

Haywood Home Builders Association

Owner Builder Brochure

Attention Owner-Builders/Legal Implications

You are about to embark on a journey that can very easily turn into a never ending nightmare of enormous financial expense, complicated bureaucracy, potential long term liability, and frustrating management. North Carolina law requires any person who builds a project in excess of \$30,000 be licensed as a general contractor. However, a narrow exception exists for one who builds a building on land owned by that person when the building is intended for occupancy by that person. In order to qualify for this exception from licensure, you must be prepared to act as your own general contractor and, as such, discharge all the responsibilities required of a general contractor that arise from such a project. If someone else is going to superintend or manage the construction of your house for you or on your behalf, that person must be a licensed general contractor. If a non-licensed person has solicited you to apply for the building permit and that unlicensed person is to superintend or manage the construction of your home, that person will be acting in violation of the law. If you obtain this permit at the behest of an unlicensed contractor, you may be violating the law as well. Your obtaining of this permit means that you will be acting as the general contractor for this project and you may not delegate this responsibility to an unlicensed person to perform on your behalf. You may think that you will save a substantial amount of money by managing your own project, but in reality you will probably save very little, and could possibly open yourself up to problems that could cost you many times the cost of your total project. Unless you are well trained in construction, it is very unlikely that you will be successful.

Owner-builders are also required to occupy the home for a minimum of one year after completion of the project; this provision is designed to prevent owners from acting as unlicensed contractors.

The permit holder of the project is acting as the contractor, and therefore assumes the responsibilities of the contractor. The contractor is solely responsible for the project and is, thus, responsible for jobsite safety, code compliance, structural detailing, and workmanship performed by any person on the job. An owner, acting as a contractor, will have little legal recourse against unlicensed individuals that make costly decisions, create an unsafe condition, or violate the Building Code.

The permitting process can sometimes be complicated and time-consuming. The process can involve coordination with many different entities such as the building department, zoning authorities, electrical utility, water & sewer utilities, the health department, erosion control, and other environmental agencies. Each of these entities has their own set of requirements, applications, necessary documentation, and fees. Substantial criminal and civil liability may result from a failure to strictly observe the statutes, rules, or regulations of one or more of these agencies. The contractor is expected to have a working knowledge of the North Carolina Building Code and is responsible for code compliance. The Building Inspector's job is to enforce the Building Code.

Building plans are a guideline for project construction but may not contain detailed information necessary to comply with the code or to complete the project. Many structural details are worked out on the jobsite by the contractor. Working out these construction details is the responsibility of the contractor.

Code Compliance

The permitting process can sometimes be complicated and time-consuming. The process can involve coordination with many different entities such as the building department, zoning authorities, electrical utility, water & sewer utilities, the health department, erosion control, and other environmental agencies. Each of these entities has their own set of requirements, applications, necessary documentation, and fees. Substantial criminal and civil liability may result from a failure to strictly observe the statutes, rules, or regulations of one or more of these agencies.

The contractor is expected to have a working knowledge of the North Carolina Building Code and is responsible for code compliance. The Building Inspector's job is to enforce the Building Code.

Building plans are a guideline for project construction but may not contain detailed information necessary to comply with the code or to complete the project. Many structural details are worked out on the jobsite by the contractor. Working out these construction details is the responsibility of the contractor.

Liability Implications

The Occupational Health and Safety Act (OSHA) regulates the safety of workers on the job. There are many safety precautions and procedures that must be followed to comply with OSHA. The contractor of record is responsible for compliance with OSHA and substantial fines can be levied for violations. North Carolina requires that all workers be covered by Worker's Compensation Insurance. The general contractor is responsible to ensure that this coverage is provided on the jobsite, extending to the employees of all subcontractors. Every worker must be covered, and it is the responsibility of the general contractor (your responsibility) to see that they are. Many owner-builders are under the false impression that home owners' insurance or liability insurance will cover workers injured on the job; this is totally incorrect! Only workers' compensation insurance covers this kind of risk. In the absence of workers comp insurance, the general contractor (you) exposes him or herself to general tort liability without the protections of the workers' compensation act to limit liability for disability payments or medical bills which may arise from a jobsite accident arising on your project. Workers' compensation insurance carriers do not cover "owner-contractors".

Liability for building defects extends for several years, especially if negligence is proved. The owner-builder is the contractor of record and therefore is solely responsible for the project. There is little chance that an owner-builder (contractor of record) will be able to hold anyone else, especially an unlicensed person, responsible for structural failures, and may be vulnerable to lawsuits from future owners.

Economic Realities

The main incentive for home owners to act as the contractor is to save money, but often it will end up costing them much more than they save. Most building material suppliers offer substantial discounts to contractors that buy from them on a constant basis. These discounts are usually based on volume over a long period of time. A home owner that buys material for one home will rarely get the same pricing as a contractor that is buying a larger volume on a continual basis. Subcontractors also price their services accordingly, offering better prices to contractors that hire them for multiple projects on a regular basis. Suppliers and subcontractors will also give better service and delivery priority to contractors.

Project Management

Planning and estimating work and materials for a construction project can be a daunting task that can have a devastating effect on cost. Major design and construction detailing decisions will need to be made that will also effect cost and structural integrity. Many of these decisions, once made, are irreversible.

A simple grading or foundation decision or detail will have a major effect on things that may not show up until near the end of the project. Material shortages could hold up workers or equipment at costly per hour rates, and excess material may get damaged or not be returnable. Being unfamiliar with subcontractors, local building vocabulary or customs may also make it very difficult to compare bids for work or materials. Knowing what is included and what is not, or where one subcontractor's work ends and another one starts can lead to numerous time and money headaches.

Financing

Most financial lending institutions do not look favorably on inexperienced, unlicensed builders. Most will only lend if a licensed contractor is engaged to build the project. Failure to notify your lending institution that you are going to be the "contractor" may jeopardize your financing.

Conclusion

Building is a profession, and like any other profession it is best left to professionals. Every profession has its own secrets, special techniques, and tricks of the trade. You wouldn't fill your own teeth, perform major surgery on yourself, or build your own television, and you probably shouldn't build your own home. Even if you possess the construction expertise and plan to devote numerous hours to the actual management of the project, do you really want the liability that comes with the project? One lawsuit or enforcement action will wipe out any potential savings.