



Legal Insurance



Hiring and Working  
with Contractors

# Table of Contents

Choosing the Right Contractor	3
Review the Contract	5
Smart Tips to Avoid Common Problems	6
Legal Issues	7
What to Do if Problems Arise	9



Maybe you've finally found time for that long-awaited remodel. Or your grand plans for a backyard oasis are starting to take shape. Before you start to look for a contractor, take the time to carefully consider what your project is, what you want the contractor to do and what your budget is.

First, try to learn a little about the type of work you want done so you understand what the contractor will be doing and what options are available. This will also help you understand the scope of the project and how it will affect your current living situation. Then, do some research about the process, the best materials to use, the typical costs and anything else you can learn about the project.

When homeowners are unsure about the scope of the project, contractors tend to bid the work higher in order to cover contingencies. While you don't need to know all of the details before you start discussions with potential contractors, knowing more means you are more likely to get exactly what you want as well as save time and money.

**By thinking through the details of your project before you begin you will most likely:**

- Receive more accurate bids that can be compared easily.
- Hire a contractor with the applicable skills for your project.
- Save time (and money) spent with the contractor planning the project.
- Stay within your budget.
- Minimize your and your family's inconvenience while remodeling.

# Choosing the Right Contractor

The single biggest influence you have on the success of your project is the contractor you select to do the work. While the cost of the project is important, reliability and quality are what last. Home improvement issues are among the top consumer complaints year after year, and the lowest price isn't always the best choice.

To find a competent and dependable contractor, start by asking your friends and family for recommendations. Learn from their experience and ask if they have tips for your project.

You can also contact your local Better Business Bureau® (BBB) to learn how long a contractor has been in business and if the firm has been responsive to any complaints filed with the BBB.

Once you have a list of potential contractors, contact each of them with the specifics of your project and determine how well you would be able to work with them. Similar to a job interview, you want to ensure that the contractor takes your satisfaction seriously and is someone you feel you can work with if issues arise.

## **Additional resources for finding a contractor include:**

- Internet or newspapers
- Local home improvement stores or lumberyards
- National Association of the Remodeling Industry (NARI®) website
- Referrals from contractors you used for other types of projects, but who don't do the type of work you need done now



## **Before you sign a contract with a contractor:**

- Assess the contractor, their experience, and how well you communicate with each other.
- Review the contractor's past projects and talk to other customers.
- Get a written estimate that thoroughly and accurately describes the project.
- Ask for and file copies of insurance and any applicable licensing requirements that may be required in your area.
- Read the contract and make sure you agree with everything as written.

## **Sample contractor questions**



- How long have you been in business?
- What type of work do you usually do?
- Are you available to take on this project?
- What concerns do you have about being able to complete the work?
- Can you provide a list of previous clients as references?
- Do you have a website with examples of projects you've done?
- How many other projects will you be doing while working on mine?
- Do you hire subcontractors to do any of the work?
- How long have you worked with your subcontractors?
- Are you licensed to work in my location?
- Will you provide a copy of your license?
- Do you have liability and worker's compensation insurance?
- Will you provide proof of coverage?
- Do you offer a guarantee on your work?
- Will you obtain all necessary permits?
- How do you keep clients updated when it comes to changes in scope, issues you run across or additional costs incurred?

## Get a written estimate

After you have identified a list of qualified contractors that are available to complete the project within your timeframe, get a written cost estimate.

If bids are significantly different, ask why. Contractors may have a different understanding of the job or may be using different types of materials. Generally materials account for 40 to 50 percent of the total cost; the rest covers overhead and the typical profit margin of 15 to 20 percent.

## Check references

After you have talked to contractors and compared estimates, narrow your consideration down to one or two contractors. Then conduct reference checks with current and past customers to verify the contractor's ability to complete the job and the quality of their work. Most contractors are willing to provide references. If they are unwilling to provide a list of references, be sure to clarify why.

