



"PENNSYLVANIA HOME IMPROVEMENT CONSUMER PROTECTION ACT"

SEMINAR OUTLINE

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PENNSYLVANIA HOME IMPROVEMENT CONSUMER PROTECTION ACT

INTRODUCTION

In October 2008, Pennsylvania enacted the Home Improvement Consumer Protection Act ("HICPA"), which becomes effective July 1, 2009. The Act requires anyone who performs more than \$5,000 in home improvement work in a year to register with the State. It also requires contractors to include certain mandatory terms in their contracts for home improvement work.

The purpose of the Act is to create a database of contractors who perform home improvement work in Pennsylvania, to make the contractors accountable for the work they perform or fail to perform. The Act creates a toll-free access number for homeowners to confirm whether a contractor is registered with the Commonwealth and to report complaints with contractors. It also imposes penalties and criminal charges for deceptive practices committed by contractors.

This Act is going to significantly affect how home improvement work is performed in Pennsylvania after July 1, 2009. Gone will be the days of handshake deals because all contracts over \$500 will have to be in writing. The amounts for down payments are limited and regulated by the Act. No deviations from the specified work will be allowed without a written, signed change order. Certain contract provisions such as indemnification, confession of judgment and waiver of jury trial, and recovery of attorneys' fees and costs if you have to sue, are no longer permitted in contracts with homeowners.

It is anticipated there will be a large number of businesses registering as the time for registration draws near. Therefore, early registration is recommended. Because contract terms and conditions are affected and violation of the act can subject you to both criminal and civil penalties, it is important that you get your contract in order long before July 1.

These materials are intended as a guide to assist you in the transition that the Act will create but it is not a substitute for professional legal advice. In light of the fact that the Act specifically requires significant changes to how you interact with homeowners and the contracts you use, we suggest contacting a firm that specializes in these types of construction matters.

I. REGISTRATION REQUIREMENTS

The Act provides that no one can perform any home improvement work without first registering with the Bureau of Consumer Protection in the Office of the Attorney General in Harrisburg.

A. What Work is Covered by the Act

- The Act applies to “home improvement work”, which is generally defined as any work having an agreed upon contract price in excess of \$500 involving:
 - repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation or sand blasting
 - 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 work, painting, doors and windows, waterproofing
 - installation of central heating, air conditioning, storm windows or awnings.
- Although the Act does not specifically mention electrical and plumbing work, they are also covered by the Act.
- **Private Residence** - The work must be performed on a “Private Residence” to be covered by the Act. This is defined as:
 - A single family dwelling;
 - A multifamily dwelling consisting of not more than two units; or
 - A single unit located within any multifamily dwelling, including condominiums and cooperative units

B. What Work is Excluded

- New construction of a home
- The sale of materials by a seller who does not perform any work or labor associated with installing the materials.
- Commercial work
- The sale of appliances which are designed for and easily removable from the premises.
- Landscaping work except work involving the construction, improvement, installation or replacement of buildings, driveways, swimming pools, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, non-decorative fences, doors, lighting systems, concrete walkways and windows.
- Emergency work as defined in the Unfair Trade Practices and Consumer Protection Law.
- Converting existing commercial buildings into residential buildings

C. Who Must Register

- **Contractors** – a person or entity that contracts with the owner of a private residence
- **Subcontractors and Independent Contractors** – a person or entity that has a contract with a contractor who has a contract with an owner.
- **Individuals** – if the work is done by an individual or sole proprietorship, each individual performing the work must register.
- **General Partnerships** – the partnership must provide registration information for every general partner
- **Corporations, limited liability companies and limited partnerships** – the entity must provide registration information for every general officer, manger and/or general partner.
- **Joint Ventures** – each party to the joint venture must register
- **Out of State Persons or Entities** – all persons or entities performing work in Pennsylvania must register regardless of whether they are located in or outside Pennsylvania.
- The Act provides for certain exemptions for “big-box” retailers whose net worth exceeds \$50,000,000.

