

**HOME IMPROVEMENT
AND THE
NEW
HOME IMPROVEMENT
CONTRACTORS ACT**



*County of Bucks
Department of Consumer Protection/
Weights and Measures*

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THE BASICS

While most home improvement contractors operate an honest business, there are those who engage in deceptive practices and defraud consumers of large sums of money. Don't be taken in by promises of guaranteed performances, quick jobs, and bargain prices. Don't allow a salesperson to talk you into repairs and improvements you do not actually need or want.

The Home Improvement Consumer Protection Act (HICPA) is designed to ensure that consumers get a fair deal from a contractor. This law requires all home improvement contractors, with limited exceptions, to register with the Office of the Attorney General and to display their registration on *all advertising and contracts*.

Contracts for home improvements are MANDATORY under this law and must be signed by the consumer and contractor before the work begins. The contract must state

- ⇒ The exact work to be done
- ⇒ A starting and completion date for the project
- ⇒ The total cost of the project.

Before you sign:

- ⇒ Check with your local homebuilders' association, your building supply retailer, the Better Business Bureau, the Chamber of Commerce, and the Department of Consumer Protection.
- ⇒ Check with homeowners who have dealt with the contractors you are considering.

- ⇒ Be cautious if high pressure is used to induce you to sign a contract quickly.
- ⇒ Be sure to obtain more than one bid for the same job involving exactly the same specific conditions.

Tips when having repairs done:

- ⇒ Don't use a contractor who has no experience doing the type of work you need to have done. The contractor should be able to share references and give examples of workmanship on similar projects.
- ⇒ If the contractor requires subcontractors such as an electrician or a plumber, ask for their names and check them out, too.
- ⇒ Obtain at least three estimates for the improvement project.
- ⇒ Always get a **written** contract before you allow someone to work on your home. Examine the contract carefully. Make sure it includes descriptions of the exact types of improvements to be done, estimated completion date, and payment schedule.
- ⇒ ***Don't pay a contractor before you read and sign a contract.*** HICPA only permits contractors to request or accept one-third deposit, plus the cost of "special order materials".



- ⇒ Verify that the contractor has the minimum insurance coverage of \$50,000.00 for property damage and \$50,000.00 for personal injury, mandated under HICPA.

Beware of:



- ⇒ Unknown or out-of-town contractors. Make certain the contractor has a permanent address in your area, where he can be contacted if problems arise.
- ⇒ Salespersons who will give you a discount if you allow your house to be shown to other prospective purchasers.
- ⇒ Outfits that offer you a bargain rate because the “equipment is already in the neighborhood,” or “we have materials left over from a job down the street.”
- ⇒ Contractors who use terms like “special introductory offer.”

After the work is completed:

- ⇒ Inspect it before signing off on the job.
- ⇒ Point out any defects *immediately*.
- ⇒ You may be asked to sign a completion certification. Do not do so until all work called for in the contract has been completed to your satisfaction. ***Be careful not to sign a completion certificate when you sign the original sales order.***



WHAT IS HOME IMPROVEMENT FRAUD?

Home improvement fraud occurs when:

- ⇒ A contractor intentionally provides false or misleading information to convince a consumer to enter into an agreement for home improvements.
- ⇒ A contractor receives payment and fails to provide the services or materials.
- ⇒ A contractor damages a person's property in order to solicit an agreement for services or materials.
- ⇒ A contractor alters a contract or other documents without the consent of the consumer.
- ⇒ A contractor publishes false or deceptive advertisements.
- ⇒ A contractor misrepresents material as special order or misrepresents the cost of special order material.
- ⇒ A contractor represents himself or herself as an employee of a governmental unit or public utility.

What are my rights?

- ⇒ A home improvement contractor must provide you with a copy of the complete contract free of charge.
- ⇒ You have the right to rescind your home improvement contract without penalty within three business days of the signing date, except as provided under law for emergency situations.
- ⇒ A home improvement contract is not enforceable against a consumer if it does not include all of the information required by law.
- ⇒ A contractor may not demand or receive any payment for a home improvement before the home improvement contract is signed.

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Where can I find my contractor's registration number?

- ⇒ All contractors must display their official registration number on all contracts, estimates, proposals, and advertisements distributed within the commonwealth.
- ⇒ To verify a contractor's registration number, call toll free **1-888-520-6680**.



WHO DOES HICPA APPLY TO?

HICPA applies to contractors doing over \$5,000.00 of home improvement business annually. “Home improvement” is defined broadly to include all of the following:

- ⇒ A contractor who is engaged in work such as repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation or sandblasting.
- ⇒ Contractors who are involved with the construction, replacement, installation, or improvement of:
 - ◇ Driveways, swimming pools, solar energy systems, pool houses, garages, roofs, siding, insulation, security systems, flooring, patios, fences, gazebos, sheds, cabanas, painting, doors, windows, waterproofing, installation of central heating or air conditioning, and installation of storm windows or awnings.
- ⇒ Generally, HICPA *does not apply* to landscaping services *unless* the landscaper is involved in the construction, replacement, installation or improvement of any of the above. Specifically, landscapers will fall within the purview of HICPA if they are involved with:
 - ◇ Lighting systems, non-decorative fences, concrete walkways, windows, doors and the installation of retaining walls, fountains or drainage systems.
- ⇒ It is likely that HICPA *will apply* to landscapers, as many landscaping businesses perform a variety of the above services for their customers.

