



A Guide to Residential Renovation Contracts

Second Edition

Canadian
Home Builders'
Association



This publication has been developed by the Canadian Renovators' Council of the Canadian Home Builders' Association for the benefit of professional renovators and their clients.

The content of the document is presented for information purposes only. Renovators should consult with their legal advisor on the specific content and wording of their contract.

August 2010

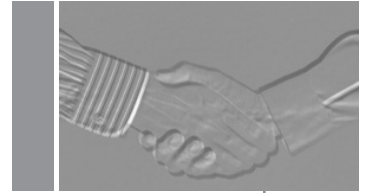


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Introduction

The most important tool for a renovator is a written contract.

Today's homeowners expect professional renovators to "put it in writing." They know that a written contract protects them and their investment in their home, and is a strong indication that their renovator is legitimate and does business the right way.

By using a written contract, you set yourself apart from fly-by-night or underground operators. The best way to push "those guys" out of the marketplace is to show customers what it takes to "do it right."

A good, solid contract is also the foundation for a positive renovation experience for both you and your clients. It helps build their confidence and your relationship. More importantly, it helps to prevent misunderstandings and false expectations that can lead to a breakdown in your relationship and jeopardize the project.

"Renovation" covers a lot of different projects, done by many different types of companies. Whether you are a one-person operation doing small repair and renovation jobs, or you run a large design-build company focused on upscale whole-house remodeling, you need a contract.

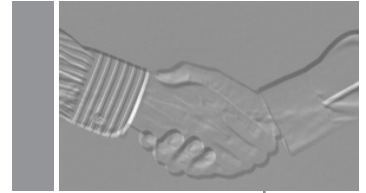
No project, no matter how small, should ever be done without a written agreement between you and your clients.

There are a number of standard or model contract forms available to renovators, but by far the best approach is to develop your own contract, tailored to your company and the type of renovation work you do.

You can create your own form, or you can hire someone to do it for you. Either way you should get a lawyer involved. If you develop your own form, you should have your lawyer review it to make sure there are no mistakes or ambiguities, and no omissions that could cost you or your clients.

It is important to be familiar with the laws and regulations in your province that may affect your contractual arrangements with homeowners, from construction liens legislation to "itinerant salesman" regulations. Ask your lawyer for information.

This booklet contains advice for professional renovators on the types of information to consider for your renovation contract. It also explains the reasons behind the suggestions and offers pointers for discussion with your clients, before signing the contract.



General Considerations

A renovation contract doesn't have to be complicated and difficult. As a legally binding document, it must conform to certain legal standards and practices. As a record of the agreement between you and your clients, it needs to communicate the facts as clearly and simply as possible.

- A renovation contract should be inclusive and detailed. It should cover every aspect of the project—from the work to be done and the materials to be used to the schedule, permits, inspections, price, payment terms, and so on.
- The contract must eliminate the need for interpretation and guesswork. When in doubt, define it and include it.
- It has to be easy to understand and read. There is no need for “legal bafflegab” or “mouse print,” which alienates customers and adds to your responsibility for explaining the contract. In legal disputes, decisions tend to favour homeowners if the language in a contract is so complex that people cannot reasonably be expected to understand what they agreed to.
- Contracts should be fair and balanced. If a contract is skewed to promote the interest of one party over the other, the courts will strive to find ways around it.
- A legal expert can offer advice on the legal aspects and wording of the contract. However, when it comes to capturing how your company does business, you are the expert—therefore you need to be the driving force in developing the content of your contract.
- Use the same contract form for all projects. If you do not need all the clauses for some projects, simply write *Not Applicable*, or leave them blank. Create an electronic file of the form so it is easy to fill in. That also makes the contract more legible.
- ALWAYS review the contract in detail with your clients before asking them to sign. Don't rely on them to remember everything you have discussed earlier. Go through the contract with them, clause by clause, point by point, and verify that they understand and agree. Have them initial every page and attachment.

The contract is your opportunity to get it right on paper—the first step in doing it right on site.



What's in a Contract?

This booklet presents the kinds of information that can be expected in a renovation contract.

It identifies a number of areas that should be included and outlines what can be covered in each area, and why. Wording for specific clauses is offered as a starting point only. Be certain to get legal advice when developing your own form.

It also offers suggestions for your review of the contract with your clients—their possible concerns and what to discuss with them.

The areas covered are:

- Date
- Parties to the Contract
- Contract Documents
- Scope of Work
- Permits
- Project Schedule
- Price
- Payment Terms and Schedule
- Changes to Work
- Standards of Work
- Utilities and Facilities
- Workers' Compensation and Other Laws
- Insurance
- Warranty
- Dispute Resolution
- Termination
- Promotion and Privacy
- Miscellaneous

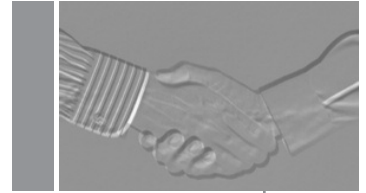
The Supplementary Clauses section contains a series of pre-written clauses detailing specific issues that may be part of a particular renovation, and which you may want to clarify or spell out in the project contract. Again, the supplementary clauses are suggestions only. You are advised to consult with your lawyer for precise wording of clauses for your own contract.

How Do You Set Up a Contract?

There is no single, set format for renovation contracts. Choose the format that suits you best for the type of projects you deal with.

Your contract can be a single document, ranging from a few pages to 10, 15 or more.

Or it can be a contract “package” consisting of a main document plus a number of schedules, or attachments, as needed. The main document sets out key information about the contractual arrangements between you and your clients, while the schedules spell out the details.



Schedules can be unique to a particular project, such as:

- Drawings, elevations, plans
- Detailed products and materials list
- Detailed payment schedule

For example, the main document can describe the Scope of Work in broad terms, e.g., *“Build a single-storey, four-season sunroom addition, 20’ by 16’ on the back of the existing home”*, with a reference, *“See attached Schedule “A”–Drawings and Schedule “B”, Scope of Work”*. Schedule B can list the steps involved in doing the work, in as much detail as you deem appropriate, from demolishing an existing deck and pathway to foundation work, construction and completion of the new structure.

Schedules can also contain general information that doesn’t change from one project to another, such as:

- Warranty information
- Standards of work
- Terms and conditions (a phrase used for a schedule that covers a range of standard information in one document)

Except for very simple renovations, a contract can easily run many pages. The advantage of using a main document with schedules is that it keeps the core information simple and easy to understand: who, what, when, and how much. All the details are added as schedules, clarifying how the project will be done and under what circumstances.

Once a schedule, or attachment, has been referenced in the main contract document, it becomes part of the contract, with the same legal weight as the main form. Any change to a schedule is a change to the contract and must be dealt with as such.

Organizing the information

In this booklet, each section may include a number of related topics. For instance, “Price” covers pricing methods, taxes, latent defects, escalation clauses and other items that directly affect the project price. You can follow this format in your own contract, or instead you may prefer to present each topic as a separate, numbered item in the contract.

Keep in mind that there is more than one way of saying something in a contract; even lawyers have different preferences for the best phrases to use in a contract. The important thing is to make sure that your contract says exactly what you mean it to say.

You may wish to refer to Canada Mortgage and Housing Corporation’s sample renovation contract available at www.cmhc.ca. Written to support homeowners in their efforts to find and hire professional renovators, it explains renovation contracts to homeowners and the kinds of information to look for and ask about. It also shows what a contract form might look like.

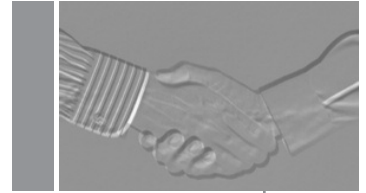


Date

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Date	The first page of the contract should show the "Agreement Date"—usually, this is the date they sign the contract.

