing of the agreement. See attached notice of cancellation for an explanation of this right.

(Note: by law, this previous statement must appear on the front page of the contract in immediate proximity to the space provided for buyer's signature and must be at least ten point bold type.)

REQUIRED PERMITS

The following building permits are required: _____ . It is the obligation of the contractor to secure such permits as the homeowner's agent and any costs which contractor will incur in doing so are included in the price for this job as set forth above. Please note that homeowners who secure their own permits or deal with unregistered contractors are excluded from the Guaranty Fund provisions of MGL C. 142A. **(Note: List any and all necessary construction -related permits. Each contract must contain a clause informing the owner of their rights related to permits and the Guaranty Fund. The law requires clear and conspicuous notice of all warranties supplied by the contractor. It should be pointed out that a one year warranty from the date of completion on all labor and materials supplied by the contractor is probably the minimum provision consistent with industry practice. To the extent that some of the contractor's warranty comes from the contractor and some of the warranty comes from the manufacturer (i.e. roofing materials, replacement windows) the warranty should be very specific as to who is supplying what. Each contract must contain a clear and conspicuous notice of where inquiries about registered contractors and subcontractors should be directed. Every contract must state whether there is a lien or security interest on the residence as a result of the contract. Consumers may initiate arbitration under the Home Improvement Contractor Law whether or not a clause describing arbitration is included in the contract. Contractors may initiate arbitration under the Home Improvement Contractor Law only if there is a specific separate provision in the contract in which the consumer agrees to arbitration.)**

Is an EXPRESS WARRANTY being provided by the contractor? No _____ Yes _____

The following warranty will be provided by the contractor under this contract:

(Note: All terms of the warranty must be described above or otherwise attached to the contract. Contractors, if you indicated that you are not providing a warranty (or one of less than one year) and I represented the homeowner, I would *without exception* advise the homeowner to get a different contractor. A good and substantial warranty should be seen as effective marketing. Providing an insurance certificate to the homeowner for his job without his having to demand it should be seen in the same light. Remember, a principal marketing concept is that everyone knows two hundred and fifty people. And, all homeowners have a ready pool of potential customers. They are otherwise known as *neighbors!*)

Please note that all home improvement contractors and subcontractor shall be registered and any inquiries about a contractor or subcontractor relating to registration should be directed to:

Director, Home Improvement Contractor Registration, One Ashburton Place, Room 1310, Boston, MA 02108, 617-727-8598.

Unless otherwise noted within this document, the contract shall not imply that any lien or other security interest has been placed on the residence.

ARBITRATION

The contractor and the homeowner hereby mutually agree in advance that in the event the contractor has a dispute concerning this contract, the contractor may submit such dispute to a private arbitration service which has been approved by the Secretary of the Executive Office of Consumer Affairs and Business Regulation and the consumer shall be required to submit to such arbitration as provided for in MGL C. 142A.

Contractor: _____ Homeowner: _____
Date: _____ Date: _____

NOTICE: the signatures of the parties above apply only to the agreement of the parties to alternative dispute settlement initiated by the contractor. The owner may initiate alternative dispute resolution even where this section is not separately signed by the parties.

ACCELERATION OF PAYMENT

Homeowner’s Financial Insecurity. A contractor may not demand payments in advance of the dates specified on the payment schedule in cases where the homeowner deems him/herself to be financially insecure.

Contractor’s Financial Insecurity. In instances where a contractor deems him/herself to be financially insecure, the contractor may require that the balance of funds not yet due be placed in a joint escrow account as a prerequisite to continuing the contracted work. Withdrawal from said account would require the signatures of both parties.

OTHER CONTRACTUAL DOCUMENTS

This contract includes as contract documents the following additional enumerated documents:

(Note: If you intend for a proposal to be part of the contract or specific plans and specifications or catalogue cuts to be part of the contract, be sure to reference them here. As a matter of contract law, where there is a proposal and then is a subsequent contract which both parties sign which does not reference the proposal, the proposal has no remaining contractual significance or effect unless it is specifically incorporated as a contract document in the contract.)

NOTICE OF CANCELLATION

YOU MAY CANCEL THIS TRANSACTION, WITHOUT 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 INSTRUMENTS EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER 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 SELLER 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 SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED A DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM TO (Name of Seller), AT (Address of Seller's Place of Business) NOT LATER THAN MIDNIGHT OF _____ (date).

I HEREBY CANCEL THIS TRANSACTION.

Date: _____ Buyer's Signature: _____

(Note: Contracts must have TWO identical copies of this form attached to the contract. The language of the Notice of Cancellation must be at least in ten point boldface type. The Notice of Cancellation must be on separate sheets of paper and easily detachable so that it may be easily separated from the contract and returned to the contractor if a consumer chooses to cancel the contract. No work may begin until the time period specified in this notice has expired.)

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