

Real Estate Title Insurance & Construction Law

N.J. Acts To Protect Homeowners

Home improvement contractors are obligated to act fairly and honestly

By Gene Markin

All too often homeowners engage a contractor to perform certain home improvements and/or maintenance functions and end up in a fight with the contractor either over the work or amount of payment or both. Recognizing the disparity in leverage and technical knowledge, the legislature and the New Jersey Division of Community Affairs have promulgated laws and regulations designed to give homeowners powerful rights to protect them when they undertake maintenance and improvement projects. With these enactments, the onus is placed where it belongs: on the shoulders of the home improvement contractors to

ensure that they act fairly and honestly when performing projects that affect a person's home.

Deception, fraud and misrepresentation are not tolerated. Every home improvement contractor doing business in New Jersey is obligated to comply with state law, even if he is not aware of the law's requirements. The Consumer Fraud Act and the Home Improvement Act are designed to protect the rights of homeowners and to provide an effective way for homeowners to combat deceptive and inequitable practices. The hallmark of these laws is to impose strict liability upon the contractor for any violations of the acts' myriad provisions.

Inside the Consumer Fraud Act and Home Improvement Practices Regulations

The Consumer Fraud Act (CFA) gives New Jersey one of the strongest consumer protection laws in the country. The CFA protects the general public by providing consumers with a private cause of action

for violations of the act and allowing for recovery of treble damages, attorneys fees and costs. See N.J.S.A. § 56:8-19. To violate the act, a person must commit an "unlawful practice," which may fall into one of three general categories: 1) affirmative acts; 2) knowing omissions; or 3) regulation violations. The third category is based on violations of regulations enacted under N.J.S.A. § 56:8-4, the Home Improvement Act (HIA).

The impetus behind enacting the HIA was to protect unknowing homeowners from predatory and deceptive tactics of contractors, as well as to provide standards for the terms and criteria by which home improvement work should be done. In this regard, the regulations apply to any persons holding themselves out as contractors in New Jersey. N.J.S.A. § 56:8-139.

The term "contractor" is defined as any person engaged in the business of making or selling home improvements, and includes corporations, partnerships, associations and any other form of business organization or entity, and its officers, representatives, agents and employees. N.J.S.A. § 56:8-137. Notably, the HIA does not apply to architects, professional engineers or other licensed professionals. N.J.S.A. § 56:8-140. The regulations broadly define "home improvement" to cover nearly every conceivable type of residential improvement or repair, including, but not limited to:

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construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property ...

N.J.A.C. § 13:45A-16.1A.

Therefore, the reach of the regulations is expansive, and almost all dealings between consumers and contractors related to home improvement will fall within their purview.

Practices Required by the Home Improvement Regulations

Generally, a home improvement contractor must obtain all necessary permits prior to commencing work, secure final inspection certificates before demanding final payment and ensure that all agreements for improvements in excess of \$500 be in writing as well as any changes in the terms and conditions of such contracts. N.J.A.C. § 13:45A-16.2(a). More importantly, the regulations require that contracts must be signed by all parties to the contract, not just the customer or contractor, and detail the parties' obligations and rights under the contract. Specifically, the contract must accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

1. The legal name and business address of the seller, including the

legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

2. The contractor's Division of Consumer Affairs registration number, and the DCA's toll free telephone number must be prominently displayed on the first page of the contract;
3. A copy of the Certificate of Commercial General Liability Insurance required of a contractor under the act and the telephone number of the insurance company issuing the certificate;
4. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract;
5. The total price, including all finance charges and, where applicable, the hourly rate for labor;
6. The start date and completion date;
7. A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement;
8. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the contractor; and
9. A precise and conspicuous notice of cancellation provision informing the customer of his or her right to cancel the contract by the end of the third business day after having received a copy of the contract.

Case law makes clear that proof of even a single violation of these regulations is sufficient to establish unlawful conduct under the HIA. See *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 18 (1994). Notably, intent to comply or not comply with the act is not a requirement, as the act imposes strict liability for even the most minimal of violations, such as not including a start/finish date on the contract or asking for

final payment prior to completing the work and/or furnishing copies of the inspection certificates.

What Can a Homeowner Recover When a Contractor Violates the Act?

The legislature intended the HIA to be both remedial and punitive in nature. Therefore, the remedial aspect of the act compensates for a homeowner's loss, yet at the same time punishes the transgressor by allowing the homeowner to recover treble damages, attorney fees, filing fees and other related costs. See N.J.S.A. 56:8-29.

Since the contractor is subject to strict liability under the act, the homeowner is entitled to an award of actual damages when he or she has suffered an ascertainable loss as a direct result of the contractor's violation. These damages are then trebled, and reasonable attorney fees and costs are awarded. Notably, the act mandates an award of attorney fees and costs when the homeowner is successful in proving that the contractor committed a technical violation of the act, even if no ascertainable loss is shown. See *BJM Insulation v. Evans*, 287 N.J. Super. 513, 516 (App. Div. 1996). This means that even if the homeowner has not suffered any consequential losses as a result of the contractor's violation of the act, he or she is still entitled to attorney fees and costs upon a showing that a violation has occurred. See *Performance Leasing Corp. v. Irwin Lincoln-Mercury*, 262 N.J. Super. 23, 34 (App. Div.), *certif. denied*, 133 N.J. 443 (1993) (holding that a plaintiff proving a violation of the act, but unable to demonstrate a causal connection between the violation and his damages, was nevertheless entitled to attorney fees).

The threat of recovering attorney fees is a powerful tool the homeowner has in negotiating a fair resolution of whatever dispute may arise with the contractor. Therefore, it is important for homeowners to be familiar with the HIA and the home improvement regulations in order to recognize contractor violations and build leverage in dealing with unscrupulous contractors. ■