Parties to the Contract

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Your Client	Who owns the property you will be working on? Who is responsible for paying you? If more than a single owner, add the names of all owners. Include the owners' full address and contact information. Make sure you have the information that allows you to get hold of your clients at short notice (e.g., at work) for discussion, decisions and emergencies once the project gets under way.
Your Company	Fill in your own company name and address as registered, along with your e-mail address and other contact information. This may include your cell phone number, or once work has begun, the cell number of your site supervisor—crucial in case of an emergency. Note your business or GST number in the contract and any business registration number required by your municipality. (The industry has for years encouraged homeowners to look for this information as proof that a renovator is operating as a legitimate business.) In provinces with mandatory bonding for contractors, indicate that you are bonded.
Project Address	List the project address, whether the same or different from the client address, as well as the legal description of the property (check the property tax bill, purchase agreement or closing papers or contact the land registry office in your area). The legal description is important in case you have to place a claim on the property.



Contract Documents

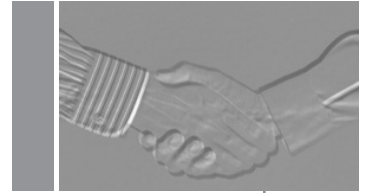
What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
<p>The Contract Form</p> <p>Schedules</p> <p>Clarification</p>	<p>This section lists the documents that make up a contract for a particular project. As noted on page 4, depending on the project, the contract may be a single document, or it can be a contract "package" that consists of:</p> <ol style="list-style-type: none"> 1) The contract form 2) Schedules or attachments, usually identified by letter and name <p>Reference every schedule in the contract form (i.e. like a table of contents) and note that it is attached, i.e. <i>"See attached Schedule 'A'—Drawings."</i> The contract form should also state that listed schedules "form part of the contract"</p> <p>It is advisable to add a sentence in this section noting, <i>"The Contract Documents constitute the complete agreement between Contractor and Owner."</i> In other words, if it is not in the contract documents, it is not part of the project.</p>

Scope of Work

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
<p>Description of Work</p>	<p>It is a good idea to begin with a broad description, such as, <i>"The Project consists of the construction of a _____ sq. ft. family room addition to the back of the existing home,"</i> or <i>"the refurbishing of the upstairs bathroom."</i></p> <p>State your company's role in the project, e.g., <i>"The Contractor will supply all materials, labour and supervision to perform the work, as outlined below (or in a separate attachment)."</i></p> <p>Depending on the size and complexity of the project, the detailed description of the work required to do the project can be included in the body of the contract form. Or instead, you can simply reference an attached schedule, e.g., <i>"See attached Schedule 'B'—Detailed Work Description."</i></p>



Hazardous Materials and Substances	<p>Describe the work step by step, "<i>The Work entails the following:</i>" Be specific and detailed, for example:</p> <ul style="list-style-type: none">• Development of design and plans• Preparation (demolition, removal of old materials)• Salvage of items for reuse (fixtures, cabinets, doors, etc.). If for disposal, who owns them?• Structural work (excavation, foundation, framing, insulation, sheathing, subfloor, roofing, etc.)• Windows and doors (size and location)• Mechanical work (installation, ductwork, services, hook-ups)• Finishing work (e. g., trim, including profile, hardware, plumbing fixtures, # of coats of paint and stain)• Disposal of waste (e.g., landfill) <p>There is a growing concern about health hazards in a home, such as radon and moulds. The very process of renovation also risks creating other health concerns, e.g. disturbing asbestos-containing materials during demolition. It is prudent to deal with these issues upfront and note them in the contract. For instance:</p> <ul style="list-style-type: none">• You may want to explain to customers that Health Canada has identified radon as a potential health hazard and give them printed information (e.g. Health Canada brochures or downloadable pdfs). If the neighbourhood is not known for radon and the work doesn't involve the basement, it may be sufficient to add a general statement to the Scope of Work, such as: "<i>The Owner acknowledges that the Contractor has advised that many parts of Canada are exposed to radon gas. Any testing for radon gas in the Owner's home is the responsibility of the Owner.</i>" <p>However, if you have reason to suspect radon may be an issue (e.g. other homes in the neighbourhood have had radon problems), you may want to recommend that the homeowners get the testing done. In that case, you may want to add to the general statement above: "<i>The Contractor has recommended that the Owner carry out a radon test or hire a qualified firm to test for radon.</i>"</p> <p>Finally, you should certainly add radon testing to the Scope of Work, when it is part of the project.</p>
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- **Mould** may be obvious on a visual inspection or only show up on demolition. If you have reason to suspect the presence of mould in a home, e.g. a slow leaking toilet or a water-damaged ceiling, you may want to add further inspection and possible remediation to the Scope of Work.

- **Asbestos** was used in a wide range of building materials until phased out by the mid-eighties—drywall compound; batt and vermiculite insulation; vinyl, asphalt and rubber floor tiles; acoustical ceiling tiles or stipple and popcorn ceilings; asbestos cement board siding and undersheeting, gaskets, and much more. Asbestos-containing materials may have to be encapsulated or removed, for instance, before renovation work can be started.

The age of the home, your own visual inspection and information from the homeowners on previous renovations offer clues to the possible presence of asbestos. If you suspect there may be an issue, an environmental assessment by a trained and certified expert may be needed. This should be added to the Scope of Work.

- An environmental assessment can test for other substances as well, including **lead** and **mercury**.

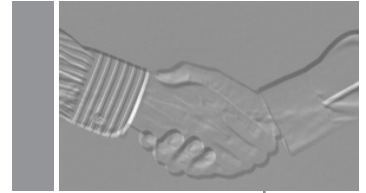
Increasingly, occupational safety and health **regulations** and other **legislation**, set out stringent rules for dealing with hazardous materials in renovation and demolition to protect workers and residents. To find out what's required in your region, ask your local home builders' association for information and contact workers' compensation and/or other appropriate departments. Also get legal advice on how to best reflect this in your contract form.

Discuss with Your Clients

It is important that your customers understand that renovation contractors are not hazardous materials experts, unless they have taken specific training and are certified. As a professional renovator, you need to be up-to-date on the issues, so you can explain what options may be available to homeowners, including testing and remediation by third parties, and in some cases, legislative requirements (e.g. workers' compensation). Beyond this level of information, you have to be careful about offering an opinion, diagnosis or solution, unless supported by facts and training.



Work by Others	<p>Similarly, when recommending or hiring a third party company to test and/or remediate, make sure they have the proper qualifications for the job and are insured. This protects your clients as well as your own company.</p> <p>Note any work you are not responsible for. For instance, the owners may want to take on some tasks themselves, such as demolition or painting, or they may want to hire some contractors directly themselves. This needs to be stated in the contract.</p> <p><i>Discuss with Your Clients</i></p> <p>Go through the stages of the work with your clients—key points or in detail—referring to plans and drawings, as appropriate. This helps to confirm that everyone sees it the same way.</p> <p>Clients who know the work involved in their project also have a better understanding of how it may affect their daily routines. Further, it can give them a better appreciation of the price you are charging.</p> <p>It is important to clarify what can happen if the owners engage other contractors to work on the project, or they plan to get friends or family members to help out. They may believe that they can save some money and may not understand the implications, for example:</p> <ul style="list-style-type: none">• They may have to pay you for management and coordination• They will forego aspects of your warranty• They may incur additional responsibilities and liabilities• Other people on the job site may not be insured• It may affect scheduling of subtrades• It may delay the project• It may impact on the quality of the project• What will happen if the work (by others) does not pass inspection?
Materials and Products	<p>The contract needs to describe the materials and products (specifications) that you will use for the work.</p> <p>On a small project requiring only a few different products, you can simply incorporate the specifications into the Scope of Work, e.g., “<i>Build a 12’ by 20’ deck using pressure treated pine (include dimensions of lumber).</i>”</p>