When you talk to the references, ask them the following questions:

- Were you satisfied with the project? Was it completed on time? Would you recommend the contractor?
- Did the contractor keep you informed about the status of the project, and any problems along the way? Were changes to the project discussed with you before proceeding?
- Was the contractor easy to reach if you wanted to speak with them? Did they promptly return messages?
- Were there unexpected costs? If so, what were they?
- Did workers show up on time? Did they clean up after finishing the job?



### Red flags

While they don't always signal scams, make sure to ask additional questions and conduct thorough background checks if you encounter any of the following:

- Door-to-door solicitations
- Estimates that are much lower than competitors
- Contractors that require immediate decisions
- Answering service only: no direct contact with contractor
- Contractor not from your area
- Entire payment required upfront
- No insurance or references

## Make sure the bid includes:



Scope of work – a detailed list of what the contractor will perform.



List of materials needed, including cost.



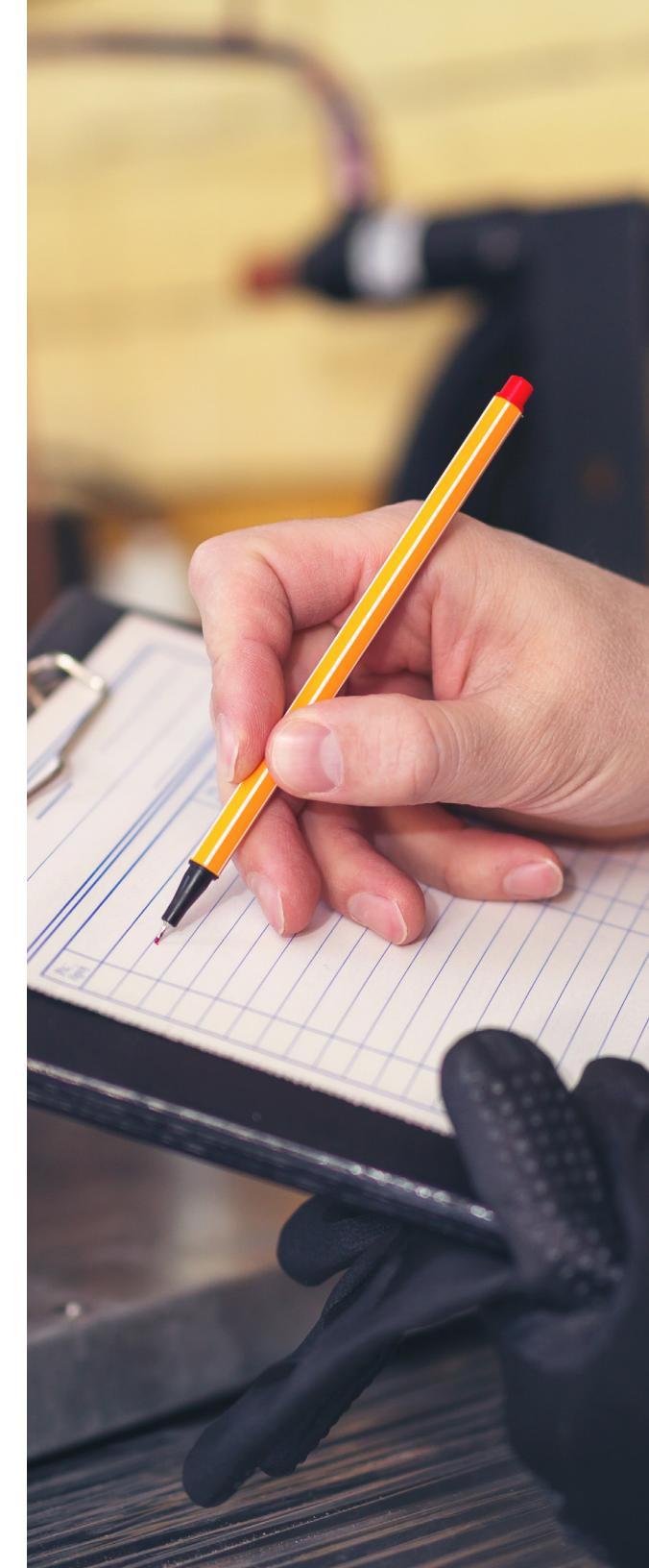
Timeline for completion.



