

PA HOME IMPROVEMENT CONSUMER PROTECTION ACT

The Pennsylvania Home Improvement Consumer Protection Act (the “Act”) took effect on July 1, 2009. The Act was intended by the Pennsylvania General Assembly to protect homeowners from unscrupulous contractors by providing new security for homeowners and to authorize criminal and civil penalties against those contractors who have violated the Act. A year later, some legitimate contractors still do not know the requirements of the Act or whether they are violating the Act in the way they do business.

What contractors are effected?

The Act’s applicability is quite broad. Any person or company that owns and operates a home improvement business or who undertakes, offers to undertake, or agrees to perform any home improvement is required to comply with the Act. This includes subcontractors and independent contractors performing work on residential properties.

The Act does not apply to contractors whose income from home improvements is less than \$5,000 during the previous taxable year. The Act is also inapplicable to home improvement retailers having a net worth of more than \$50,000,000 or an employee of that retailer that does not perform home improvements.

What is a ‘Home Improvement’ under the Act?

In order to qualify as a Home Improvement under the Act, the work must be done in connection with a private residence. Further the term only applies to contractor where the total cash price of all work agreed upon between the contractor and owner is more than \$500. It includes all of the following

- (1) Repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation or sandblasting.

- (2) Construction, replacement, installation or improvement of driveways, swimming pools, pool houses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, landscaping of a type that is not excluded under section 6 below, painting, doors and windows and waterproofing.
- (3) The installation of central heating, air conditioning, storm windows or awnings.

What is *not* a 'Home Improvement' under the Act?

The term does not include:

- (1) The construction of a new home;
- (2) The sale of goods or materials by a seller who neither arranges to nor performs, directly or indirectly, any work or labor in connection with the installation or application of the goods or materials;
- (3) The sale of services furnished for commercial or business use or for resale, if the service takes place somewhere other than at a private residence;
- (4) The sale of appliances, including stoves, refrigerators, freezers, room air conditioners and others which are designed for and are easily removable;
- (5) Any work performed without compensation by the owner or renter of the property;
- (6) Certain work performed by a landscaper certified by the Department of Agriculture under the Plant Pest Act,
- (7) Certain emergency work; and
- (8) The conversion of existing commercial structures into residential or noncommercial structures.

What must a contractor covered by the Act do?

The first thing to do is to get registered with the Pennsylvania Attorney General's Bureau of Consumer Protection. You can go to www.attorneygeneral.gov to register.

Once registered, a contractor must include its registration number in all advertisements, as well as on all contracts, estimates and proposals.

The contractor must maintain liability insurance covering personal injury in an amount not less than \$50,000 and insurance covering property damage caused by the work of a home improvement contractor in an amount not less than \$50,000.

What must be in a home improvement contract covered by the Act?

- (1) The contract must be in writing and legible and contain the home improvement contractor's registration number.
- (2) The contract must be signed by the owner and the contractor or their agents.
- (3) The contract must contain the entire agreement between the owner and the contractor, including attached copies of all required notices.
- (4) The contract must be dated.
- (5) The contract must contain the name, address and telephone number of the contractor. (A post office box number alone is not sufficient).
- (6) The contract must contain the approximate starting date and completion date.
- (7) The contract must include a description of the work to be performed, the materials to be used and a set of specifications that cannot be changed without a written change order signed by the owner and the contractor.
- (8) The contract must state the total price.
- (9) The contract must state the amount of any down payment plus any amount advanced for the purchase of special order materials. The amount of the down payment and the cost of the special order materials must be listed separately.
- (10) The contract must include the names, addresses and telephone numbers of all subcontractors on the project known at the date of signing the contract. (A post office box number alone is not sufficient).
- (11) The contract must identify the current amount of insurance coverage maintained by the contractor at the time of signing the contract.
- (12) The contract must set forth the toll-free telephone number of the Bureau of Consumer Protection. 1-888-520-6680

- (13) The contract must include a notice that the owner has the right to rescind that contract without penalty within THREE business days of the date of signing.
- (14) The contractor must provide a copy of the complete contract to the owner at the time the contract is executed.
- (15) If the contract contains an arbitration clause, it must meet the following requirements:
 - (a) The text of the clause must be in capital letters.
 - (b) The text shall be printed in 12-point boldface type and the arbitration clause must appear on a separate page from the rest of the contract.
 - (c) The clause shall contain a separate line for each of the parties to indicate their assent to be bound thereby.
 - (d) The clause shall not be effective unless both parties have assented as evidenced by signature and date, which shall be the date on which the contract was executed.
 - (e) The clause shall state clearly whether the decision of the arbitration is binding on the parties or may be appealed to the court of common pleas.
 - (f) The clause shall state whether the facts of the dispute, related documents and the decision are confidential.

What cannot be in a home improvement contract covered by the Act?

- (1) A hold harmless clause.
- (2) A waiver of Federal, State or local health, life, safety or building code requirements.
- (3) A confession of judgment clause.
- (4) A waiver of any right to a jury trial in any action brought by or against the owner.
- (5) An assignment of or order for payment of wages or other compensation for services.
- (6) A provision by which the owner agrees not to assert any claim or defense arising out of the contract.