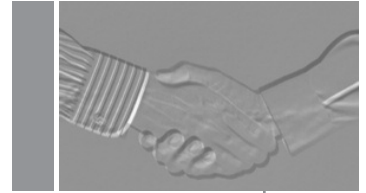
<p>Subcontractors</p>	<p>For larger projects, you may wish to list the products and materials you will be using in a separate schedule. Be detailed. Information may include the following:</p> <ul style="list-style-type: none"> • Brand name/manufacturer • Model name or product number • Quantities and dimensions • Colour (name and/or number) • Performance characteristics • Certification/labeling • Warranty <p><i>Discuss with Your Clients</i></p> <p>Your clients must agree with the products you propose to use for their project. It is a good idea to explain the reasons for some of your choices—e.g., your positive experiences with a product or supplier, or the warranty or follow-up service provided by a manufacturer.</p> <p>Be prepared to discuss alternatives, including “green” products and materials. Homeowners often do a lot a research and may want to talk about options.</p> <p>If the project includes allowances (e.g., kitchen cabinets, lighting), explain how it works. Stress any assistance your company may offer, such as accompanying homeowners to your suppliers’ outlets and showrooms.</p> <p>Explain the implications of homeowners supplying their own materials or products, by ordering online, for instance. You won’t warrant products you haven’t supplied yourself or any work affected by homeowner-provided items in case they fail. For that reason alone, many renovators discourage this practice.</p> <p>Projects will often involve the use of subcontractors, or subtrades. It is a good idea to clarify contractual obligations related to subcontractors, e.g., “<i>The Contractor will use subcontractors during the performance of the Work. This Contract does not create a contractual relation between the Owner and any subcontractor for which the Contractor is solely responsible.</i>” (However, under provincial Construction Lien Acts, subcontractors can place a lien on the Owner’s property in case they are not paid by the Contractor.)</p>
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	<p><i>Discuss with Your Clients</i></p> <p>It is important to establish the right lines of authority and responsibility from the outset. Subcontractors work for YOU and are accountable to YOU, not to the homeowners (although as members of your team, everyone ultimately works for the homeowners, and must be committed to customer service and satisfaction).</p> <p>Clear lines of communication are critical. Subcontractors cannot change the Scope of Work on their own, for instance. If homeowners decide they want to change something during the project, they need to talk with you or your project manager.</p> <p>Some renovators require their subcontractors to sign non-competition agreements valid for a year or two after a project. That way, an excellent working relationship between your clients and your subs does not become a business risk for you.</p> <p>Renovation projects run more smoothly when the homeowners are comfortable with the people working on their home. Some renovators introduce their team (crew and subtrades) to their clients as part of the contracting process, before the project starts up, either in person or with a description of their areas of expertise, their experience and how long they have been with the company.</p>
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Permits

What’s Covered?	What Should You Include, Consider and Discuss With Your Clients?
Permits and Inspections	<p>The contract should spell out who is responsible for getting any necessary permits, e.g., “<i>The following permits are required for the work and will be provided by the Owner or Contractor as set out in this Contract.</i>”</p> <p>List the permits (demolition, building, electrical and so on) and assign responsibility for each one. Note how the permits will be paid for, e.g., “<i>The Contractor will include the cost of permits in the contract price.</i>”</p>



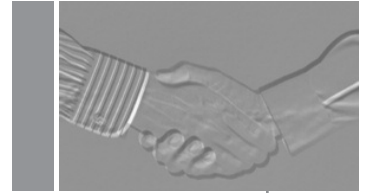
Zoning Variance	<p>Also specify who is responsible for dealing with inspections by the municipality or utilities, e.g., <i>"The following party (Contractor or Owner) will contact the appropriate authorities for inspections."</i></p> <p><i>Discuss with Your Clients</i> Homeowners are usually not familiar with municipal requirements and processes for home renovation, so it makes the most sense for the renovator to take on those tasks. That also helps to ensure that permits and inspections happen in a timely fashion. However, point out to the clients that they are legally responsible for having the proper permits and inspections.</p> <p>Seller's disclosure statements are becoming commonplace in the resale market. Essentially, the homeowner (i.e., the seller) discloses a range of information of interest and importance to purchasers about their property, including any renovation work done and whether a permit was obtained. While the statement is voluntary in some regions, purchasers everywhere are becoming hesitant to buy an existing home without it.</p> <p>That's one of the reasons why it is so important for your clients to follow the right processes for permits and inspections, and to keep the documents for when they decide to sell their home.</p> <p>On some projects, a zoning variance may be needed, for instance, if you are building an addition near the property line or adding another storey. When a variance is required, include a disclaimer in the contract, such as, <i>"The Contractor is not responsible for securing a zoning variance. In case of refusal by the municipality to authorize the variance as proposed, the Owner agrees to work with the Contractor to modify the project design to comply with the municipal framework, or alternatively will pay the Contractor for any Work performed in anticipation of the variance."</i></p> <p><i>Discuss with Your Clients</i> Zoning variances are outside your control, and you cannot guarantee a positive outcome. In some cases, projects can still go ahead without the desired zoning variance, as long as the homeowners are willing to modify their plans. For instance, while they applied for a permit to build a 14' by 14' addition, the zoning may already allow a 12' by 12' addition.</p>
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	<p>You can include a “wish” in the contract that the Contractor and Owner reconsider and modify plans, as suggested above. This can offer comfort to both parties and set the tone for solving a potential problem, but it cannot guarantee the outcome. An “agreement to agree” is not legally enforceable.</p> <p>If the entire project is dependent on a zoning variance, the best approach may be to make the contract conditional upon getting the required approval. Then put everything on hold until that happens.</p>
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Project Schedule

What’s Covered?	What Should You Include, Consider and Discuss With Your Clients?
Start and Completion Dates	<p>The contract may contain start and completion dates based on your best estimate of when work can begin and how long it will take, e.g., “<i>The Work will start on or before _____, and will be completed on or before _____.</i>”</p> <p>Often dates can be guidelines only. This is certainly the case if the start-up date is contingent on a specific action, for instance, getting a building permit. In such cases, the contract can read, “<i>The Work will commence ___ days after obtaining a building permit, or as agreed to by Owner and Contractor.</i>” If you provide a date for substantial completion (see below), you may also want to add a sentence like, “<i>The Contractor may extend the date by 14 working days, at the Contractor’s discretion, should extra time be required.</i>”</p>
Phasing the Work	<p>On a big project, break the schedule into phases, tied to logical and well-defined milestones. This allows you to track progress more effectively, and to identify and deal with slippage sooner. It also creates a “time map” for your customers—easier to deal with than one prolonged renovation period.</p>
Substantial and Full Completion	<p>It may be important to determine how the project is deemed completed, as it can affect the payment schedule (and on occasion, when clients can move back into their renovated home, if an occupancy permit is required).</p>



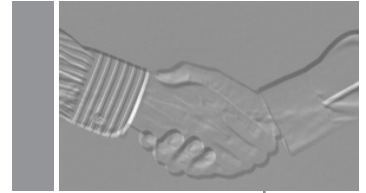
<p>Delays</p> <p><i>"Time is of the essence" is a common term in contracts, which in effect says that the specified time and dates are vital and mandatory, i.e., "we really mean it."</i></p>	<p>On large projects, differentiate between substantial and full completion, with an explanation such as, <i>"Substantial Completion means that the Work is ready for its intended use and meets the definition of substantial completion in the province."</i> (Check the Lien Act in your province for definition and any specific requirements.)</p> <p>Things can happen to cause a delay or, in rare cases, prevent the project from progressing as planned.</p> <p>Some delays occur as the result of the homeowners making changes after the work has begun. Change orders (see page 21) should note any amendment required to the project schedule as the result of a particular change.</p> <p>However, the contract also needs to protect both you and your client from situations where the timelines cannot be met due to events outside your control or theirs.</p> <p>This can be written into the body of the contract, or be part of an attached Schedule of Terms and Condition. For instance: <i>"Time limits in this Contract are of the essence, but any delay in Substantial Completion or Full Completion is an excusable delay if beyond the Contractor's control, including labour disputes, unavailability of materials, delays in obtaining a permit, fire, natural disaster, unfavourable weather, breach by any subtrades; or any delay by Owner of processing proposed changes, delays resulting from inaccuracies in information provided by Owner, or delays resulting from work by Owner or Owner's trades."</i></p> <p><i>"In the event of an excusable delay, the Contractor will inform the Owner of the delay, its reason, and anticipated amended dates of completion within ____ (specify time) or, if that is physically impossible, as soon thereafter as possible."</i></p> <p><i>"If the Contractor is unable to commence the Work within ____ days from the commencement date, due to causes beyond the Contractor's control such as inability to obtain a building permit, or delay in the Owner providing access to the property, then the Contractor or Owner may cancel the Contract on written notice mailed to or delivered to the address of the other party. The Contractor's liability to the Owner shall be limited to the refund of any monies paid by the Owner to the Contractor, less any cost incurred by the Contractor as previously agreed."</i></p>
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<p>Delays (cont'd)</p>	<p><i>Discuss with Your Clients</i></p> <p>Homeowners are often concerned that their renovation will not be done on time. Many have heard stories of projects that went off track and dragged on, and worry that the same will happen to them.</p> <p>To begin with, set realistic timelines—don't promise anything you don't think you can deliver. Tell your clients about your success in bringing other projects in on schedule. Be frank about the things that can happen to throw a project off track. More than anything, reassure the homeowners that you will be able to deal effectively with any delay that may occur—no need for them to feel stressed or worried.</p> <p>At the same time, point out the importance of timely decisions by the Owner. Any delays in choosing and ordering items covered by allowances, for instance, can have a domino effect on the remainder of the project.</p>
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Price