Payment schedule.



Process for approving changes in construction.



# Review the Contract

After you have chosen a contractor, you'll need to develop a written contract stating the agreement. Not all states require a contract; however, you should always request one because it helps ensure both parties are clear on the terms of the agreement and provides something to refer back to if misunderstandings occur.

Once you are sure the contract has all the necessary information, sign and date it. Be sure to keep a copy for your files, along with a copy of the contractor's license and proof of insurance. Your contractor should have proper general liability insurance and workers' compensation in case a worker is hurt while working.



Visit your state's licensing board website to learn about what's required in your specific area.



## The agreement should be clear, concise and complete. Make sure the contract contains:

- The contractor's name (business name), address, phone number and professional license number, if required.
- A payment schedule for the contractor, subcontractors and suppliers.
- The estimated start and completion dates.
- A detailed list of all materials including color, quantity, model, size, brand name, product and cost.
- What the contractor is responsible for and anything that you are responsible for.
- Oral promises and warrants that the work to be performed will be done in a professional manner, in accordance with all applicable codes and standards.
- The contractor's obligation to obtain all necessary permits. If you obtain permits, you are responsible for fines and penalties for incomplete and improper work.
- Who will pay for the applicable permits and inspections.
- How change orders will be handled.
- Penalties for work not completed by the projected date, within a reasonable time or unsatisfactory (shabby) work.
- A termination clause for unreasonably slow progress, inattention, incompetency or carelessness.
- Lien release for all employees, suppliers and subcontractors of contractor.
- A written statement of your right to cancel the contract within three business days of signing the contract. During the sales transaction, the salesperson (contractor) must give you two copies of a cancellation form (one to keep and one to send back to the company) and a copy of your contract or receipt. The contract or receipt must be dated, show the name and address of the seller and explain your right to cancel.
- An indemnity and hold harmless clause against any claim, demand, loss, liability, damage or expense arising from the contractor's work.
- Insurance requirements.
- Any applicable warranties.

# Smart Tips to Avoid Common Problems

## Make sure the contractor obtains a permit if the job requires one.

The contractor is responsible for getting necessary permits and work cannot start without them. Be sure to see the building permit before work starts to verify that they were obtained, and make sure they aren't issued in your name. Obtaining these permits yourself may make you responsible for fines and penalties for incomplete and improper work, so it's important to have the contractor handle all permits and any inspections.

## Keep a file for all related paperwork.

All paperwork related to your project needs to be kept in one place. This includes copies of the contract, contractor licenses, proof of insurance, change orders and all communication with your contractor. Keep a log or journal of all phone calls, emails, conversations and activities. You also might want to take photographs as the job progresses. These records are important if you have problems with your project either during or after construction.

## Pay by check and get a receipt.

Write out the check to the contracting company rather than to an individual. A check provides proof that you made payment. Sign documents and send your check only when the job is finished properly.

## Document any changes to the contract in writing.

If you and the contractor agree to change any part of the contract, make sure the changes are put in writing and signed by both of you. This will help ensure that the agreement reflects the current arrangement and decreases the potential for misunderstandings.

## Payment tips

Consider a plan that pays out the money in increments. For example:

10%  
down

25%  
when plumbing  
and electrical work  
are done

25%  
after cabinets  
and windows  
are finished

25%  
after floors  
and painting  
are finished

15%  
when everything is  
finished and  
has been working  
for 30 days\*

If the job is big enough – say, \$50,000 or more – consider hiring an attorney to devise a contract that includes a fair payment plan, with retainage, and stipulates that disputes will be settled through arbitration (the quick and easy way to do it).

