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How to Avoid Getting Sued

Please note:

This is not advice from a lawyer



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Don't do any work



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Seriously

- Even that doesn't always work
- Nothing prevents all lawsuits – but you can reduce the number of suits, and improve your chances of winning.



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Who is in the audience?

- a. Contractors
- b. Builders
- c. Raters
- d. Agencies
- e. Other



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How many of you have been sued in the course of doing business?

- a. Work failures
- b. Damage
- c. Personal injury issues
 Sub-contractor related.
- d. I looked like I had deep pockets



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What we are going to talk about:

Avoiding lawsuits for work on site – in the context of work done on an existing building.

The liability for new construction is different, also worth looking at, but not my specialty

We are not talking about dealing with personal injury lawsuits (lawsuits from employees)



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Can't avoid lawsuits entirely...

Goal # 1 – Reduce the number of suits.

Goal # 2 – Increase your chance of winning when you are right.

Can't help much when you are wrong, except to urge quick settlement either directly or through binding arbitration.



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Home Performance with Energy Star promotes two major themes:

1. Test in and Test Out

We recommend that homes be tested before work begins, that installations be commissioned and tested after work is complete.

2. The House as a System

The house is a system in which all parts work together – Building Science is the means of planning in advance for how one change will affect others.



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These two themes are critical in avoiding lawsuits, as well as for getting the maximum energy savings.

We will add one more:

*** Practice Good Business ***

- document your work
- take responsibility for what you & your subs do



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Test In - The comprehensive Home Assessment

- a. Walk through the entire house, preferably with the customer.



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Test In - The comprehensive Home Assessment (cont.)

- b. Document what you see – pre-existing damage:
- water stains on ceiling
 - soft floor in bathroom
 - scratches on walls & floors
 - non-functioning appliances/lights

Since most of these things relate to energy efficiency (*OK, not the scratches on the walls*) you have a good reason to note them – fixing them may become part of the job, not part of the lawsuit.



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Test In - The comprehensive Home Assessment (cont.)

- c. Take pictures of pre-existing conditions (digital cameras or film with date & time stamp).

- d. Ask the customer about how the house works and any problems they encounter – write it down as notes on the assessment if relevant.



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The House as a System

Apply your knowledge of building science to the project.

Common issues:

1. Tightening a house tends to raise the relative humidity inside the house → plan ahead with mechanical ventilation.
2. If there are pipes that are located outside the surface you are choosing to insulate you may be creating a frozen pipe problem → bring them inside the thermal envelope.



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The House as a System

Common issues (continued):

3. If you partly air seal an attic and insulate it you can make ice damming worse.
4. A better furnace, boiler or ac unit may make distribution system problems worse – so check the distribution system when specifying HVAC replacements.



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The House as a System

Surprises

No matter how carefully you check the house before you begin work, you will find conditions that require additional work – the duct in the crawlspace with water in it, the rotted floor joist, the faulty electrical circuit, etc.

In retrofit work you can only minimize, but not avoid surprises. So you need protection in your contract from this liability.



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The House as a System

Surprises (Continued)

Your standard contract should contain a clause that covers you against pre-existing surprises, and you should explain the clause clearly to the client before they sign the contract.

Some clients will not like this clause. Solutions are:

Raise the price

Walk away



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The House as a System

Sample Language on Surprises

Client (Homeowner, whatever term you are using) hereby acknowledges that client has been advised that the performance of the work hereunder may reveal the existence of conditions which would render the work to be performed unfit, unsafe, and/or in violation of governing codes/regulations unless additional work not specified herein is performed immediately. Client hereby expressly consents to and authorizes the performance of the minimum amount of additional work which is necessary, in the judgment of the tradesperson performing such work, in order to produce a completed project which is in compliance with all applicable codes and will function as intended. Client hereby agrees to pay the fair and reasonable cost of the time and materials necessary in order to complete the additional work, including overhead and profit for the tradesperson, upon demand following the completion of that work, pursuant to the terms of this contract which govern payment for the planned work hereunder.



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Test Out

- a. Part of testing out is the punch list – make sure the job is complete and that anything you have had to take apart is put back together. *(This mostly avoids annoying the customer.)*



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Test Out (cont.)

- b. Make sure that what you have installed works the way you expect it to:
 - Commission the HVAC installations.
 - Blower door test the air leakage – check critical areas with a smoke pencil or other indicator – remember it is not just the amount of leakage but the location that matters.
 - Use a duct blaster to test the integrity of your duct system and measure the flow and temperature at the registers.



Test Out (cont.)

- c. Test appliances, lights and other things that may have been affected by your work. (*You want to find the cellulose blown into the dryer vent before the homeowner does.*)
- d. Walk around with homeowner during the final test out – again use your camera if it makes sense.



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Documentation –

“I’ve never had too much”

- a. Written estimates, including time frames
- b. Written contracts - signed & dated
- c. Written Change Orders - Signed & Dated!
- d. Written certificate of completion –
Signed & Dated, accepting the work



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Good business practices (reduce friction, build confidence)

- a. Set schedules.
- b. Show up on time - call if you're going to be late.
- c. Neatness counts.
- d. Clean up after yourself:
 - Wear foot coverings
 - Bring drop cloths
 - Bring your own shop vacuum
 - Bring your own trash bags, and take your trash with you



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Manage your subcontractors to the same standards you keep

- a. Insist on qualified people.
- b. Review your expectations on customer relations with them.
- c. Check up on their work, and do some customer relations checking with the customer also.



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When all of this fails:

- a. Fix your mistakes right away – top priority.
- b. Split the difference on arguable issues.
- c. Fight the unfair claims – your documentation will be your best defense.