

Performing asphalt repairs and sealcoating a driveway in Virginia involves a legally binding contract. To ensure the contract is thorough and compliant with Virginia law, you must include specific elements and adhere to certain regulations. This guide will exhaustively cover all relevant recommendations, best practices, and potential considerations.

## I. Essential Elements of a Legally Binding Contract in Virginia for Asphalt Repairs and Sealcoating

A legally binding contract in Virginia, especially for residential construction or home improvement projects like driveway repair and sealcoating, must be in writing and contain specific terms. The Virginia Department of Professional and Occupational Regulation (DPOR) outlines these requirements.

### A. Basic Contract Information:

1. **Date of Contract:** Clearly state the date the contract is entered into.
2. **Parties Involved:**
  - **Contractor's Full Legal Name:** As registered with the State Corporation Commission (SCC).
  - **Contractor's Business Address:** Physical location.
  - **Contractor's Virginia State Contractor License Number:** (Class A, B, or C, and PAV specialty, as applicable).
  - **Contractor's License Class and Classifications/Specialty Service:** For asphalt and sealcoating, the relevant specialty is "Asphalt Paving and Sealcoating Contractor (PAV)".
  - **Homeowner's Full Legal Name(s):** As appears on the property deed.
  - **Homeowner's Address:** The address where the work will be performed.
  - **Contact Information:** Phone numbers and email addresses for both parties.

### B. Scope of Work (Detailed Description of Services):

This is crucial to avoid disputes. Be extremely specific.

1. **Type of Work:** Clearly state "Asphalt Repair" and/or "Driveway Sealcoating."
2. **Specific Areas to be Worked On:** "Entire driveway," "specific patches," "parking pad," etc.
3. **Preparation Work:**
  - Cleaning of the surface (e.g., power washing, sweeping).
  - Removal of debris, weeds, or existing loose asphalt.
  - Crack filling (specify type of filler, e.g., hot pour, cold pour, rubberized).
  - Pothole repair (specify depth of repair, type of asphalt mix for patching).
  - Edge cleaning and trimming.
4. **Asphalt Repairs (if applicable):**
  - Details on patching methods (e.g., cut-and-patch, overlay).
  - Type of asphalt mix to be used (e.g., hot mix asphalt, cold patch).
  - Thickness of new asphalt layers (if overlaying).
  - Specific dimensions of repairs.
5. **Sealcoating (if applicable):**
  - Number of coats of sealcoat to be applied.
  - Type of sealcoat product (e.g., coal tar emulsion, asphalt emulsion, acrylic).
  - Manufacturer and product name/specifications for the sealcoat.
  - Application method (e.g., spray, brush).

- Curing time and instructions for homeowner (e.g., "driveway may not be driven on for X hours/days").

6. **Materials:** List all primary materials to be used, including brand names if specific.
7. **Work Not Included:** Explicitly state any work that is *not* part of the contract to prevent misunderstandings (e.g., "Does not include re-grading of the sub-base").

#### C. Project Timeline:

1. **Start Date:** When the work is to begin.
2. **Estimated Completion Date:** A reasonable timeframe for the project's completion.
3. **Exculpatory Clause:** A statement explaining that events beyond the contractor's control (e.g., inclement weather, material shortages, unforeseen subsurface conditions) do not constitute abandonment and are not included in calculating timeframes for payment or performance.

#### D. Total Cost and Payment Schedule:

1. **Total Contract Price:** The exact dollar amount for all work and materials.
2. **Payment Schedule:**
  - **Down Payment:** Clearly state the amount and when it is due. (Virginia law may limit down payments for certain residential contracts).
  - **Progress Payments:** If applicable, outline specific milestones and the amount due at each stage.
  - **Final Payment:** The remaining balance due upon satisfactory completion of the work.
3. **Payment Methods:** Acceptable forms of payment (e.g., check, credit card, electronic transfer).
4. **Late Payment Penalties:** If any, clearly define terms (e.g., interest rate per month).

