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March 31, 2009

PA HOME IMPROVEMENT CONSUMER PROTECTION ACT

The *Home Improvement Consumer Protection Act* (HICPA) has been enacted in Pennsylvania and becomes effective and enforceable on July 1, 2009. The Act provides for the registration of home improvement contractors, which is liberally construed, with the Bureau of Consumer Protection in the office of the Attorney General, requires specific, extensive requirements for written contracts and provides for both criminal and civil sanctions for violation of the Act.

Contractors performing more than Five Thousand Dollars (\$5,000.00) worth of home improvement business annually must comply. The Act defines "Home Improvement" to include the following activities upon a private residence which exceeds Five Hundred Dollars (\$500.00) in value:

- (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, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, painting, doors and windows and waterproofing.
- (3) Installation of central heating or air conditioning, storm windows or awnings.

"Contractor" is defined broadly and applies to subcontractors, independent contractors and out of state contractors but the Act does not apply to new home construction nor commercial construction.

Contractors must register as a business and individually providing social security numbers, driver's license numbers, home address and telephone numbers and related information for the business and all officers, partners and those having more than a Five Percent (5%) equity interest. Information with the exception of that protected such as social security numbers will be available to consumers pursuant to the *Right to Know*

Act. Any relevant criminal convictions and civil judgments must be disclosed and at least Fifty Thousand Dollars (\$50,000.00) in liability and property damage insurance must be in effect. There is a Fifty Dollar (\$50.00) filing fee which must be renewed biennially. The registration number assigned must be disclosed on advertisements, contracts, estimates and proposals.

A home improvement in excess of Five Hundred Dollars (\$500.00) must be in writing as well as any change orders. The contents of the contracts are specifically and extensively governed by HICPA. In addition to requiring basic terms such as price, start and completion dates, contractor information, etc., the document must be legible, include the registration number, incorporate a statutory right of rescission and be signed by the home owner or agent. The Act also limits deposits and imposes penalties for failure to comply with the home improvement contract terms. A contract should conform, as well, with the ***Pa. Plain Language Consumer Contract Act.***

HICPA renders a contract voidable if any of ten (10) common provisions exist such as a “hold harmless” clause, “waiver of jury trial”, “confession of judgment” or terms which could award attorneys fees to the contractor. Failure to comply with HICPA is an “unfair or deceptive act” pursuant to the ***Pa. Unfair Trade Practices and Consumer Protection Law*** and could result in treble damages and an award of attorney’s fees and costs to the consumer.

Committing home improvement fraud can be prosecuted as a misdemeanor or a third degree felony. If the victim is over sixty (60) years of age, the grading of the offense can increase. A contractor’s license can be revoked or suspended by courts. Along with the registration and contractual requirements, HICPA expands the Unfair Trade Practices and Consumer Protection Act that provides for additional prohibited acts that will, undoubtedly, lead to more civil actions by consumers.

The Act does not address the issue of warranties but a contractor should be aware that courts have implied warranties of habitability and quality construction and the ***Uniform Commercial Code*** specifies warranties of merchantability and fitness for a particular purpose which could also apply.

Since the Act is quite broad and extensive, it’s doubtful that a home improvement contract in use today is compliant and must be substantially revised. Contractors, without proper advice, can easily violate the Act inadvertently. Contractors and consumers need to educate themselves as to their respective rights and responsibilities as the effective date is quickly approaching. .

Disclaimer: This is not intended as an exhaustive analysis of the Act and readers should seek experienced legal counsel for advice and guidance. Any questions can be directed to Wayne W. Congar, Esq. at (610) 389-1999 or lawlife221@aol.com