

Protect Yourself from Unscrupulous Contractors

By Rose Landau, Staff Attorney at the Legal Aid Society of Northeastern New York

We've probably all heard a story like this: A senior citizen pays a seemingly nice and professional contractor to have some kind of home repair done, like a paint job, a roof repair, or a kitchen remodeling. The contractor tells the senior what the work will cost, and they pay it. The contractor takes the money and just disappears. Or worse, the contractor comes and does a poor job, exacerbating an old problem or creating a new one, and then disappears.

How can you protect yourself from this happening to you? The first rule is that you should always be the one to initiate contact with contractors. If someone approaches you and says something like, "I happened to notice there's a hole in your roof. If you pay me \$5,000, I'll repair it for you," you should firmly tell this person that you're not interested. There is probably no hole in your roof. However, if you suspect that there is, you should call another contractor to come look at it and give their opinion.

If you decide that you want or need work done to your home, ask around with your local family and friends for recommendations. Stick to contractors who were honest with and did a good job for someone you know. It will be worth it to have to wait a bit to get work done or pay a little more than you were hoping to if it means working with a contractor with a good reputation and ties to your community.

If you do not have local friends or family who can make a recommendation, you should at least run an internet search on the potential contractor. This may allow you to see how others reviewed their experience with the potential contractor and if they've ever been sued by a dissatisfied customer. If a google search for the name of the contractor and/or their business does not yield any results, that should give you pause. It is not illegal for someone to not have an internet presence, but it is unusual for someone who runs a legitimate business. You should at least ask a potential contractor about it if you do not find any websites, social media pages, or reviews online.

When negotiating with a contractor, be very wary of anyone who applies pressure. You have a right to pause and think about it before entering into an agreement, especially one that costs you a large sum of money. If anyone tries to make you feel otherwise, that is a big red flag. It is also a good idea to have someone with you when you speak with a potential contractor. Sadly, there are some people who see a lone senior citizen as a vulnerable target. These same people, however, will think twice about trying to take advantage of someone with family and/or friends looking out for them.

If you do decide to hire a contractor, get your agreement in writing. Even though oral agreements can constitute valid contracts, a written contract can go a long way in preventing and resolving disputes. There is no magic language that every contract must contain, nor does it need to be drafted by an attorney. However, it should clearly state exactly what the contractor is being hired to do, what time frame the work will be done in, and exactly how much you are going to pay and when.

Contractors may ask for a portion of the money upfront, and that by itself is not cause for concern. However, you should be very hesitant to pay the entire amount before any work is done. If a potential contractor presents you with a contract that contains language you do not understand, ask an attorney to look at it before you agree to anything. Again, be wary of pressure. A potential contractor may need to impose a reasonable deadline before moving on to look for other work, but anyone who puts a document in front of you and insists that you sign it right then and there is probably bad news.

But what if it's too late and you already know or fear that you've been cheated by a contractor (or someone pretending to be one)? You can use the court system to sue for the money you paid for any work that was never done or not done adequately. If the contractor caused any damage, you may also be able to sue for whatever money you spent or can prove that you will need to spend repairing that damage.

There are also non-legal actions you can take that may not get you your money back or get the work done but would at least prevent the contractor from victimizing anyone else. One is to file a complaint with the Better Business Bureau. This can be done online at <https://www.bbb.org/consumer-complaints/file-a-complaint/get-started>. Similarly, you could give a poor review on Yelp at <https://www.yelp.com/writeareview>. Finally, you could file a complaint with the Attorney General's Consumer Frauds division. This would be done online at <https://formsnym.ag.ny.gov/OAGOnlineSubmissionForm/faces/OAGCFCHome>, and you would select the Albany office. The Attorney General's office will not sue on your behalf, but they will investigate.

First, however, you should clearly communicate to the disappeared contractor that you are going to file a lawsuit and/or a complaint if you do not hear from them before a certain date. If you call them, you should also use some kind of written communication like a text message, email, or certified letter. This might get their attention, and if it doesn't, you'll be able to prove that you tried to resolve this yourself.

If you're going to file a lawsuit, the first thing to determine is which court to file in. You may be able to file in small claims court in the town where you live. As the name implies, you can only use small claims court if you are suing for under a certain amount of money. If you live in a city such as Glens Falls, the limit is \$5,000. If you live in a town or village (which is everywhere in Washington and Hamilton Counties and everywhere in Warren County outside of Glens Falls), the limit is \$3,000. If you qualify for small claims court, you should use it. It is inexpensive and designed to be navigated without help from a lawyer.

To file a suit in small claims court, you should contact your local court to ask for the form. Each court uses a slightly different form, but they will all require that you provide the name and street address (not a PO box) for the defendant (person you're suing) and a brief description of the events that led up to this lawsuit. Then you will bring the form and the court fee, which will be between \$10 and \$20, to the town clerk to file. The clerk will then serve the defendant, which means they will provide the defendant with written notice of what you are suing them for and for how much and when the small claims court trial will take place. The clerk will, of course, also notify you of when the trial will take place.

At your trial, you will want to bring any evidence that supports your claim that the contractor owes you money for work that was never done and/or damage they caused to your property. This would include photos, written agreements, letters, itemized bills, canceled checks, receipts or invoices, proof of payments, etc. If you have audio or visual evidence--for example an audio recording of a conversation or security camera video proving a contractor never showed up--you can bring that too, but you should inquire with the court about format requirements.

At your trial, you will have a chance to tell the person deciding your case, either a judge or an arbiter, your side of the story through testimony and any evidence you have. You can but are not required to bring witnesses to testify. The defendant will be allowed to ask questions of any witnesses you bring. If the defendant attends the hearing, they will have the same opportunity to bring witnesses, and you will have the opportunity to ask questions of the defendant and any witnesses that they bring. You should ask the defendant about any assets that they have, because this will prevent them from getting rid of those assets and help you collect a judgment if you win. If the defendant does not attend and the judge believes that you have provided enough evidence, you will win a default judgment.

If you win, you will receive a Notice of Judgement from the court. The judgment will be valid for twenty years, and it accumulates interest at a rate of 9% per year. It will be up to you to collect the judgment. You should start by calling or writing to the defendant, who is now called a debtor, to request a payment. If that doesn't work, you will need to hire an enforcement officer, who would be a sheriff, a town or village constable, or local police officer. You will have to pay the enforcement officer, but if it comes to that, the enforcement officer may also be able to collect a fee from the debtor in addition to the judgment.

If you lose and your case was decided by a judge, you can appeal the decision to county court. This is also where you will start if you are suing for more than the limit in small claims court. Contractors scamming or taking advantage of senior citizens is, unfortunately, a common occurrence. But remember, you are not powerless in preventing this from happening or fighting back when it does! If you have questions about a contract or representing yourself in small claims court, please call the Legal Aid Society of Northeastern New York at 518-587-5188.