

Pennsylvania Law Changes Home Improvement Contractor Practice

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On October 17, 2008, Governor Rendell signed into law the Home Improvement Consumer Protection Act (the “Act”), effective July 1, 2009, providing statewide registration of contractors, disclosure and contractual benefits to homeowners, criminal penalties for home improvement fraud and economic remedies for violations of the Act. This legislation will limit opportunities for overreaching by unscrupulous home improvement contractors and retailers and, upon violation of the Act, enhance the ability of the Attorney General and homeowners to seek justice in the courts. It is important for contractors and retailers to learn how to comply with the Act so that no honest tradesman or supplier suffers sanctions intended for the few whose actions prompted this legislation. According to Nils Frederiksen, Deputy Press Secretary for the Office of Attorney General, “The days of doing business on a handshake are going by the boards ... [the Act] should screen out legitimate contractors from con men in contractor disguise.”

The Act specifically states that “[n]o person shall hold himself out as a contractor nor shall a person perform any home improvement without first registering with the [B]ureau [of Consumer Protection in the Office of Attorney General] as provided for in this [A]ct.” Contractors are persons who own and operate a home improvement business or who offer to undertake or agree to perform any home improvement. Included are subcontractors or independent contractors who contract with a home improvement retailer to provide home improvement services to the retailer’s

customers. Excluded are persons whose annual home improvement services were less than \$5,000 in the last tax year and home improvement retailers with net worths more than \$50,000,000 or who do not perform home improvements.

Contractors register with the Bureau of Consumer Protection in the Office of Attorney General (the “Bureau”) in writing or on-line (if the Bureau allows), providing significant personal and business information. In addition, each foreign registrant must disclose convictions of criminal offenses related to home improvements, fraud, theft or fraudulent business transactions, whether he filed a bankruptcy petition or had, in the last 10 years, received a money judgment entered against him related to a home improvement transaction. Information required of individual applicants must also be supplied by investors in business entity applicants. All registrants must submit proof of liability insurance for personal injury of at least \$50,000 and property damage coverage in the same amount. All registrants provide such information for the 10-year period before the date of the application. The Bureau must keep confidential certain protected information, but will provide the fact of registration for all certified contractors on its website and disclose the same by toll-free telephone service. The contractor’s home address and phone number may be disclosed if it is the same as his business information. The Bureau issues a certificate of registration including a registration number. The certified contractor must reapply biennially and include his registration number in all advertisements,

estimates and proposals with Pennsylvania homeowners.

Statewide certification of contractors by the Bureau replaces some existing registrations. First, registration under the Act preempts municipal licensure. The Act preserves local enforcement of building codes and local responsibilities for the Pennsylvania Construction Code, the Workers' Compensation Act and existing licensing standards for electricians, plumbers and other tradesmen where licensing is conditioned on testing or training. Bureau certification also takes the place of certain licensure of contractors by the Department of Banking.

The Act requires that all home improvement contracts must: (1) be in writing and legible and with the contractor's registration number; (2) be signed by the parties; (3) include attached copies of required notices; (4) be dated; (5) contain contact information of the contractor; (6) include the approximate starting date and completion date; (7) contain a description of work and materials, including specifications; (8) state the total sales price; (9) recite any down payment; (10) include contact information of all subcontractors; (11) recite that the contractor has insurance required by the Act; (12) include the Bureau's toll free phone number; and (13) contain notice of the owner's right to rescind three business days after the contract is signed, a right given by the Act. If the contractor wants an arbitration clause, he must use the language authorized in the Act. The contract may not include certain clauses that could enable a contractor to overreach the homeowner. Home improvement retailers who are not technically contractors must supply contracts to homeowners that contain or comply with many of the same terms that contractors must include or with which contractors must comply.

The Act creates and defines the offense of home improvement fraud. Prosecution for this crime does not bar prosecution or conviction for any other crime. Convictions for home improvement fraud are either third-degree felonies or first-degree misdemeanors depending on whether more or less than \$2,000 is involved. Such an offense is one grade higher if committed against a victim 60 years of age or older. In addition to imprisonment and money damages, the convicted person loses his registration certificate. The Act gives the Attorney General authority to prosecute this crime concurrent with the District Attorneys whose court calendars may be occupied with other matters.

The Act enumerates 12 prohibited acts by contractors involving deception and other practices that substantially regulate the home improvement business, including failure to perform without justification, changing specifications without a written change order, taking money before the contract is signed and taking more than one-third down on contracts priced over \$1,000. Violation of these provisions are violations of the Unfair Trade Practices and Consumer Protection Law (the "Law"), for which homeowners may file legal proceedings, and obtain an award for triple the actual damages plus attorneys fees. Suits under the Law by the Attorney General can result in orders for restitution, costs of investigation and civil penalties payable to the Commonwealth. "Until now we've had to demonstrate a pattern or practice of deceptive activity," according to Mr. Frederiksen, "Now we have specific grounds for defining a violation."

While the Act will empower the Attorney General and homeowners against confidence men, it contains open issues that the Bureau must solve with regulations. First, how can the contractor provide a "total sales price

due under the contract” if the parties want the contractor to proceed on a time and materials basis? Second, how can the parties state “the entire agreement” if the homeowner does not know what he wants in part, but does want the contractor to begin quickly identifiable tasks? Third, how will the Bureau treat contractors who still perform home improvements on a

handshake but otherwise do not violate the Act? According to Mr. Frederiksen, “Our job is to educate and help contractors comply.” Hopefully, the Bureau will provide user friendly rules and regulations to assure compliance by honest tradesmen and retailers while developing the consumer protection provisions aimed at swindlers.

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