\*This is called retainage and is better than handing over that last percentage on the final day of the work.

# Legal Issues

While most projects go smoothly, it's important to remember you have certain rights and cannot be forced to take on additional financial obligations that aren't your responsibility. Here are some important legal issues to consider so that your project goes as planned.

## Your right to cancel a contract

You have a legal right to cancel any contract within three business days from the day you signed it. The contract needs to include this provision and you should receive a form, in duplicate, explaining that right. If you decide to cancel the contract within the allotted time, you must notify the contractor in writing that you intend to cancel, and the letter must be postmarked by midnight of the third business day following the date the contract was signed. Keep a copy of the letter, and mail the original by certified mail, return-receipt requested. If work started immediately because of an emergency situation (such as flooding), the right to cancel within three days is not applicable.

## Mechanic's lien

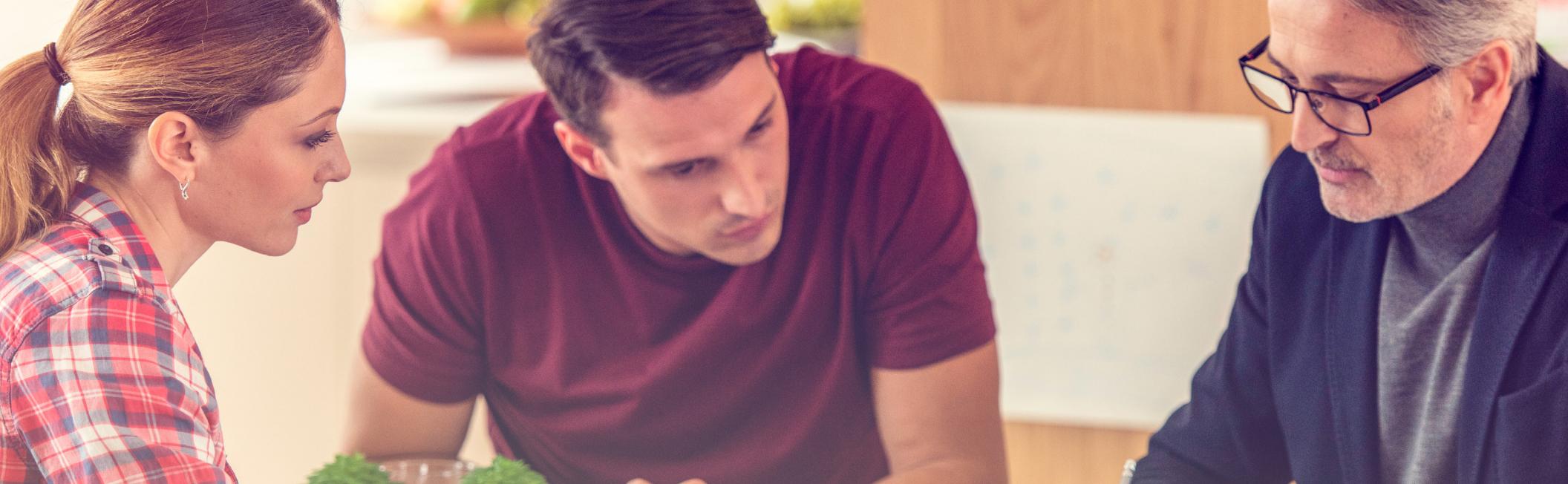
A mechanic's lien, also known as a construction lien, is a claim made by contractors or subcontractors who have performed work on a property and have not yet been paid. A supplier of materials delivered to the job may also file a mechanic's lien. In some states, professionals such as architects, engineers and surveyors may also be entitled to file a lien for services rendered.

The owner or contractor needs to obtain lien releases or waivers of lien from each subcontractor and material supplier. Without these waivers or releases, the real estate is subject to liens of all the subcontractors, even if the general contractor, though paid in full, fails to pay the subcontractors.