#### E. Warranties and Guarantees:

1. **Workmanship Warranty:** A clear statement on the duration and scope of the contractor's warranty on their labor.
2. **Material Warranty:** Information on any warranties provided by material manufacturers.
3. **What Voids Warranty:** Conditions that would void the warranty (e.g., improper use of driveway by homeowner, damage from other contractors).
4. **Claim Process:** How the homeowner can make a warranty claim.

#### F. Cancellation Rights and Provisions:

1. **Virginia Home Solicitation Sales Act Disclosure:** If the contract was solicited at the homeowner's residence without prior invitation or appointment, the contract *must* include a statement informing the buyer of their right to cancel the contract until midnight of the third business day after signing. This disclosure often requires a separate, easily detachable "Notice of Cancellation" form.
2. **Emergency Exception:** Note that the cancellation right may not apply if the buyer requests immediate work due to an emergency, provided specific conditions are met (e.g., dated written request from buyer waiving the right, substantial beginning of performance by contractor, goods cannot be returned).
3. **General Cancellation Clause:** Provisions for cancellation by either party outside of the Home Solicitation Sales Act, including any penalties or refunds.

#### G. Dispute Resolution:

1. **Mediation/Arbitration Clause:** Consider including a clause for alternative dispute resolution before resorting to litigation.
2. **Governing Law:** Specify that Virginia law will govern the contract.

#### H. Compliance with Laws and Permits:

1. **Building Permits and Zoning:** A statement that the contractor will comply with all local requirements for building permits, inspections, and zoning, if applicable (unlikely for most driveway repairs/sealcoating, but good practice to include for general construction contracts).
2. **Licensing and Insurance:** A representation that the contractor is properly licensed and insured (liability and worker's compensation). Request proof of insurance from the contractor.

#### **I. Modifications to the Contract:**

1. **Written Amendments:** A statement that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date must be in writing and signed by all parties. This is critical for preventing "change order" disputes.

#### **J. Virginia Contractor Transaction Recovery Fund Disclosure:**

1. **Required Statement:** The contract *must* include a statement notifying the consumer of the existence of the Virginia Contractor Transaction Recovery Fund and information on how to contact the Board for Contractors for claim information. This fund provides a means for consumers to recover monetary losses suffered as a result of a licensed contractor's misconduct.

#### **K. Signatures:**

1. **Signatures of All Parties:** Both the consumer and the licensee (contractor) must sign the contract prior to the commencement of work or acceptance of payments.
2. **Date of Signatures:** The date each party signed.

## **II. Contractor Licensing Requirements in Virginia for Asphalt & Sealcoating**

It is paramount that the contractor performing the work is properly licensed in Virginia.

- **Classes of Licenses:** Virginia contractors are classified as Class A, B, or C, based on the monetary value of projects they can undertake:
  - **Class A:** No monetary restrictions. Requires at least 5 years of experience and a net worth of at least \$45,000.
  - **Class B:** Individual projects up to \$120,000, and total annual projects up to \$750,000. Requires at least 3 years of experience and a net worth of at least \$15,000.
  - **Class C:** Individual projects less than \$10,000, and total annual projects up to \$150,000. Requires at least 2 years of experience.
- **Specialty Classification (PAV):** For asphalt paving and sealcoating, the contractor should hold the "PAV" (Asphalt, Paving, and Sealcoating) specialty. This license permits installation of asphalt paving or sealcoating on driveways, parking lots, etc.
- **Verification:** Homeowners should always verify the contractor's license status and class through the Virginia DPOR website. Hiring an unlicensed contractor, or a contractor with the wrong class of license for the project's value, can have serious legal implications and may void consumer protections.

