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# Inside CONSTRUCTION

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## THE LAW OFFICES OF RANDALL L. GILBERT, P.A.

### Cautions about signing contracts for home repairs



**If you are looking for the typical law firm, the lawyers at The Law Offices of Randall L. Gilbert, P.A. are not what you are looking for.**

**NORTH MIAMI** – The lawyers at The Law Offices of Randall L. Gilbert, P.A. are not a typical law firm. Their firm focuses its practice on all phases of construction; representing owners to contractors, architects to engineers, and all the material suppliers, laborers, and financiers who work together to improve and develop property.

Another difference is the way they work. Don't expect to see marble or cherry wood offices. The lawyers who work at the firm are housed inside a construction company in a construction district. When asked to explain their choice, Randall Gilbert, Esq., a former contractor and licensed realtor said, "Even the goldfish has a different perspective from inside the fish bowl. When you actually live inside construction, understand the business of it, and the very real problems that occur, you learn how to better counsel your clients to protect themselves." Ronald Kaufman, Esq. of the firm said, "Our clients look around and realize that we have to know what we are doing."

*In light of the construction boom and recent hurricanes in South Florida, attorneys Gilbert and Kaufman offer this advice to Owners:*

**1. Don't pass go, and don't collect \$200.00!** If your Contractor's company is not licensed, do not hire them! It is illegal to perform unlicensed contracting. I recommend state contractors over those who are licensed locally (i.e. by the County) because the State of Florida offers potential protection to homeowners from contractors of up to \$50,000.00 for specified violations. You can also easily verify licensure at [www.myfloridalicense.com](http://www.myfloridalicense.com).

**2. Don't grasp at straws.** The most precious and biggest investment you have is the property you own, so why not investigate your contractor or design professional? We all test drive cars to shop and compare, so get references from other satisfied customers and solicit two or three bids.

**3. So you think the "foundation" is what your house is being built upon?** No way... the true bedrock of any construction project starts with your contract. Contracts can be morphed to address the most common pitfalls. These include

vague payment terms, penalizing contractor delays and rewarding for early completion, handling how changes or additional work will be charged so that there are no surprise bills, notices and opportunities to curing defects, holding back money as a "retainage" until defects are cured, management and supervision, warranties, bringing in your own workforces, updates regarding what sub-trades are working on your project, responsibility for job-site



**Both attorneys work for Law Offices of Randall L. Gilbert, P.A. located at 15700 Northwest Seventh Avenue Miami Florida 33169, DADE: (305) 769-3000. BROWARD: (954) 693-0207, counsel the construction industry, owners, contractors, sub-contractors, design professionals, manufacturers, and material suppliers regarding State and Federal litigation, arbitration, bidding and DBPR complaints.**

injuries and insurance, avoiding suspensions, termination, or abandonment of work. Then, if there is a dispute, will it be decided in a private binding arbitration or sit with the thousands of cases filed in the courthouses.

Construction contracts are highly technical and often silent on the things that matter to you. Face facts. If everyone does what they are supposed to do you wouldn't even need a contract. The only time anyone seems to actually read these things are when its time to enforce them. Unless you are doing a multi-million dollar job, or are a public entity, the contracts are normally prepared by the contractor, not the owner. Therefore, most owners would be well advised to consult with a construction attorney before signing a contract.

**4. Ready set go.** By law, owners (or lenders if a construction loan exists) must record a "Notice of Commencement" at the beginning of construction for



**Ronald E. Kaufman, Esq. was born in Queens, New York and graduated from the University of Miami School of Law; Ronald is licensed to practice as an attorney in the great states of New York and Florida.**

projects that exceed \$2,500.00. Usually, this form will be given to you by your contractor since the building department will not issue a permit without one. When the project is done, and everything paid, ask your contractor to give you a "Termination of Notice of Commencement" which will usually be necessary if you want to sell your property.

**5. Double??** I may have

"Progress Payment Affidavits" detailing who else remains unpaid, including their own laborers. If the contractor doesn't have enough money to pay his roofer, plumber, and electrician or there is a dispute between the contractor and his subcontractors, then consider making payments to the contractor and subs or suppliers as the case may be, with a joint-check



**Randall L. Gilbert, Esq. is a licensed Florida attorney and realtor, former contractor, Vice-Chairperson of the Broward County Construction Lawyer's Association, passed the Florida Bar's Board Certified Construction Litigation exam, and authorized to practice in Florida's Federal Courts.**

be sold at auction to pay off their costs, attorney fees, and outstanding bill. If a lien is filed, you should consult a local construction attorney immediately. There may be defects in the lien. There are procedures to shorten the time frame a contractor has to enforce a lien, and for those who need to sell their property,

authorized to practice in Florida's Federal Courts.

Ronald E. Kaufman, Esq. was born in Queens, New York and graduated from the University of Miami School of Law; Ronald is licensed to practice as an attorney in the great states of New York and Florida, including all New York and Florida Federal Courts; Ronald practices in the areas of Construction Litigation; Contract Law; Commercial Litigation; Commercial Collections; and Real Estate Litigation; Ronald is also a member of the Broward County Construction Lawyer's Association; the American Bar Association and the Dade and Broward County Bar Associations.

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*"The hiring of a lawyer is an important decision that should not be based solely on advertising. Before you decide, ask us to send you free written information about our qualifications and experience."*



payable to both, in exchange for the "Release of Lien." We also recommend including in the Releases of Lien that the subcontractor warrants that they have paid for their supplies and services in order to avoid any other potential hidden lienors from popping up.

**6. Get out of here.** Even if you are frustrated, try to resolve disputes among yourselves. A contractor that is wrongfully terminated may recover the lost profits that he/she would have been entitled to if allowed to complete your job. Therefore, if you notice that something is not being done correctly, fax a letter or send it certified mail, detailing the complaint and giving the contractor a reasonable opportunity to correct. New laws require that a homeowner must do this if the claim involves defective construction.

**7. Lien machine.** Contractors are what I call super-creditors. You don't pay them, they can lien your property and force it to

there are ways to transfer the lien off the property, usually done by posting a cash deposit.

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