Who must register with the Bureau?

- ⇒ Contractors who do more than \$500.00 worth of work for a consumer in their home or on the land surrounding their home must register with the Bureau.
- ⇒ The definition of those who must register with the Bureau is quite broad. If a contractor performs any of the work described above, it is required to register individually and as a business.

Who does NOT need to register with the Bureau?

Despite the expansive definition of “contractors” who must register with the Bureau, there are some exemptions:

- ⇒ Any individual for whom the total cash value of all of that person’s home improvements is less than \$5,000.00 during the previous taxable year.
- ⇒ Any individual that sells his services for commercial or business use is exempted from the registration requirement, as is new home construction.
- ⇒ Someone who sells appliances such as stoves, refrigerators, freezers or room air conditioners is not required to register.

Registration requirements

An individual, general partnership, corporation, limited liability company, and limited partnership all have relatively the same registration requirements. An applicant must provide:

- ⇒ Names, home addresses, telephone numbers, driver’s license numbers, Social Security numbers, and all prior business names and addresses of the home improvement businesses operated by the individual or each partner, officer, manager, etc.

HICPA provides that the personal information of the contractor *shall not* be disclosed to the public, and a home address and telephone number will only be released to the public if the contractor uses home contact information for the business.

- ⇒ HICPA also requires each applicant, whether it be an individual or a company, to provide a complete description of the nature of the business and provide a statement which lists whether he or the company has ever been convicted of a criminal offence relating to a home improvement transaction, fraud, theft, deception or fraudulent business practices.
- ⇒ Furthermore, each applicant *must disclose* any final civil judgments entered against it relating to a home improvement transaction in the last ten (10) years, or whether it has ever filed for bankruptcy.



A concern for any contractor is the potential for having to report even the smallest judgment, regardless of the reason entered. Obviously, in evaluating the costs of litigation or settling claims, a contractor must now weigh the risk of being *legally required* to report a judgment, which will remain on file with the Bureau.

- ⇒ HICPA also requires an applicant to disclose whether a certificate or similar license issued by another state or township was revoked or suspended by a court. This provision of HICPA extends to any other business in which the applicant has ever had an interest, and is not limited to a home improvement business.

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- ⇒ In addition, an applicant must inform the Bureau whether they are registered in another state, and if any disciplinary action has occurred in that state.
- ⇒ HICPA also mandates that all contractors obtain and provide proof of liability insurance covering personal injury and insurance for property damage in a minimum amount of \$50,000.00.

After complying with each of the registration requirements, an applicant must renew its registration every two years.

Once a contractor has complied with all of the registration requirements, paid the \$50.00 fee, and obtained its registration certificate, its work is still not done. Based on the requirements of HICPA, a contractor will in all likelihood be forced to rewrite all of its contracts prior to July 2009.

Contracts must comply with HICPA

As of July 1, 2009, all contracts that do not contain the specific requirements of HICPA will be **VOID**. Therefore, if the form of contract a business has been using does not contain required information, it must be revised.

HICPA requires that every contract:

- ⇒ Contain the approximate starting date and completion date of the work. This provision is very important and places an added burden on the contractor to be both reasonable and accurate in providing start and completion dates.

- ⇒ Include a description of the work to be performed, the materials to be used, and a set of specifications. Most importantly, these specifications cannot be changed without a written change order signed by the owner and the contractor. This creates an added burden on the contractor to ensure a written change order is executed for any change from the original contract.
- ⇒ Include the names, addresses and telephone numbers of all subcontractors on the project. However, HICPA only requires information of subcontractors that are known as of the date of the signing of the contract.
- ⇒ State that the contractor agrees to maintain insurance and identifies the current amount of insurance maintained at the time of signing the contract.

In addition, the contract must also contain these basic requirements:

- ⇒ Be legible, in writing, and include the registration number of the contractor.
- ⇒ Be signed by the owner of the home, agent or other permitted person and the contractor or a salesperson.
- ⇒ Constitute the entire agreement.
- ⇒ Contain the date of the transaction.
- ⇒ List contact information of the contractor.
- ⇒ Include the total sales price due.
- ⇒ Include the amount of any down payment plus, listed separately, any amount advanced for special-order materials.

A copy of the contract SHALL be provided to the consumer at the time it is signed.



While most contracts in use likely contain some of the required provisions, a contract must now include the *toll-free telephone number for the Bureau*, and a *notice of the Right of Rescission* providing that a consumer can rescind the contract within three business days of signing the contract.

HICPA provides further requirements that will require contractors to reprint all of their agreements:

- ⇒ If a contractor includes an arbitration clause in a contract, the clause must be in capital letters, 12-point, boldface type, and on a separate piece of paper.
- ⇒ Further, it must state whether the arbitration is binding or can be appealed, and whether the arbitration will be deemed confidential.
- ⇒ It must also contain a separate line for each of the parties to sign and date.
- ⇒ All of the items required by HICPA must be present, or the arbitration clause can be voided by the consumer.