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
<p>Pricing Method</p>	<p>Your company may work on a fixed cost, all-inclusive basis, (a lump sum contract), e.g., <i>"The price (all inclusive) is \$_____ plus GST/HST for the project. Payment shall be due and payable as outlined in the payment schedule."</i></p> <p>Or you may determine the price on a cost-plus basis, <i>"The Contract price is calculated on a cost-plus basis as follows: Cost plus _____% of cost, plus GST/HST."</i></p> <p>A Design-Build contract can be based on either method, but it essentially rolls the design and the construction into a single contract. To reassure your clients, include a sentence such as, <i>"The Contractor will obtain the Owner's approval for design, prior to applying for a building permit"</i> (or prior to construction, if no permit is required).</p> <p>Alternatively, design can be treated as a separate contract, to be followed by a construction contract if the owner decides to go ahead.</p>



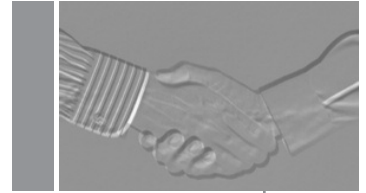
Pricing Method (cont'd)	For a small job, you may be able to itemize the cost of the project in the contract form itself. Otherwise, show the total cost only (or the cost plus the percentage you will charge for management) and refer to an attached Schedule of Cost for a detailed breakdown.
Taxes	Specify if GST/HST is included in the price or will be calculated separately and added to the total.
Time Limitation	Sometimes homeowners are not prepared to sign the contract right away, for any number of reasons. To protect yourself against rising costs, you may want to include a clause such as, <i>"This quote is valid if accepted by the Owner within _____ days of presentation of the quote (made on _____ [date])."</i>
POSSIBLE ADDITIONAL COSTS	A number of situations can occur that can affect the price of the project after the contract has been signed. It is wise to anticipate them in the contract. (Also see Unknowns at the Site, page 38).
Latent Defects	On projects where you cannot accurately inspect and assess the condition of the home in advance, add a clause that the agreed price does not include pre-existing latent defects or deficiencies, e.g., <i>"Any additional work required due to site conditions that are uncovered in the course of the project is not included in the Contract Price and shall be extra to the Contract Price."</i>
Request Arising From inspections	As appropriate, note that, <i>"Any additional work required as the result of municipal or engineering inspections will be made known to the Owner, and shall be an extra to the Contract Price."</i>
Escalation Clause	<p>On fixed-cost contracts, if you are concerned that prices for building materials could go up in the course of the project, consider adding a clause to the effect that, <i>"The Contract price is based on current prices for the component building materials. In the case of an increase in the price of _____ (specify the building materials) after the signing of the contract, the Owner agrees to pay the additional cost to the Contractor upon written notice and evidence of the price increase (e.g., invoices, bills of sale)."</i></p> <p>Discuss with Your Clients Make sure the owners fully understand how you calculate the cost of their renovation—they may not be familiar with cost-plus pricing or design-build contracts.</p>



Escalation Clause (cont'd)	<p>Check and double-check your figures before presenting the contract. A simple mistake at this point can seriously undermine clients' confidence.</p> <p>It is also important to explain the "caveats," without worrying the homeowners unduly. On fixed-priced contracts, the price quoted is the price they will pay, EXCEPT for specific circumstances, such as latent defects, unexpected requests by the municipal inspector, and, of course, changes requested by the homeowners themselves. Also see Supplementary Clauses at the back.</p> <p>You may want to suggest that they set aside a contingency fund to cover unexpected additional costs, from 5 to 10 per cent of the total cost. For instance, when tearing down old walls, you could run into problems with structural integrity, wiring or plumbing. Instead of adding to the contract price upfront by including an amount to cover the unexpected, the homeowners can create a reserve fund, just in case.</p> <p>A reserve fund can also cover the extras that they may decide on in the course of choosing cabinets, fixtures and so on—homeowners often end up going beyond the amounts allocated for allowances.</p>
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Payment Terms and Schedule

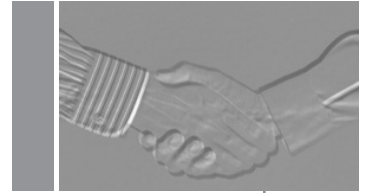
What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Payment Schedule	<p>Specify how the homeowners are going to pay you, e.g., <i>"The Owner will make payments to the Contractor as follows..."</i> Then set out the payment schedule, whether by lump sums according to milestones, regular payment periods or some other terms.</p> <p>Note scheduling and percentage of holdbacks as mandated by provincial construction lien legislation. (Check the Lien Act in your province for specific requirements related to holdbacks.)</p> <p>When feasible, tie payments to specific milestones, such as the start-up of a process: when the foundation is cast, when framing is started, when flooring is started, and so on.</p>



Deposit	<p>It is common practice to ask for a deposit upon signing the contract, anywhere from 5 to 15 per cent of the full value of the contract.</p> <p>However, if you need to make a deposit on materials or order customized windows, special fixtures, custom cabinets, or any other custom or specialty items or materials, you may need a larger deposit from the homeowner. Alternatively, you can list it as a particular milestone payment.</p>
Fixed-Price Contracts	<p>On fixed-price contracts, set out the number of payments you request, the payment milestones or dates, and the amount owed at any payment date. Note the amount to be held back, i.e., the construction lien holdback, and for how many days.</p>
Cost-Plus Contracts	<p>For cost-plus contracts, you can similarly set up a series of milestone payments, or it may make sense to set up a schedule of regular weekly or bi-weekly draws. Specify what will be included in your invoices, e.g., costs incurred in the billing period plus your percentage management fee. Note the holdback amount and for how many days.</p>
Payment Due	<p>Add a statement that, <i>"Payment is due (choose one) a) upon submission of invoice by Contractor or b) within ___ days of invoicing. Interest of ___ % per year, or the maximum rate allowable by law, whichever is less, will be charged on unpaid invoices after the due date."</i> Be aware that if the contract doesn't mention interest, you will not be able to collect it.</p>
Specify Recipient	<p>Note that, <i>"All payments must be made to the Contractor. Any payment to a subcontractor is not deemed a payment to the Contractor."</i></p>
Security	<p>If you are concerned about safeguarding yourself and ensuring that you will get paid, you can speak to your lawyer about the kinds of security that may be available in your province, such as liens, bonds or other arrangements.</p> <p>Discuss with Your Clients The payment terms should be clear and understandable.</p>



	<p>Keep in mind that clients may be concerned about being left in the lurch, if they pay too much up front or get too far ahead of the work being done. They may not voice these fears, but it may still be wise to explain the rationale for the payment schedule to them—briefly and professionally: your overall approach is to create a balance that works for both parties, between work performed and costs incurred on the one hand, and payment on the other.</p> <p>Explain that custom and special “one-off” orders are treated differently, and why. Manufacturers often require a significant deposit upfront, and once the item has been produced, manufacturers will not restock it. They will demand payment in full, even if the clients change their mind.</p> <p>Also explain construction lien holdbacks—what they are, how they work and what they protect against. This is also a subtle way of letting your clients know that the holdbacks have nothing to do with the quality of the work. That is a separate issue.</p> <p>Depending on legislation in your province, you may be able to use statutory declarations (i.e., sworn statements that you have paid your subtrades and suppliers) to eliminate holdbacks. Check with the appropriate provincial department or ask your lawyer.</p> <p>You may want to spend a little time talking about final completion. Occasionally, final completion is delayed due to small items, such as a handle or doorknob being on back-order, or to seasonal delays. In such cases, it is reasonable for you and your clients to work out a final completion holdback to reflect what’s actually outstanding, rather than the homeowner holding back the final payment (or the construction lien holdback on final payment).</p>
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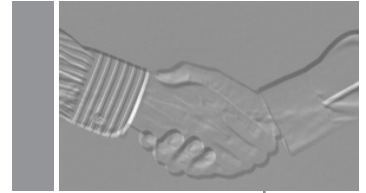
Changes to Work