For example, your building contractor may hire subcontractors to handle the plumbing and electrical work on your project. To ensure they seek payment only from the contractor who hired them, and not from you by putting a lien on your property, obtain a waiver of lien from each subcontractor.

In some states, contractors and subcontractors must notify the property owner prior to filing a lien, but in other states such liens can be filed without any notice to the owner.





### Release of lien and affidavit

Prior to making any partial or final payment to the contractor, you should obtain a release of lien and affidavit (or partial release of lien and affidavit) that specifies that the contractor has either paid all subcontractors and laborers or lists all individuals owed any money and how much is owed to each. This amount may be withheld from the contractor's pay and paid directly to the subcontractors or suppliers after giving 10 days written notice to the contractor. Again, if you pay the subcontractors or laborers directly, make sure to obtain a release of lien.

### Final release of lien and affidavit

You should not make the final payment until a certified inspector has approved the contractor's work. It is acceptable to withhold at least 15 percent of the total contract amount as final payment. Do not make the final payment until:



You are satisfied with the contractor's performance.



The work has been approved by a certified inspector.



You have received the final release of lien from the contractor

### Final checklist

Before you sign off and make the final payment, use this checklist to make sure the job is complete.

- All work meets the standards spelled out in the contract.
- You have written warranties for materials and workmanship.
- You have contact information for contractors and applicable subcontractors in case there is an issue with the work.
- You have proof that all subcontractors and suppliers have been paid (final release of lien).
- The job site has been cleaned up and cleared of excess materials, tools and equipment.
- All permits and related inspections have been performed as required.
- You have inspected and approved the completed work.

# What to Do if Problems Arise

If problems come up during or after the job, notify the contractor and try to resolve them. Frequently, effective communication will resolve most difficulties. If problems persist, however, document your side of the dispute and send a demand letter to the contractor indicating what the problem is and the solution that you are looking for. Demand letters should be used when other attempts to work out the issue have been unsuccessful and you want to make your concern formal.