Voidable Clauses

HICPA also provides a list of provisions, which if included in the contract, will give a consumer the ability to void a contract. The most important provision of this section of HICPA prohibits a contractor from including in a contract a provision allowing for an award of attorney fees and costs. HICPA has legislated away a contractor's right to privately contract with its customers for the ability to obtain attorney fees and costs if a lawsuit is commenced. However, while the contractor has lost a significant piece of leverage in pursuing claims, the consumer still has the ability to receive an award of attorney fees and costs, as well as treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Therefore, it is recommended that a contractor obtain legal advice to determine other ways to protect its interests.

Civil and Criminal Violations

The definition of what is home improvement fraud is what typically would be expected:

- ⇒ Misrepresenting the true name of the salesperson, contractor or business.
- ⇒ Damaging a person's property with the intent to induce the consumer into purchasing home improvement services.
- ⇒ Misrepresenting the cost of materials.
- ⇒ Altering an agreement, mortgage, etc.
- ⇒ Publishing a false advertisement
- ⇒ Receiving an advance payment for home improvement work and failing to complete the work when specified in the contract and not returning the payment.

As with any new piece of legislation, there is uncertainty as to the interpretation of certain provisions. However, a contractor should prepare itself with the proper advice to prevent even inadvertent violations of HICPA.

⇒ **Criminal Violations** – Committing home improvement fraud can be prosecuted as a *misdemeanor* or a *third degree felony*.

- ◇ If the victim is 60 years old or older, the grading of the offense will increase.
- ◇ HICPA gives a court the ability to revoke or suspend a contractor's certificate. If the certificate is revoked, the contractor can only petition the court for reinstatement after five (5) years have elapsed.

⇒ **Civil Penalties** – In addition to the registration and contractual requirements imposed, HICPA expands the Unfair Trade Practices and Consumer Protection Law to provide for additional prohibited acts that will give rise to a civil action by consumers.

- ◇ A contractor is required to fully refund any amount paid by a customer within ten (10) days after it receives a written request for refund if 45 days have passed since the work was to begin, and no substantial portion of the work has been performed.
- ◇ A contractor is also in violation of the Unfair Trade Practices and Consumer Protection Law if it materially deviates from plans or specifications without a written change order that contains the price change for the deviation. It is a common practice for many smaller contractors to verbally change certain specifications on a small project. However, if *any* change in the plan, specification, etc. of the project is made, a written change order *must be executed*.

- ◇ For a contract of more than \$1,000.00, the contractor cannot accept a deposit in excess of one-third of the contract price, or one-third of the contract price plus the cost of special order materials.

Big Box Retailers

While a “Big Box” retailer – a home improvement retailer such as Home Depot or Lowe’s, having a net worth of more than \$50,000,000.00 – does not need to register with the Bureau, its contracts are required to contain many of the same provisions as requires of all other contractors. More than likely, Big Box retailers will also have to change their contracts to comply with HICPA. Their contracts must contain:

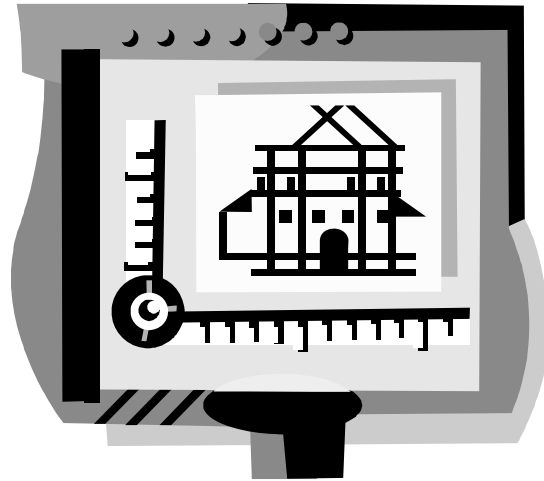
- ⇒ Name, address, and telephone number of the retailer.
- ⇒ Name of the person signing on behalf of the retailer and the position within the retailer or their authority to sign the contract.
- ⇒ Signature of the owner.
- ⇒ Entire agreement.
- ⇒ Date of transaction.
- ⇒ Approximate starting date and completion date.
- ⇒ Description of the work to be performed, materials used and specifications, which cannot be changed without a written change order.
- ⇒ Total sales price due.
- ⇒ Down payment plus any amount for special materials.
- ⇒ Right of Rescission.
- ⇒ Arbitration Clause requirements.

The Big Box retailer also may not include a provision that it can obtain an award of attorney fees or costs.

IN SUMMARY

Under the new law,
any contract that does not
meet the requirements of the
Pennsylvania
Home Improvement
Consumer Protection Act
will be
INVALID
and
UNENFORCEABLE
against the consumer.

If a contractor wants to be paid,
he or she will have to draw up
a new contract.



*Provided as a public service by the
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