

Choosing a Contractor for Hurricane-Related Repairs

Hurricane Andrew taught South Florida many lessons, including some important ones about quality construction. The following is intended to help you avoid adding to your list of troubles.

Choosing a contractor and the contract terms carefully is the best protection against continuing damage from the effects of the storm.

1. Contact your insurer

Many policies require that the company's personnel make inspections prior to work beginning. Emergency repairs should be performed as quickly as possible; if your insurance company cannot send personnel, be sure to document the pre-repair condition with good-quality photographs; save all invoices and cancelled checks for these emergency repairs for submission to your insurance carrier.

2. Select only licensed, qualified contractors

General contractors, many specialty contractors and design professionals must be registered with the Construction Industry Licensing Board, a Division of the Department of Professional Regulation. These contractors are licensed after extensive testing, and licenses can be revoked as part of the consumer complaint process. Cities and counties in your area may also require registration and licensing of these contractors. Your code-enforcement authority will be able to advise you on individual licensing requirements. Check references whenever possible. A licensed contractor is more likely to be familiar with the requirements of the local building code (For example, Dade and Broward Counties Code requirements differ from the other counties in Florida), and will have a local reputation to preserve when problems arise or warranty service is required. Many contractors are coming into the devastated areas to perform work, but if a warranty runs five or fifteen years, they may be unwilling to return to the area to take necessary corrective measures in the future. This is especially important if your building was constructed prior to 1980 and contains asbestos. Asbestos may be present in ceiling

tiles, popcorn ceilings, pipe insulation, and exterior wall panels. If you have sustained damage to those elements of your buildings, you should have a qualified asbestos-abatement contractor perform air testing and make certain the Department of Environmental Regulation requirements are strictly followed.

3. Verify the contractor's insurance

Insurance coverage may differ widely for such items as premises liability and responsibility of the contractor for acts of their employees (including theft from unoccupied premises). A statement of coverage from the contractor's insurance agent is absolutely necessary. The contractor must have insurance for injury to persons and damage to the buildings and personal property (such as automobiles) which may be caused by the work -- materials can be dropped from the roof and fall on cars and other portions of the building (or even someone's head!). It is also essential that the contractor provide proof that he maintains worker's compensation insurance.

There is no requirement in Florida that contractors be insured for default under the contract; if the contractor fails to complete the work or pay subcontractors, you may not have recourse unless a performance or payment bond has been obtained. For large jobs, discuss with your attorney whether a bond is advisable. If the contractor is not "bondable," meaning he cannot obtain such guarantees from a company in the bonding business, factor that into your choice of a contractor.

4. Use design professionals

For jobs such as roofing, mechanical, electrical and equipment replacements, do not simply rely on the work description the contractor provides. It may include inappropriate materials or oversized equip-

ment; it may recommend replacement when, in fact, repair might suffice. A professional engineer or architect or a consultant with experience in the type of construction can prepare specifications, supervise the work, review invoices and certify when payments are due, freeing management for other tasks and providing a safeguard against contractor gouging and poor workmanship. This is especially important when new work must be tied in with pre-existing building components (for example, part of a roof to be tied in with an existing system, or mechanical equipment which must work with in-place components). Unfortunately, Building Departments do not provide these services, and even if inspections will take place, these Departments will be stretched to the limit to accomplish inspection of all the construction work which will ultimately be performed. If your insurance carrier seems unwilling to pay for design services, take the matter up with a higher authority.

5. Review warranties

Many manufacturer's warranties have limiting conditions which can make them worthless. These warranties can exclude workmanship if the manufacturer did not inspect the installation of materials, or can provide for "materials only" in the event of failure, making the owner pay for labor. Some are good only as long as the contractor remains in business. Review the warranty provisions as carefully as you review all other contract terms, and rely only on warranties from manufacturers with established reputations and proven track records.

6. Avoid "form" contracts

The contract used by the building across the street or the contract which the contractor provides with his proposal may not contain all the terms necessary to protect you (although it may adequately protect the

party who drafts it!). Even contracts from the American Institute of Architects (AIA) may contain provisions which can limit legal remedies, add additional costs to the contract or delay dispute resolution. Contracts must provide for payment of subcontractors, completion of the work in accordance with an agreed upon schedule, inspection of the work by your representatives, payment tied to stage of completion (and not just calendar dates), and retainage until all clean-up work has been completed, as well as other terms to protect the owners' legal rights and remedies.

7. Enforce compliance with construction lien laws

To avoid double payment for the same work, you must comply with the Florida Construction Lien Laws. Recording a Notice of Commencement, obtaining progress and final payment affidavits and making sure suppliers and subcontractors are being paid by the contractor are just some of the things you must do to avoid liability. The contract should address all of these requirements, and the contractor's compliance must be closely monitored.

8. Verify availability of supplies

A contractor cannot accomplish the work if there is no reliable source of materials to the area. Verify that your contractor has a steady source of supply in place at the time you sign the contract, and consider making the first checks jointly payable to contractor and supplier to avoid a construction lien on the property, if the contractor subsequently fails to pay the supplier.

Restoring order to your community as quickly as possible is an important part of the recovery process; people feel more secure in familiar and normal surroundings. Avoid making costly mistakes which will delay your community's recovery. Please contact us if we can be of help in the rebuilding process. ☺

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