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
General Statement	<p>Homeowners often change their minds about details of a project once the work has begun. This may affect the price of the project and sometimes the timing as well. Include a clause to the effect that, <i>"The Owner may make changes by altering, adding to or deducting from the Work in consultation with the Contractor, with the contract price and project schedule being adjusted accordingly. Changes to the Work require a written Change Order form, signed by both the Owner and the Contractor."</i></p>
Extras and Deletions	<p>Spell out how Change Orders are priced and paid for. For example, <i>"Extras will be calculated in the following manner (choose one):"</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Material cost plus hourly rate of \$___</i> <input type="checkbox"/> <i>Labour and material costs plus ___ %</i> <input type="checkbox"/> <i>Lump sum to be agreed on in advance by both parties</i> <p><i>Extras are payable upon (choose one):</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Signing the Change Order</i> <input type="checkbox"/> <i>Adding to next scheduled project invoice</i> <p><i>Deletions will be calculated on a cost less 10% basis, to be deducted from the relevant or next scheduled payment."</i></p>
Design Changes	<p>Change Order forms should also be used for design changes. Calculate the cost of revising the design as well as the cost of any recalculation of materials, canceling and reordering, and so on.</p> <p><i>Discuss with Your Clients</i></p> <p>Make sure your clients understand the possible impact of change orders. Reassure them that you will accommodate changes if at all possible, but be frank about the potential for throwing the work off schedule and off budget.</p> <p>As much as possible, give your clients plenty of warning about deadlines for selections to be made during the project, as that process may trigger changes to the work.</p>



Standards of Work

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
<p>General Statement</p> <p>www.tarion.com/HOME and click link in menu.</p>	<p>Often renovation contracts include a statement on the way the work will be carried out, such as, <i>"The Contractor will undertake all Work in a workmanlike manner and will comply with all applicable codes and other authorities having jurisdiction."</i></p> <p>Many renovators across the country refer to the guidelines developed by Tarion (Ontario's New Home Warranty Program) and adapted by most of Canada's new home warranty programs, e.g., <i>"All relevant work will be done to the standards of Tarion's Construction Performance Guidelines."</i> (Or cite your provincial equivalent, if applicable. A region-specific version of Tarion's Guidelines has been adapted by the Atlantic Home Warranty Program and another by the Saskatchewan New Home Warranty Program. Contact your provincial warranty program for information.)</p> <p>Reference can also be made to guidelines or standards for specific trades.</p> <p>Discuss with Your Clients</p> <p>Many homeowners are anxious about the final quality of their renovation; some may have unrealistic expectations of perfection. The intent of the general statement is to clarify expectations of standards of performance and provide a reference point for the quality that homeowners should expect. This can be very helpful in discussions that may arise later on what's acceptable and reasonable.</p> <p>Without overdoing it, it may be reassuring and informative to your homeowners to note the excellence of "our standards, industry practices and building codes".</p>
<p>Inconvenience</p>	<p>Usually, renovation contracts address issues of inconvenience, clean-up and other aspects of the work, and outline the responsibilities of both parties.</p> <p><i>"The Owner accepts that there may be inconveniences from time to time arising from the project and the Contractor agrees to keep such inconveniences to a reasonable minimum."</i> (As relevant, include specific measures such as the erection of a dust barrier or the installation of a temporary kitchen elsewhere in the house, for instance.)</p>



Homeowner Responsibilities	This goes hand in hand with a statement on the homeowners' responsibilities, e.g., <i>"The Owner will take reasonable steps to ensure that the work area is free of household obstructions, and will remove or protect items that could be damaged during the renovation project."</i>
Clean-up	Usually renovation contracts include a statement on the renovator's responsibility for clean-up, e.g., <i>"The Contractor agrees to keep the site orderly and reasonably free of debris. At the completion of the project, the Contractor shall remove all equipment, materials, garbage and anything else incidental to the project, and leave the property fit for use."</i>
Non-Smoking Policy	<p>For the homeowners' comfort, you may want to add a sentence on the expectations for the crew working on the project, such as, "The Contractor agrees to enforce a 'no-smoking' rule inside the house for site crew and subtrades at all times."</p> <p><i>Discuss with Your Clients</i></p> <p>Most homeowners worry a great deal about the mess created by the renovation work. It is a good investment of your time to discuss your company's practices to keep the impact of the work to a minimum. At the same time, help the homeowners to have realistic expectations of the daily clean-up—you will tidy and broom sweep, for instance, not wash and vacuum.</p>

Utilities and Facilities

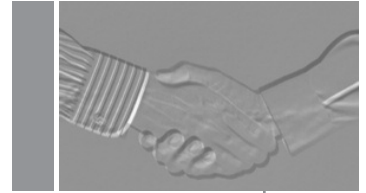
What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Access to Water, Electricity and Washroom Facilities	Many projects require access to water and electricity, as well as washroom facilities for the crew. The contract should clarify the arrangements, e.g., <i>"The Contractor and the Owner agree that responsibility for the provision of utilities and facilities will be assumed in the following manner...."</i> Then list each item, who is responsible for providing it, and who will pay.



Storage, Parking and Other Logistics	<p>If needed, delivery and storage of materials, placement of waste containers and parking for your crew and subtrades should be noted in the contract. If there are any sensitive or complex issues, spell them out—that way, everyone will know precisely what’s expected and what’s acceptable.</p> <p><i>Discuss with Your Clients</i> Clarify with your clients in advance if you can hook up to their utilities, or if you need to bring in a generator, for instance. Also find out if the homeowner expects for you to contribute to their utility bills.</p> <p>Can your crew use the washroom in the house, or will you need to make other arrangements? Are there areas of the house or property that are off limits to the crew? How do the homeowners feel about music in the work area? On lengthy projects, small irritations can grow into big problems—it is wise to anticipate and discuss even the smallest concern.</p>
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Workers’ Compensation and Other Laws

What’s Covered?	What Should You Include, Consider and Discuss With Your Clients?
Workers’ Compensation	The contract should show that the homeowners are protected against liability in case of accidents, e.g., “ <i>The Contractor agrees to provide proof of compliance by the Contractor’s own company and any of the Contractor’s subcontractors under the province’s workers’ compensation regulations.</i> ”
Personal Disability Insurance	Alternatively, and where permitted by provincial law, if you are a sole or independent operator without employees, you may be covered by personal disability insurance. Note this in the contract, with relevant information on the insurance provider and your coverage. (For suggested wording, see “Insurance,” next page.)
Compliance with Other Laws	For the benefit of your clients, you may want to note that, “ <i>The Contractor also agrees to comply with all laws, by-laws, rules, regulations, codes and orders in force during the performance of the Contract that relate to the preservation of public health and construction safety.</i> ”



Compliance with Other Laws (cont'd)	<p><i>Discuss with Your Clients</i></p> <p>For years, consumer education by the industry has taught homebuyers to ask renovators for proof that they “do it right” and protect their clients by complying with relevant rules and regulations.</p> <p>It is therefore important to your credibility that your contract form includes information on workers’ compensation, insurance, and so on. Your clients should not have to ask for it.</p>
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Insurance