- (7) A provision that the contractor shall be awarded attorney fees and costs.
- (8) A clause by which the owner relieves the contractor from liability for acts committed by the contractor or the contractor's agents in the collection of any payments or in the repossession of any goods.
- (9) A waiver of any rights provided under this act.
- (10) A provision providing for the automatic or recurring renewal of any provisions of the agreement, unless:
 - (a) the contract establishes a procedure by which the owner can choose not to renew the provision or provisions, thereby avoiding any new fees or charges, by providing written notice to the contractor via first class mail postmarked no later than three business days prior to any renewal;
 - (b) such procedure is clearly and conspicuously disclosed in the agreement; and
 - (c) the contract includes a provision requiring the contractor to notify the owner of any automatic or recurring renewal, and the owner's option to cancel such renewal, by mail, not earlier than 20 days and not later than ten days prior to the date of any such renewal.

What can lead to criminal sanctions under the Act?

A person commits the offense of home improvement fraud if, with intent to defraud or injure anyone or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

- (1) makes a false or misleading statement to induce, encourage or solicit a person to enter into any written or oral agreement for home improvement services or provision of home improvement materials or to justify an increase in the previously agreed upon price;
- (2) receives any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials when specified in the contract taking into account any force majeure or unforeseen labor strike that would extend the time frame or unless extended by agreement with the owner and fails to return the payment received for such services or materials which were not provided by that date;

- (3) while soliciting a person to enter into an agreement for home improvement services or materials, misrepresents or conceals the contractor's or salesperson's real name, the name of the contractor's business, the contractor's business address or any other identifying information;
- (4) damages a person's property with the intent to induce, encourage or solicit that person to enter into a written or oral agreement for performing home improvement services or providing home improvement materials;
- (5) misrepresents himself or another as an employee or agent of the Federal, Commonwealth or municipal government, any other governmental unit or any public utility with the intent to cause a person to enter into any agreement for performing home improvement services or providing home improvement materials;
- (6) misrepresents an item as a special order material or to misrepresent the cost of the special order material;
- (7) alters a home improvement agreement, mortgage, promissory note or other document incident to performing or selling a home improvement without the consent of the consumer; or
- (8) directly or indirectly publishes a false or deceptive advertisement in violation of State law governing advertising about home improvement.

A contractor who engages in home improvement fraud can be found guilty of a felony of the third degree if the amount involved exceeds \$2,000; or a misdemeanor of the first degree if the amount involved is \$2,000 or less or if the amount involved cannot be satisfactorily ascertained. The grading of the crime is advanced where the victim is over the age of 60 and where there are subsequent offenses. In addition, a court may suspend the contractor's certificate.

What can lead to civil penalties?

Civil penalties can be assessed under the following circumstances:

- (1) Failure to register with the Attorney General;
- (2) Under certain circumstances, the failure to refund the amount paid for a home improvement within ten days a written request sent by certified mail. The refusal to accept certified mail is also an offense.

- (3) Acceptance of a municipal certificate of occupancy or other proof that performance of a home improvement contract is complete or satisfactorily concluded with knowledge that the document or proof is false and the performance is incomplete.
- (4) Uttering, offering or using a completion certificate or other proof that a home improvement contract is complete or satisfactorily concluded when the person knows or has reason to know that the document or proof is false and is made in order to get paid.
- (5) Abandoning or failing to perform, without justification, any home improvement contract or project engaged in or undertaken by a contractor.
- (6) Deviating from or disregarding plans or specifications, in any material respect, without a written change order dated and signed by both the contractor and owner, which contains the accompanying price changes for each deviation.
- (7) Preparing, arranging, accepting or participating in the financing of a home improvement contract with knowledge that the home improvement contract states a greater monetary obligation than the actual price of the home improvement.
- (8) Advertising or offering, by any means, to perform a home improvement if the person does not intend to accept or perform the home improvement contract or does not intend to charge at the price advertised or offered.
- (9) Demanding or receive any payment for a home improvement before the home improvement contract is signed.
- (10) For a home improvement contract in which the total price is more than \$1,000, receiving a deposit in excess of one-third of the home improvement contract price; or (ii) one-third of the home improvement contract price plus the cost of special order materials that have been ordered.
- (11) While acting as a salesperson, failing to account for or remitting to the contractor whom the salesperson represents a payment received in connection with a home improvement.
- (12) Subsequent to entering into an agreement for home improvement services or materials, changes the name of the contractor's business, liability insurance information, the contractor's business address or any other identifying information in a fraudulent or deceptive manner likely to cause confusion or misunderstanding without advising the owner in writing within ten days following any such change.

Any violation of the Pennsylvania Homeowners Improvement Consumer Protection Act may also be deemed a violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, which can lead to treble damages and attorneys' fees being assessed against the contractor.

In addition, a court may refuse to enforce the terms of a contract that does not comply with the Homeowner Improvement Consumer Protection Act.

For more information and to access a list of all registered contractors, please go to the Pennsylvania Attorney General's website at www.attorneygeneral.gov