

STANDARDIZED CLEANING & RESTORATION CONTRACT FORMS

For the State of Texas

June 23, 2021 Update

Read This First Before Using The Forms

Dear Texas Restorer,

Thank you very much for purchasing our *Standardized Cleaning and Restoration Contract Forms Package* for the great state of Texas. I am pleased to present you with the latest revision of the Package. Please immediately discontinue use of earlier forms. Before you use these, please log on to EdCross.com/contracts and check out the date of the latest update to the package so you know you are using our most recent release. We cannot distribute revisions every time the law changes, but we frequently distribute updates as a courtesy to our local customers.

I have fulfilled all the requirements to obtain a law license in the State of Texas and am awaiting approval of my Application and a swearing in ceremony. I am eagerly looking forward to practicing law in the Lone Star State, where I spent a considerable amount of time in my youth. In the meantime, I collaborate with Texas lawyers in an effort to deliver a high quality product to you. This product is not intended as a substitute for the advice of a licensed attorney.

This Package is organized into four parts:

1. **Part One: “Start Here.”** This letter provides an overview of how to use the package.
2. **Part Two: “Forms.”** These are the forms that will be presented to the customer. The ones in PDF format do not require filling out. All the others are in MS Word format, ready for your logo, and fully editable.
3. **Part Three: “Instructions and Scripts.”** These PDFs contain detailed instructions on how to fill out the forms and how to present them to the customer.
4. **Part Four: “Supplemental Material.”** These important documents are included free with the package. They contain consumer advisories and warnings

from the State of Texas. In this centralized location, you have a large collection of research that many of your customers will see before you arrive on site. They cover everything from contractor “scams,” to the dangers of lead poisoning.

This Package include updates to address the following issues not included in the prior version:

- Advice to the customer to retain an environmental consultant if there has been water damage and release of liability for Contractor if the customer refuses
- The customer’s responsibility to detect and repair the source of water intrusion outside of the work areas.
- Clarification that completion dates are based on an initial visual observation and are subject to change,
- The right of the restorer to reimbursement for attorneys’ fees incurred to collect a past due balance, even if no lawsuit is filed,

The title of the contract includes the phrase “Work Authorization” for familiarity only. It is always best to refer to it as the “Restoration Service Contract.” The phrase “work authorization” is problematic and outdated. Instead of a “Work Authorization,” use the “Home Improvement Contract” for all residential work, and the “Commercial Service Agreement” for everything else.

Certain types of assignments may not be enforceable in Texas, and it behooves the restorer to understand the differences. The world of Assignments of Benefits has evolved considerably since our last publication. We have retired the name “Assignment of Benefits,” replacing it with the broader name “Irrevocable Assignment of Insurance Rights,” to encompass the right to pursue a claim directly against an insurance company, if needed. The standard “AOB” may only allow the restorer to collect against proceeds *if* the insurance company decides to cut a check. If it decides not to, the restorer may not be able to pursue a claim against the insurer. The law of assignments is fairly involved, particularly in Texas, which only enforces them in certain situations. The legal and strategy considerations are important and vast, s I have dedicated an entire book to it: *The Book on the Assignment of Benefits*. It has Assignment forms, Notice of Assignment form letters to send to insurers, and Insurance Information Authorization and Release forms that will allow you obtain a certified copy of the policy and all the key claims handling documents, to keep you abreast of the status of payment and help you track down the check. For more about Assignments, and to get forms specifically made for Texas, along with a summary of Texas’s law of assignments, please visit www.EdCross.com/aob.

Per Property Code 53.259, be sure to provide an affidavit for residential projects, as follows:

- (a) As a condition of final payment under a residential construction contract, the original contractor shall, at the time the final payment is tendered, execute and deliver to the owner, or the owner's agent, an affidavit stating that the original contractor has paid each person in full for all labor and materials used in the construction of improvements on the real property. If the

original contractor has not paid each person in full, the original contractor shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

- (b) The seller of any real property on which a structure of not more than four units is constructed and that is intended as the principal place of residence for the purchaser shall, at the closing of the purchase of the real property, execute and deliver to the purchaser, or the purchaser's agent, an affidavit stating that the seller has paid each person in full for all labor and materials used in the construction of improvements on the real property and that the seller is not indebted to any person by reason of any construction. In the event that the seller has not paid each person in full, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

Use caution with the affidavits. A person commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under that section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under that section shall be punished by a fine not to exceed \$4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense. A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit. We are aware of no strict rules for the format of the Affidavit. It is not included in this package.

Do not use any of the forms before reading the instructions that accompany each form. We also have provided an update to the handy Scripts to use to explain the forms to customers in plain English, or the language in which the contract is written. As you may recall, Texas law requires the written contract to be prepared in the language in which the work and agreement are discussed with the customer, e.g., Spanish. Communication is key to avoiding conflicts that erupt into expensive legal problems.

Provide the Lead Safe Guide to Renovate Right, as required, based on the age and the type of building.

Our forms, instructions, and scripts are for general information purposes and are not intended to be legal advice. The forms may need modification to fit with your business model. If you questions about how this package is set up, give us a call.

These forms are only for use in the State of Texas. They do not comply with the law of other states. If you intend to operate outside Texas, please notify us and we will send you a different set of forms.

If you have any questions, or suggestions for future updates, please do not hesitate to call, or just send me an email at EdCross@EdCross.com. Finally, please keep an eye on TheRestorationLawyer.com for news and videos on important legal issues that can directly impact your bottom line!

Congratulations for bringing your work to the next level by using these forms. We hope they work well for you!

Thank you for the opportunity to help.

Gratefully,
EDWARD H. CROSS & ASSOCIATES, PC

A handwritten signature in blue ink, appearing to read 'Edward H. Cross', with a stylized flourish at the end.

Edward H. Cross
TheRestorationLawyer.com

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