## **III. Consumer Protections and Considerations**

#### **A. Virginia Consumer Protection Act (VCPA):**

- The VCPA (Va. Code Ann. § 59.1-197 et seq.) promotes fair and ethical standards in

consumer transactions. It prohibits deceptive, fraudulent, or unconscionable acts or practices by suppliers (contractors) in connection with the sale of goods or services for personal, family, or household purposes.

- **Prohibited Acts:** Examples relevant to home improvement include misrepresenting the quality, characteristics, or benefits of services or materials, or misrepresenting that repairs were performed when they weren't.
- **Remedies:** Consumers can sue for actual damages (or \$500, whichever is greater). If the violation was willful, the court may award treble damages (up to three times actual damages) plus attorney's fees and costs.

#### **B. Home Solicitation Sales Act (Va. Code Ann. § 59.1-21.1 et seq.):**

- As mentioned above, if the sale occurs at the consumer's home without a prior invitation or appointment, the consumer generally has a three-business-day right to cancel the contract.
- The contractor *must* provide written notice of this right and a cancellation form. Failure to do so allows the consumer to cancel at any time and may not be required to pay for materials or labor.

#### **C. Mechanic's Liens:**

- Virginia law allows contractors, subcontractors, and suppliers to file a mechanic's lien against the property if they are not paid for labor or materials furnished for improvements.
- **For Homeowners:** It is crucial to ensure the general contractor pays all subcontractors and suppliers. You can request lien waivers from the general contractor and any significant subcontractors upon making payments.
- **Lien Requirements:** A mechanic's lien must be filed within 90 days from the last day of the month in which the claimant last performed work or furnished materials, and no later than 90 days from the time the project is completed or work terminated. There's also a "150-day rule" limiting the work that can be included in the lien.
- **Unlicensed Contractors:** Only properly licensed contractors may claim a mechanic's lien in Virginia.

#### **D. Fraudulent Intent for Advances (Va. Code Ann. § 18.2-200.1):**

- This statute makes it a crime if a person obtains an advance of money with fraudulent intent upon a promise to perform construction, repair, or improvement of real property and fails to perform.

### **IV. Best Practices and Recommendations for Homeowners**

1. **Get Multiple Bids:** Obtain at least three written bids from different reputable contractors.
2. **Verify Licensing and Insurance:** Always verify the contractor's license with the Virginia DPOR and request proof of liability and worker's compensation insurance. Call the insurance company to confirm coverage.
3. **Check References and Reviews:** Ask for references from past clients and check online reviews (e.g., BBB, Google, Angie's List).
4. **Detailed Scope of Work:** Insist on a highly detailed scope of work in the contract, as outlined in Section I.B.
5. **Understand Payment Schedule:** Never pay the full amount upfront. A reasonable down payment (often 10-30%) is common, with progress payments tied to completed milestones.
6. **Read the Fine Print:** Carefully read the entire contract, including any small print, before signing. If you don't understand something, ask for clarification or seek legal advice.

7. **Keep Copies:** Keep a signed copy of the contract and all related documents (invoices, change orders, communications).
8. **Do Not Pay in Cash:** Avoid paying in cash without a clear, signed receipt. Use checks or electronic transfers for a paper trail.
9. **Change Orders in Writing:** Any changes to the original scope of work or cost must be documented in a written "change order" signed by both parties.
10. **Final Inspection:** Before making the final payment, thoroughly inspect the work to ensure it meets the contract's specifications and is completed to your satisfaction. Address any deficiencies in writing.
11. **Lien Waivers:** For larger projects, consider requesting lien waivers from the general contractor and major subcontractors upon making substantial payments, ensuring they have paid their own suppliers and laborers.

## V. Comparison of Approaches/Options for Asphalt Repair & Sealcoating

While the contract requirements remain largely consistent, homeowners have choices regarding the type of work performed:

### A. Asphalt Repair Options:

#### 1. Patching (Cut and Patch):

- **Description:** Removing a deteriorated section of asphalt and replacing it with new asphalt.
- **Pros:** Addresses localized damage, can be very effective for potholes and severe cracks.
- **Cons:** If not done correctly, the patch can be visible or fail prematurely.
- **Contract Considerations:** Specify dimensions of patches, depth of removal, type of asphalt mix, compaction methods.