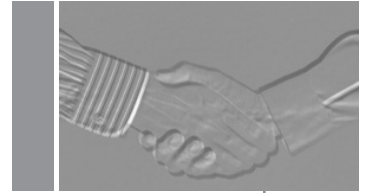
What’s Covered?	What Should You Include, Consider and Discuss With Your Clients?
Your Insurance Coverage	<p>Your contract should note the insurance carried by your company, e.g., “<i>Prior to starting the work, the Contractor agrees to provide, maintain and pay for insurance during the time the Work is being performed, including commercial general liability insurance in the minimum amount of \$1 million (many renovators, including all RenoMark™ members, carry \$2 million) against claims for damages for personal injury or property damage by reason of anything done or not done by the Contractor, its employees or agents, in connection with the performance of this contract.* The Contractor is responsible for all material on site provided by the Contractor for the Work in this Contract until installed.</i>”</p> <p>* If you are a sole or independent operator without employees, and are covered by personal disability insurance, this is where you would insert the words, “<i>The Contractor will also provide proof of sufficient personal disability insurance.</i>”</p> <p><i>Discuss with Your Clients</i></p> <p>Be prepared to elaborate on the key features of your insurance coverage—e.g., for damage to the home or neighbouring properties, or bodily injury to third parties. As proof, show a copy of your policy with the expiry date clearly indicated, or a certificate of insurance.</p>



Your Insurance Coverage (cont'd)	Tell your clients that they must contact their own insurance company before work starts. While small renovation projects usually have no effect on homeowner insurance, larger projects may. For instance, a major renovation may increase the value of the house significantly, and the homeowners should increase their coverage accordingly, even before the project is completed.
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Warranty

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Contractor's Warranty	Set out the warranty you offer on the Work and any limitations that may exist, such as, " <i>The Contractor warrants materials and workmanship provided by the Contractor for the Work for a period of _____ year(s)* from the date of substantial completion. Any defects in the Work due to faulty materials and/or workmanship will be corrected at the Contractor's expense during this warranty period.</i> "
Limitations	<p>* The warranty is usually offered for a one- or two-year period (two years for RenoMark™ renovators).</p> <p><i>"The Contractor does not warrant labour and/or materials supplied by the Owner or the Owner's subcontractor. Nor does the Contractor warrant work performed by the Contractor that is affected by faulty labour and/or materials provided by the Owner or the Owner's subcontractor."</i></p>
Product Warranties	<p><i>"The Contractor will convey to the Owner all warranties by manufacturers or suppliers for products, materials or systems used by the Contractor on the project."</i></p>



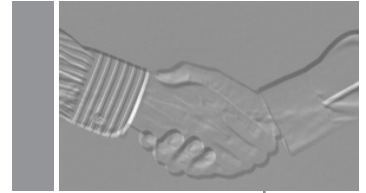
Dispute Resolution

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
<p>General Statement</p> <p>Appointment of Mediator</p> <p>Binding Arbitration</p>	<p>Notwithstanding a solid contract and plenty of goodwill from both parties, disputes will occasionally occur, for a variety of reasons. It is a good idea to set out a framework for dealing with disputes, just in case, starting with, <i>"All disputes between the parties shall be submitted for amicable discussion and resolution."</i></p> <p>Many renovation contracts note that, <i>"In case of a dispute, a third party, agreed to by the Owner and the Contractor, will be appointed to help the parties settle the dispute."</i> Contracts may identify a specific individual, such as a member of the local home builders' association, a local architect, engineer or other respected member of the community.</p> <p>However, the two parties may not be able to agree on a third party to offer an unbiased opinion. You may therefore wish to consider including an option for non-binding mediation in the contract, e.g., <i>"If a dispute cannot be settled amicably, then either party may submit for mediation as administered by (chose a mediator like the Arbitration and Mediation Institute of Canada Inc.) on written notice to the other party. The cost of mediation shall be borne equally by the parties."</i></p> <p>Alternatively, you can add a statement in the contract about appointing a third party to provide binding arbitration, e.g., <i>"Any disputes between the parties shall be submitted for arbitration under the Commercial Arbitration Act (Canada)."</i></p> <p>Discuss with Your Clients</p> <p>Both you and your clients want to start the project on a positive note. However, it is wise to acknowledge the possibility that it may not work out as planned and make provisions for dealing with disagreements.</p> <p>The ideal approach to solving a dispute with your client is to sit down, discuss the problem and come up with a solution that you can both live with. However, sometimes it is wise to bring in a third party to help negotiate a solution—ideally someone with expertise in the particular area under discussion. Your goal is always, with few exceptions, to salvage the project and to restore the client's confidence in you, without compromising your integrity.</p>



Termination

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
<p>Default by Owner</p> <p>Default by Contractor</p>	<p>Things can happen—good or bad—that make it impossible to do the project, after all. People get transferred, fall in love and move away, have babies and so on. Or they fall sick, lose their jobs or go out of business.... The contract should spell out what happens in case either the Owner or the Contractor is unable to go ahead or complete the project.</p> <p>Termination clauses should be approached with caution. Some contractors use clauses similar to those below, offered here as examples. The best idea is to get legal advice to ensure that your own termination clauses reflect your business practices. Keep in mind that if it is too easy to terminate a contract, there is little deterrent for people wanting to walk away from their contractual obligations.</p> <p><i>"If a) the Owner does not perform their obligations under this Contract and has not corrected the default within ___ days of written notice by the Contractor, or b) the Owner becomes bankrupt, or makes a general assignment for the benefit of creditors, or a receiver of the Owner is appointed, or c) if the Work is stopped as a result of a court order, then the Contractor may cease work and treat the Contract as repudiated. An accounting shall be made, and the Contractor shall be entitled to payment for such part of the Work as is completed, including any management fee as would normally be part of such payment."</i></p> <p><i>"If a) the Contractor does not perform the Work in accordance with the terms of the Contract and has not corrected the default within ___ days of written notice by the Owner, or b) the Contractor becomes bankrupt, or makes a general assignment for the benefit of creditors, or a receiver is appointed, then the Owner may finish the Work in accordance with the plans and specifications as the Owner may deem expedient, but without undue delay or expense. The Contractor shall then not be entitled to any further payment under this Contract, but upon completion of the Work, an accounting shall be made. If the unpaid balance on the Contract Price exceeds the expense of finishing the Work, the Owner shall pay the Contractor for such parts of the work as were payable and completed at the time of default. If such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner."</i></p>



No-default Termination	<p>Sometimes conditions on a project, for any number of reasons, lead one or the other party, or perhaps both parties, to wanting to dissolve the working relationship. You may wish to add a clause to your contract that allows you and the Owner to terminate the contract without cause (i.e. without having to specify “defaults”), either by mutual agreement, or as an individual decision, such as:</p> <p><i>“The Contractor and Owner together may terminate this Contract by mutual agreement in writing. Either the Contractor or the Owner may unilaterally terminate this Contract with two weeks notice in writing to the other party; and all invoices, charges, costs, credits and adjustments shall be submitted within that two weeks and paid within two weeks thereafter; and the Contractor shall leave the project in as stable, safe and secure state as the Contractor deems reasonable. If the Contractor terminates this Contract, ___% shall be deducted from the labour charges accrued during the last __ weeks of work on the project prior to notice of termination. If the Owner terminates this Contract, ___% shall be added to the Contractor's labour and material charges accrued during the last ___weeks of work on the project prior to notice of termination.”</i></p>
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Promotion and Privacy

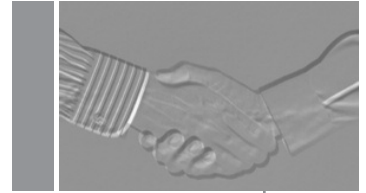
What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Signs and Photographs	<p>Most projects have promotional potential for your company.</p> <p>A sign on the front lawn or on the outside of the home will give you visibility and profile in the client's neighbourhood. Good photos of the renovation project are great for many purposes, including your own promotional materials, entries to awards competitions, and for media coverage.</p> <p>If you wish to use a project for promotional purposes, you need the homeowners' approval. You can formalize an agreement to do this by adding it to the contract, e.g., <i>“The Owner agrees to permit the Contractor to display a sign on the property until completion of the project, and to let the Contractor use photos of the project for participation in awards programs and for promotion, in print, in the media, or for website use.”</i></p>