D. How to Register

- Registration can be accomplished online via the Attorney General’s website at www.attorneygeneral.gov.
- If you prefer to not apply online, you may download the application and mail it to the Attorney Genera’s office in Harrisburg.
- You may request an application by phone at (717)-772-2425

E. Deadline to Register

- All registrations must be submitted by July 1, 2009
- Failure to comply with this deadline will make the contractor ineligible to perform home improvement work in Pennsylvania.

F. What Information Must be Submitted to Register

- **Personal Information** – names, addresses, dates of birth, social security numbers, driver’s license numbers are required. However, the Attorney General is not permitted to disclose confidential information to the public including social security or driver’s license numbers.
- **Background Disclosures** – information regarding prior home improvement businesses, prior bankruptcies, prior debarments from public work, criminal pleas and convictions

- **Description of the Applicant's Business** – the contractor must provide a summary of the types of work that it performs on private residences
- **Other Registrations** - A list of other registrations in any state or municipality.
- **Proof of Insurance** – all applicants must have insurance coverage of at least \$50,000 for bodily injuries and \$50,000 for property damage
- **Filing Fee** - \$50.00
- **Renewal** – The registration is effective for two (2) years.

G. Registration Number

- All successful applicants will receive a registration number from the Attorney General's Office.
- The registration number must be included on all proposals, contracts, purchase orders and change orders.
- The registration number must also be included in all advertisements for the business including television, radio, print, and your vehicles if they are lettered.
- You are not required to place it on items such as shirts and stationery.

II. CONTRACT REQUIREMENTS

A. Written Contract

- any project where the contractor will be paid \$500 or more must have a written contract signed by the contractor and the owner

B. Change Orders

- Any deviation from the work specified in the contract must be set forth in a written change order signed by the contractor and the owner.

C. Mandatory Contract Provisions

- All Home Improvement Contracts must contain:
 - the Registration Number of the Contractor
 - the signatures of Contractor and the Owner or the Owner's agent.
 - the entire agreement between the Contractor and Owner
 - the Contractor's name, address and telephone number
 - P.O. Box number by itself is **not** sufficient
 - the approximate starting date and completion date
 - a description of the work to be performed, the materials that will be used and a set of specifications **that cannot be changed without a written change order signed by the Owner and Contractor**
 - the total sales price

- the amount of any down payment and/or the amount advanced for special order materials
- the names, addresses and phone numbers of all subcontractors known as of the date of the contract
- an agreement to maintain liability insurance of not less than \$50,000 for bodily injuries and \$50,000 for property damage.
- the toll free number to the Office of the Attorney General
- a notice regarding the right of rescission.

D. Rescission

- The Owner has the right to rescind the contract, without penalty, within three (3) business days of the date the contract is signed.

E. Copies

- The Owner is entitled to receive a copy of the contract at the time it is signed.

F. Voidable Clauses

- The Act prohibits certain contract clauses, which, if included in the contract, make the contract voidable by the owner. They are:
 - A hold harmless clause
 - A waiver of Federal, State or local health, life, safety or building code requirements
 - A confession of judgment clause
 - A waiver of any right to a jury trial in any action brought by or against the owner
 - An assignment of or order for payment of wages or other compensation for services
 - A provision by which the owner agrees not to assert any claim or defense arising out of the contract
 - A provision that the contractor shall be awarded attorney fees and costs.
 - 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.
 - A waiver of any rights provided under the Act.
 - A provision providing for the automatic or recurring renewal of any provisions of the agreement, unless:
 - 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;
 - the procedure is conspicuously disclosed in the contract; and

- 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

III. VIOLATIONS AND PENALTIES

A. Prohibited Acts

The acts specifically prohibited by the Act include the following:

- Failing to register with the Attorney General's Office
- Failing to refund the amount paid by the owner, after notice by the owner, where
 - No substantial part of the work has been performed; and
 - More than 45 days have passed since the start date in the contract
- Accepting a Certificate of Occupancy with the knowledge that the work is not complete or the document is false
- Abandoning a project or failing to perform without justification.
- Deviating from specified work without a written, signed change order
- Inflating the cost of the work
- Advertising to perform home improvement work without any intention to perform the work or charge the price advertised.
- Demand or receive payment before the contract is signed.
- Change the name, address or other identifying information of the business after the contract is signed in a deceptive manner and without informing the owner.
- Down Payments
 - Cannot exceed one-third of the contract price plus the costs of any special order materials

B. Home Improvement Fraud

- The Act prohibits contractors from committing fraud in connection with home improvement work. Such fraud includes:
 - Making false or misleading statements to induce an owner to sign a contract
 - Receiving advanced payment for services that are not provided and failing to return the payment to the owner
 - Misrepresenting the name, address or other identifying information of the business
 - Damaging the owner's property to induce the owner to pay for additional work
 - Deceptive advertising
 - Altering a contract or other related document without the consent of the owner

C. Criminal Penalties

- The Act provides for criminal penalties for acts of fraud
- The grading of the crime (felony/ misdemeanor) depends on:
 - The amount involved in the fraud
 - The age of the owner
 - The number of offenses committed
- The court may also revoke or suspend the contractor's registration upon conviction
 - No reinstatement of registration for five (5) years unless the court orders a shorter time period

D. Civil Penalties

- In addition to standard claims for breach of contract and fraud, a violation of the Act also constitutes a violation of the Unfair Trade Practices and Consumer Protection Law, which allows a homeowner to seek treble (triple) damages and attorney's fees and costs.

Sample Contract Provisions:

Rescission

You have the right to rescind this contract without penalty. If you intend to rescind the contract, you must notify the Contractor within three (3) business days of the date you sign this contract. To rescind within the allowed time, please send an email, fax or certified mail to the address noted on the front of this Agreement. In the event you rescind this contract, any deposit monies paid by you to the contractor will be returned within ten (10) days of the date of the rescission.

Start and Completion Dates

It is intended that the work covered by this contract will begin on or about _____ and that the work will be completed on or about _____. Please be aware that these dates are an approximation and may be affected, and therefore extended, by factors beyond the control of the contractor, including but not limited to weather conditions, material delays or shortages and your failure to pay contractor in accordance with the terms of this contract.

Registration

Contractor is required by the Pennsylvania Home Improvement Consumer Protection Act to register the business with the Bureau of Consumer Protection. Our registration number is: _____. The Bureau maintains the following toll-free consumer assistance telephone number: (800) _____.

Entire Agreement/ Change Orders

This contract constitutes the entire agreement between Contractor and Owner with regard to the work to be performed at Owner's residential property. There are no other agreements, whether written or oral, that relate to this contract or the work. No changes or alterations to the scope of the work set forth in this contract will be performed unless the Contractor and the Owner have both signed a written change order setting forth the agreed-upon change in the work.

Subcontractors

The following are the names, addresses and phone numbers of the subcontractors that Contractor intends to use to perform work on this project:

Arbitration Clause

ANY CLAIM ARISING OUT OF OR RELATED TO THE HOME IMPROVEMENT CONTRACT ENTERED INTO THIS DAY BETWEEN OWNER AND CONTRACTOR SHALL BE DECIDED BY ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION CURRENTLY IN EFFECT. THE DEMAND FOR ARBITRATION SHALL BE FILED IN WRITING WITH THE OTHER PARTY TO THE CONTRACT AND WITH THE AMERICAN ARBITRATION ASSOCIATION. THE DECISION OF THE ARBITRATOR SHALL BE BINDING ON THE PARTIES SUBJECT ONLY TO IT BEING VACATED OR MODIFIED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA BY APPROPRIATE APPLICATION TO THE COURT OF COMMON PLEAS IN THE COUNTY IN WHICH THE PROJECT IS LOCATED. ALL FACTS OF THE DISPUTE, RELATED DOCUMENTS AND THE DECISION ARE CONFIDENTIAL.

By: _____
Owner

Dated: _____

By: _____
Contractor

Dated: _____