#### 2. Overlay:

- **Description:** Applying a new layer of asphalt over an existing, structurally sound but worn-out asphalt surface.
- **Pros:** Can provide a smooth, new surface, less expensive than full replacement.
- **Cons:** Does not address underlying structural issues; if the base is bad, the overlay will eventually crack. May raise the driveway height, affecting drainage or garage clearance.
- **Contract Considerations:** Specify thickness of overlay, necessary crack filling/leveling of existing surface, drainage considerations.

#### 3. Full Depth Replacement:

- **Description:** Removing the entire existing driveway (asphalt and sub-base if necessary) and rebuilding it from the ground up.
- **Pros:** Addresses all issues, provides the longest-lasting solution.
- **Cons:** Most expensive, most disruptive.
- **Contract Considerations:** Detailed specs on excavation, sub-base preparation (material, compaction), asphalt layers (binder, surface), thickness, slope, drainage.

### B. Sealcoating Options:

#### 1. Coal Tar Emulsion Sealcoat:

- **Pros:** Excellent resistance to oil, gasoline, and chemicals; durable; typically provides a darker black finish.

- **Cons:** Strong odor during application, environmental concerns (though formulations have improved), may be restricted in some areas due to PAH content.
- **Contract Considerations:** Specify product type, number of coats, application methods.

## 2. **Asphalt Emulsion Sealcoat:**

- **Pros:** More environmentally friendly, less odor, good flexibility.
- **Cons:** Less resistant to chemicals than coal tar, may not maintain as dark a color, may require more frequent reapplication.
- **Contract Considerations:** Specify product type, number of coats, application methods.

## 3. **Acrylic-Based Sealcoat:**

- **Pros:** Good color retention, often available in various colors, more "friendly" for residential use.
- **Cons:** Typically more expensive, may not offer the same wear resistance as coal tar or asphalt emulsions.
- **Contract Considerations:** Specify product type, number of coats, desired color.

**Choosing the Right Option:** The best option depends on the current condition of the driveway, budget, and desired lifespan. A reputable contractor should inspect the driveway and provide recommendations, explaining the pros and cons of each.

# VI. Anticipating Follow-Up Questions/Related Topics

- **Permits:** For typical driveway asphalt repairs and sealcoating on residential property, a building permit is generally *not* required in most Virginia localities, as it's considered maintenance or minor improvement. However, if the project involves significant grading, drainage changes, or expanding the driveway beyond existing footprint, it's prudent to check with the local county or city building department. The contract should state that the contractor is responsible for obtaining any necessary permits.
- **Drainage:** Proper drainage is critical for driveway longevity. The contract should address how the contractor will ensure proper water runoff and avoid pooling.
- **Preparation is Key:** Emphasize in the contract the importance of proper surface preparation (cleaning, crack filling, patching) before sealcoating, as this directly impacts the sealcoat's adhesion and lifespan.
- **Weather Conditions:** Asphalt work is highly weather-dependent. The contract should acknowledge this and include clauses about scheduling flexibility due to temperature and precipitation.
- **Homeowner Responsibilities:** Clearly outline any homeowner responsibilities, such as clearing the driveway of vehicles and debris before work begins, or avoiding use for a specified curing period.
- **Property Damage:** Include a clause about responsibility for any damage to adjacent property (e.g., landscaping, garage doors, house siding) during the project and how such damage will be rectified.
- **Disposal of Debris:** Specify who is responsible for the removal and disposal of old asphalt or other construction debris.

By meticulously incorporating these elements and adhering to Virginia's legal requirements and consumer protections, you can create a robust and legally binding contract for your asphalt repairs and sealcoating project, minimizing potential disputes and ensuring a successful outcome.