Privacy	<p>By law, you must protect the privacy of your clients' information. However, you will also likely want to use your clients as references in the future. A general statement in the contract will signal your intent to do so, without obliging the homeowners to agree to it at the time they sign the contract, e.g., "<i>(Name of your company) will not release your information to a third party at any time without your express permission. On occasion we may wish to give your name as a reference to future clients and will contact you for your consent to do so.</i>"</p> <p>This statement also covers any concern they may have about their names and address being used in your promotional materials without their knowledge or consent.</p> <p>There are a number of opportunities to reconfirm the clients' willingness to serve as references once the project is completed—when you go back for "after" photos, contact them for permission to use their project for an awards submission, and most importantly of all, in follow-up calls to ensure they are enjoying their new home. Once the project has been completed and you know they are satisfied customers, you may want to ask them to sign a form permitting you to use them as ongoing references.</p>
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Miscellaneous

What's Covered?	What Should You Include, Consider and Discuss With Your Clients?
Final Standard Clauses	<p>As a rule, the contract form should include some final standard clauses. It may say, for example:</p> <ul style="list-style-type: none">• The contract will be binding on all successors and permitted assignees.• The contract will not be assigned to another party.• The written contract supersedes all prior communications and agreements.• The Contractor assures that there are no claims, action, contract, rule or other circumstance that will interfere with the Contractor's ability to perform their obligations under the contract.



Supplementary Clauses

Renovation projects frequently include specific issues and considerations that should be noted in the contract.

This section contains a series of pre-written clauses for addressing a range of issues that are not uncommon in renovation projects. The clauses are suggestions only—they can be used as is or tailored to each particular project, and they can be inserted in your standard contract form, included in a standard addendum, or used as a separate addendum, depending on the issue. In all cases, a legal review is recommended.

For some issues, more than one possible clause is offered. Choose one or more to best suit the particular circumstances. Also, see the checklist at the back for other possible topics that you might want to cover by a supplemental clause.

Access

In some cases, reasonable access to a client's home for the renovation work may mean that the homeowner may have to vacate the premises. This can be noted in the contract.

There may be two different scenarios for owner move-out: 1) the owner will not be able to live in the home during renovations, or 2) the move-out is optional — "let's see how it goes". A clause for each possible scenario is presented below.

The owner acknowledges that it will be necessary to move out of the house while renovations are taking place. The Contractor will provide reasonable notification (___ days) prior to start-up of the Work for the owner to vacate the home, as well as for the Owner's move-back into the home when the Work is sufficiently completed. The Contractor will strive to conduct and complete the Work in an efficient and timely fashion.

The Owner acknowledges that it may be necessary to move out of the house while renovations are taking place. The Contractor will endeavour to minimize conditions that would necessitate such a move, without jeopardizing the timely and efficient progress of the Work. The Owner and the Contractor will strive to accommodate the needs of the other party and, if required, will seek a mutually acceptable schedule for Owner move-out and subsequent move-back into the house.



Access via neighbour

When a renovation project will impact neighbouring properties or requires the cooperation of neighbours, proper arrangements must be made with affected neighbours, and noted in the contract. This protects all parties against misunderstandings and helps to maintain good community relations. For instance:

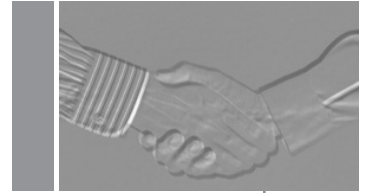
The Owner attests that approval has been obtained from the neighbour (insert name and address) to remove the fence and to provide access over the neighbour's property for delivery of material and supplies, for excavation or for other purposes to reach the Owner's property to complete the project. Unless otherwise specified, the Contractor will remove the fence as and when needed, and reinstall it upon completion of the project. Any repairs or replacements of the fence as the result of damages occurring from the removal and reinstallation of the fence will be carried out by the Contractor and charged to the Owner as an extra cost to the contract. Other damage to the neighbour's property resulting from the Contractor's use will be treated in a similar manner. The Contractor agrees to take reasonable steps to prevent any damage to the neighbouring property.

Appliances

Homeowners may assume that the work includes dealing with appliances, for instance, part of completing a kitchen renovation. Add a clause to the contract to clarify the contractor's responsibilities regarding appliances.

The Contractor is not responsible for uncrating and installing appliances, unless specified.

The Contractor is not responsible for the quality, performance or condition of Owner-supplied appliances.



Debris

As noted on page 23, homeowners are concerned about the disorder and mess created by renovation. Depending on the scale of the project and the expected impact on the home and the grounds, you may wish to develop specific and detailed clauses, which will help the homeowners to have reasonable expectations and keep their anxiety down. (Also see “Dust and Noise” page 34.)

The Contractor shall supply disposal bins as necessary for the removal of debris resulting from the Contractor’s contracted work. Unless otherwise specified, off-contract work, performed by the Owner or others, must use separate disposal means or containers.

During the Work, the Contractor will keep the site tidy and remove debris as necessary. On completion, the Contractor will provide a final clean-up to include the removal of all debris, surplus materials, tools and equipment, and the project will be left in a broom-swept condition.

Driveway

Repair

When upgrading an existing driveway, it is a good idea to spell out the assumption for the installation of a new driveway.

The condition of the base under the existing driveway surface is deemed to meet approved industry standards. If found to be otherwise, the contractor will advise the owner of any additional costs to prepare a proper base before installing a new driveway.

Damage

If the project requires heavy use of the owner’s driveway, along with the potential for damage, it may be wise to insert a clause to that effect in the contract.

Reasonable effort will be taken to protect the driveway. However, normal use of heavy equipment, waste bins and/or trucks may cause damage to some driveways. All repairs to the driveway, other than as the result of the Contractor’s negligence, will be the responsibility of the Owner and will be charged as an extra to the contract.



Dust and Noise

You may wish to use a detailed clause about dust in your contract rather than a general statement about inconvenience and homeowner responsibility. (Also see page 23.)

The Owner acknowledges that the Work will result in the creation of dust and noise. The Contractor will endeavour at all times to keep such to a minimum and to take reasonable measures to contain dust. The Owner is responsible for the removal or safeguarding of computers and other items on the site that can be damaged by dust.

Excavation

When the project includes excavation, an unknown factor is what's in the ground, and how it might affect the work and the budget. Suggested supplementary clauses include:

If soil conditions require additional excavation beyond standard practice or the depth shown on the drawings, the additional costs incurred for excavation and foundations will be charged as an extra to the contract.

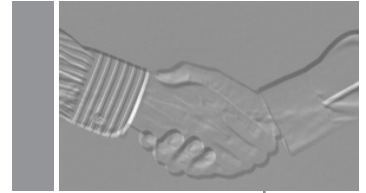
During excavation, large rocks, tree trunks, roots or other natural or man-made obstructions may be found; blasting or removal of these obstructions will result in additional charges. Similarly, any other soil conditions that call for measures beyond standard expectations and practices will be considered outside the agreed-upon scope of the contract and will be charged as an extra to the contract.

It is assumed that unless otherwise noted, any slab to be removed in whole or in part is not thicker than 4 inches. If the thickness exceeds 4 inches, the additional cost for demolition and removal will be added to the contract as an extra.

Final Payment

Use this clause, or similar, to spell out the owner's responsibility to pay construction lien holdbacks as they become due, in situations where there is a delay in completing the contract work. Owners should be aware that they cannot delay payment of construction lien holdbacks related to previous invoices or milestone payments on the ground that they are withholding a final payment to cover further work—i.e., the two are not linked.

Where further work is required to fulfill the contract, then unless otherwise specified, the Owner may withhold payment in an amount reasonable to cover such further work, but not to exceed \$_____. Once that further work has been completed, that amount is due and payable to the Contractor. Notwithstanding any withholding, the Owner is responsible for paying the Contractor the full amount of the construction lien holdback when due, in accordance with provincial lien legislation.



Intellectual Property

To protect your investment in your business tools as well as the information developed in the pursuit of specific projects, you may wish to add a clause on the use of your intellectual property.

Reproductions of any contents of this document (the contract form) or of any plans or drawings for this Work, or use of same other than for this Work, is prohibited except with the written permission of the Contractor.