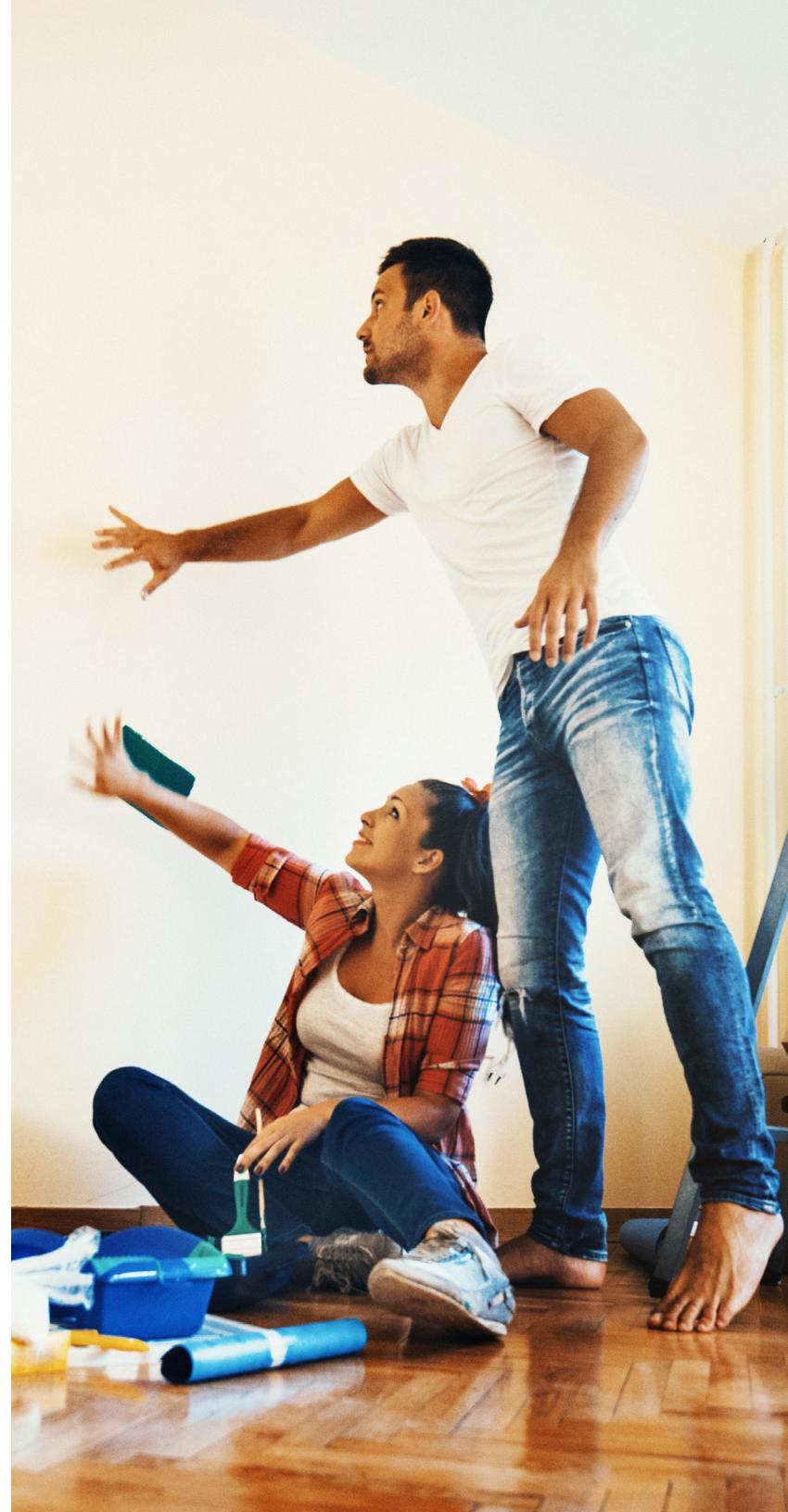
## Where to complain

If you and your contractor cannot resolve the situation together, contact the following organizations for further information and help:

- State and local consumer protection offices
- State or local offices that license the contractor
- State or local builders association and/or remodelers council
- Local Better Business Bureau
- Action line and consumer reporters. Check with your local newspaper, TV and radio stations for contacts.
- Local dispute resolution programs

## When to seek legal assistance from an attorney

- You want help creating legal documents such as a lien release or waiver of lien.
- Work is not going as scheduled and the contractor is unwilling to discuss options, or the options offered are not reasonable.
- Work is shabby or unprofessional and the contractor is unwilling to repair or offer options.





### Other Resources

Check out the following websites for additional information on how to hire and work with contractors.

*Federal Trade Commission*

[ftc.gov](http://ftc.gov)

*National Association of the Remodeling Industry*

[nari.org](http://nari.org)

*National Association of Home Builders*

[nahb.org](http://nahb.org)

*Better Business Bureau*

[www.bbb.org](http://www.bbb.org)

### Take Control with ARAG



If you encounter issues or don't have an attorney to turn to for guidance, ARAG can help. Visit [ARAGlegal.com](http://ARAGlegal.com) to learn more about how ARAG legal coverage gives you an affordable way to manage legal matters and the freedom to live the life you dream of.

This publication is provided as educational material only. While every effort has been made to ensure the accuracy of this publication, it is not intended as legal advice as individual situations will differ and should be discussed with an expert and/or lawyer.

By clicking on the links provided in this article you are connecting to another website. We have provided links to these sites for information that may be of interest to you. These links and any opinions, products, services or any other sites contained therein are not endorsed by ARAG. ARAG is not responsible for the legality or accuracy of the information contained therein, or for any costs incurred while using this site.

© 2023 ARAG North America, Inc.

100032

