

Some Basic Facts About: Pennsylvania's Home Improvement Consumer Protection Act

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In 2008, the Pennsylvania Legislature passed the Home Improvement Consumer Protection Act ("HICPA"). *73 P.S. §§517.1 - 517.19*. The law was created in an effort to protect consumers from a legal and financial perspective, against contractors and sub-contractors who perform home improvements. HICPA went into effect July 1, 2009.

Contractor Registration

Under HICPA, any contractor or sub-contractor (used interchangeably herein) holding him/herself out as performing home improvements and who is actually performing home improvements for an owner, worth a total cash value greater than \$5,000.00 in the previous taxable year, is required to register with the Bureau of Consumer Protection in the Office of the Attorney General (the "Bureau"). Each contractor must list out specific information in the application, most of which will not be made available to the public and will remain confidential. If the contractor is incorporated or organized as a legal corporate entity, certain personal information is required to be provided by the officers and owners of the company, regardless of corporate form.

The application itself must include a statement disclosing, among other details, whether the contractor is licensed in other states, proof of insurance and whether the contractor is or has been subject to discipline or has been convicted of a criminal offense related to a home improvement, *e.g.*, fraud. A contractor must include its registration number in all advertisements distributed within the Commonwealth of Pennsylvania and on all contracts, estimates and proposals with owners. Failure to register with the Bureau is prohibited and is a clear violation of HICPA.

Home Improvement Contract

Although too numerous to list out in this article, under *Section 517.7* of HICPA, there are very detailed and specific requirements that must be in each contract entered into between a contractor and/or sub-contractor and an owner. Should a contractor fail to include these required provisions, any contract entered into between a contractor and owner shall be invalid and unenforceable. By way of example only, some of these requirements include, the contract: must be in writing, legible, contain contact information of contractor and sub-contractors and be signed by all parties; must include the date of transaction; must include the approximate start and completion date(s); must include a work description and a set of specifications that cannot be changed without a change order signed by all parties to the agreement; must include a total sale price; must require the contractor to maintain liability coverage; must include a three-business day right of rescission by owner; and if an arbitration provision is included, it must comply in form and substance, containing extremely detailed and specific information as

defined in HICPA. Additionally, there are a number of clauses covered in HICPA that if included in the contract by the contractor, render the contract “voidable”, meaning that it is the owner’s option to cancel the contract without penalty.

Penalties for Violation of HICPA

Failure to comply with HICPA carries civil as well as criminal penalties. A misdemeanor occurs if the contract is for \$2,000 or less; and if for more than \$2,000, there is an increase in the grade of the offense, making the violation a third degree felony. Additionally, penalties are higher for repeat violations and if the owner is 60 years old or older. A violation of any of the provisions of HICPA are also a violation of the Unfair Trade Practices and Consumer Protection Law which carries with it substantial penalties of its own, including a private right of action. 73 P.S. §§201-1 – 201-9.2.

Conclusion

Due to the nature and breadth of the contractor registration requirements, including the detailed application a contractor must submit, it will be helpful to have a lawyer review any filings. Moreover, HICPA creates a need for every contractor to revise their current contracts. As noted above, should any contract fail to include the required disclosures as well as leave in prohibited language, a contractor could find him/herself with an unenforceable contract. Due to the harsh penalties imposed by HICPA, contractors may want to have their contracts reviewed by an experienced attorney.

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