Landscaping

Set out, in writing, who is responsible for dealing with landscaping that must be disturbed during the renovation project, or for repairing or creating new landscaping once construction is completed.

The Owner shall remove and preserve all landscaping items or materials (e.g. plants, bushes, edgings, pavers and so on) to be saved or replanted, from the area designated for excavation and storing of backfill material around same, prior to start-up.

The site will be rough-graded only; any landscaping or site finishing will be charged as an extra to the contract, unless otherwise specified.

Non-Competition

In addition to asking your subcontractors and others to sign a non-competition agreement (page 12) as a condition of working for your company, your contract with the homeowners can also request that they respect this practice.

The Owner shall not contract any work directly with the subcontractors, suppliers or subtrades. All business related to the renovation will be conducted through the Contractor.



Out of Level

If you have reason to believe that the home is not level or plumb, and that this could affect the contracted work, you may want to add a clause, such as:

It may be found that the existing structure is out of plumb and/or out of level. The proposed work does not include leveling or straightening of the existing structure unless it is specifically mentioned.

Leveling of the subfloor in preparation for installation of new hardwood flooring would be an extra, to be ascertained, if necessary, after existing flooring is removed.

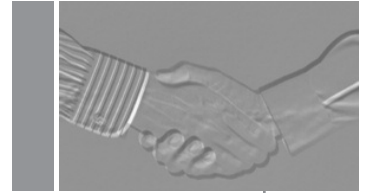
Personal Effects

The suggested clauses below elaborate on the homeowners' responsibilities to clear the work area (also see page 23).

The Owner shall remove furniture and all personal items from the work areas and any areas required for access by the Contractor.

The Owner shall remove articles from the walls and other locations that are not secure or may be dislodged or damaged, in all areas of the house affected by the Work and/or access to the Work and/or services.

The Contractor holds no responsibility for items left by the Owner in any areas that are affected by the renovation, including access points and traffic through the home.



Safety

Safety can be a concern for homeowners, particularly in homes with young children. It is important to address the issue directly in conversation, and explain the measures the contractor will take to protect everyone, including the people who work onsite. At the same time, there are limits to the contractor's ability to ensure safety in off-hours; nor can the contractor be liable for existing conditions in the home. It can be helpful to spell out in the Contract what's reasonable for the homeowners to expect, as well as their own responsibilities, such as:

During the renovation the site will be kept "work safe" in accordance with provincial regulations; however, the safety of the Owner, family members and guests is solely the responsibility of the Owner. The Owner acknowledges that additional safety concerns beyond "work safe conditions" may exist for young children, visitors to the home during the renovation and others, and may at the Owner's discretion and responsibility decide to take additional safety measures, such as locking up the area under construction or limiting entry to the Contractor's crew only.

There may be features of the house that do not meet current code requirements. Where such features are not included in the scope of work for the renovation, the Contractor is not responsible for them.

Salvage

What happens when demolition or other preparatory work results in unwanted materials and items that are too good to be thrown away? The contract can set out the framework for what to do with them and by whom.

Except as otherwise itemized, all materials to be removed from the premises shall be disposed of by the Contractor, and if any such removed materials can be salvaged, re-used or recycled, the benefit shall belong to the Contractor.

Services

If not part of the project budget, alert homeowners to the fact that possible work and fees related to services, connections, meters and so on, inside or outside the home, are additional costs, to be paid by them. For instance:

If it is required to move service meters, payment of any service connection fees or service upgrade fees are the responsibility of the Owner.

Included in the contract is installation of simple surface-mounted light fixtures. If the Owner chooses another fixture that requires more time to install, that time will be an extra to the contract.



Storage

Use this clause to reinforce your discussion with the homeowners about how they will get ready for renovations and live during the project.

The Owner acknowledges that space will be needed and provided at the site for the storage of material and equipment. The space requirement will be established during a meeting between the Owner and the Contractor, prior to the start of construction.

Underground Utilities

This clause, or similar, highlights the importance of due diligence in getting information from the proper authorities before proceeding, and protects the contractor in case of incomplete information.

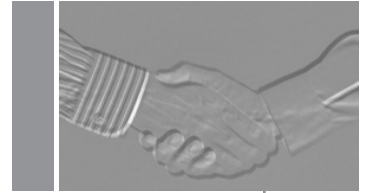
The Contractor will contact the appropriate authorities and request information on the location of all underground services in the areas of excavation, construction, grading and paving, as well as access used by heavy equipment. The Contractor shall not be held responsible for damage to or removal of underground services not identified during the investigation, including cables, wires, telephone or hydro-electric connections, pipes, sprinkler lines, water or sewage disposal systems or conduits or similar items, and the Owner covenants and agrees to hold harmless and indemnify the Contractor with respect thereto.

Unknowns at the Site

Even the most diligent pre-renovation inspection cannot uncover all potential issues in a client's home. Depending on the project, it may be prudent to note in the contract the items that could potentially emerge as the work gets underway. Stress that it is a simple precaution, to protect all parties, just in case. For example:

Unless specifically indicated, the contract price does not include re-routing of vents, pipes, ducts or wiring conduits that may become necessary during removal of walls or cutting of openings in walls.

Unless specifically indicated, the contract price does not include the cost of rectifying damage to the existing premises caused by dry rot, mould, ants or termites, mitigation or removal of substances such as asbestos or lead, or other pre-existing conditions that were unknown at the time the contract was signed.



During inspections by building officials or engineers, additional work may be requested beyond the terms of the project. Should this occur, the Contractor will advise the Owner of any additional costs that will be incurred by the Owner following a proper assessment of the required work.

If the Owner or Contractor discovers concealed physical conditions, which existed before commencement of the Work, and which differ materially from the conditions indicated in the Contract or from those ordinarily found and generally recognized as inherent in such a project, then the observing party shall notify the other, and the Contractor will promptly investigate. If the finding is that the conditions differ materially and this would cause an increase or decrease in the Contractor's cost or time to perform the Work, the parties will sign a Change Order to reflect this. The Change Order should be signed or agreed to prior to starting the Work.

If during demolition the Contractor encounters conditions that could not reasonably be anticipated by the Contractor and that will increase the Contractor's cost of demolition and removal, this cost will be charged as an extra to the contract.

Walls

Use the following clause to help homeowners have realistic expectations of wall repairs.

When repainting of existing surfaces is required by the Contract, the preparation will consist of minor filling of small holes and cracks prior to the application of two coats of paint. If the condition of the wall or wood surface is such that it requires further remedial work, the Contractor will provide a quotation for the additional preparation required.



Checklist of Possible Exclusions

Reduce misunderstandings or misinterpretations about what's included in a contract and reflected in the project scope and price, and what's not.

For each project, think about the excluded items—that is, items that homeowners may believe are included in their contract with you, that they may be confused or uncertain about, or that they don't recognize as an owner responsibility. Many of those items will likely have been noted in the contract already. If not, consider adding a separate clause listing excluded items.

- ☐ Surveys
- ☐ Permits
- ☐ Engineering fees
- ☐ Moving or storage of personal items or furniture
- ☐ Any work not shown on the drawings or specifically mentioned in the Scope of Work
- ☐ Any work on the exterior of the house, except as noted
- ☐ Painting of any surfaces not affected during construction
- ☐ Supply or installation of video or sound equipment
- ☐ Supply of security equipment
- ☐ Supply or installation of telephone wiring
- ☐ Final connection of telephone or cablevision outlets
- ☐ Supply or installation of cablevision wiring
- ☐ Supply or installation of computer cabling
- ☐ Supply or installation of cabinets
- ☐ Supply of appliances or hood fan
- ☐ Supply or installation of flooring
- ☐ Supply of plumbing fixtures
- ☐ Supply of surface-mounted light fixtures
- ☐ Interior or exterior painting
- ☐ Landscaping, the site will be rough graded only
- ☐ Payment of any service connection fees or service upgrade fees
- ☐ Installation of Owner-supplied appliances
- ☐ Environmental assessment
- ☐ Removal or disposal of any hazardous materials or mould
- ☐ Supply or installation of a make-up air unit
- ☐ Hidden knob and tube wiring repairs, replacement or removal
- ☐ Hidden galvanized water lines, replacement
- ☐ Window coverings

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