

CONSTRUCTION LAW ALERT

A Stradley Ronon Publication

JUNE 2009

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Sweeping Changes in Residential Construction

By Patrick R. Kingsley

Pennsylvania recently enacted the Home Improvement Consumer Protection Act (HICPA) to protect homeowners from unscrupulous contractors. This new law becomes effective July 1, 2009. The scope of the law is threefold:

- it imposes registration requirements on home improvement contractors;
- it regulates the content of home improvement contracts; and
- it provides for criminal and civil sanctions for failing to abide by its terms.

Contractors should be prepared to bring their contracts and business practices into compliance with HICPA by July 1.

The Applicability of HICPA

HICPA applies to contractors, including subcontractors and independent contractors, who undertake home improvements projects. A person who operates a home improvement business is nevertheless exempt if the total cash value of the home improvement activities during the preceding tax year was less than \$5,000.

Home improvements are defined by this act as the repair, replacement, remodeling, demolition, construction, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation, painting, waterproofing, sandblasting or installation of the following: driveways, swimming pools,

pool houses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, floors, patios, fences, gazebos, sheds, cabanas, doors, windows, air-conditioning systems, storm windows or awnings. Work that has a value of less than \$500 is not covered by the act. Landscapers are generally covered, except in very narrow circumstances.

The act does not apply to the following:

- New home construction
- The sale of materials that does not include installation
- The sale of appliances (such as stoves, refrigerators, freezers and room air
- Work performed without compensation
- Emergency work pursuant to 73 P.S. § 201-7(i)(3)
- Conversion of a commercial structure to a residential structure

HICPA Registration Requirement

Contractors must register with the Bureau of Consumer Protection online at www.attorneygeneral.gov/hic.aspx, or by writing to the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, 15th Floor, Strawberry Square, Harrisburg, PA 17120. There is a \$50 registration fee.

The statute has specific requirements for individuals, general partnerships and

corporations but generally requires that the following information be given: name, date of birth, home address, driver's license number, federal employer identification number, Social Security number and the names of all prior businesses previously operated by the applicant along with their addresses. The applicant must describe the nature of the business and must provide a statement indicating whether he or the company has ever been convicted of a criminal offense relating to a home improvement transaction or any other crime involving deception. The applicant must also state whether he has filed a petition in bankruptcy or whether there has been a civil judgment relating to a home improvement transaction entered against him or his business in the last 10 years. The applicant must have proof of personal injury liability insurance of at least \$50,000 and property damage insurance of at least \$50,000.

Once the registration process is complete, the contractor must include the registration number in all advertisements, contracts, estimates and proposals.

New Contract Strictures

After July 1, 2009, all home improvement contracts that do not conform to the specific HICPA requirements will be rendered invalid and unenforceable. Therefore, all form contracts must be revised and made compliant with HICPA. HICPA requires that every contract:

- Be in writing and legible
- Contain the contractor's registration number, address and telephone number
- Be signed by both the owner and the contractor
- Contain the entire agreement between the parties
- Specify the start date and completion date
- Include a description of the work to be performed and the materials to be used
- Include specifications that cannot be changed without a signed change order
- Include the total sales price
- Specify any down payment
- Specify all subcontractors known at the date of the contract

At the time the contract is executed, the contractor must provide a complete copy to the owner, without charge. The owner then has the right to rescind the contract without penalty within three business days.

Arbitration provisions – otherwise generally enforceable – are now restricted in home improvement contracts. The arbitration provision must be printed in all capital letters in 12-point boldface type. It must appear on a separate page from the rest of the contract and contain a separate line for each of the parties to sign. The arbitration provision must clearly state whether the decision of the arbitration is binding or may be appealed to the courts of common pleas. Arbitration provisions that fail to meet any of these requirements are deemed void.

HICPA also provides that home improvement contracts containing certain provisions may be voidable at the option of the owner. Such provisions include:

- A hold harmless clause in favor of the contractor
- A waiver of safety or building code requirements
- A confession of judgment clause
- A waiver of the right to a jury trial
- A provision not to assert claims or defenses
- An attorney's fees provision in favor of the contractor
- A waiver of the contractor's liability for collection efforts
- A waiver of any rights provided under HICPA

Criminal and Civil Sanctions

HICPA now establishes the offense denominated as "home improvement fraud." What constitutes home improvement fraud is broadly defined by the statute and can include:

- Making false or misleading statements to induce a person to enter into a home improvement contract or increase the previously agreed upon price
- Failing to return an advance payment after failing to perform work or provide the services or materials paid for in advance
- Concealing one's true name, business address or identifying information
- Damaging a person's property in order to induce the person to enter into a home improvement contract
- Misrepresenting oneself as being affiliated with the government
- Misrepresenting an item as a special order or misrepresenting the cost thereof

- Altering a home improvement contract without the owner's consent

Home improvement fraud has both criminal and civil penalties. It can constitute a felony of the third degree. A second violation can constitute a felony of the second degree.

Other Prohibitions

HICPA outlines several other miscellaneous prohibited actions, these include:

- Advertising as a home improvement contractor or performing home improvement work without registering with the bureau
- Failing to refund amounts requested by certified mail if no substantial portion of the work has been performed and 45 days have elapsed since the start date
- Accepting a municipal certificate of occupancy knowing that the document is false and the work is incomplete
- Proffering documentary proof that a home improvement contract is complete in order to induce payment when the contractor knows that such work is incomplete
- Abandoning a home improvement contract or project (except if the owner is guilty of nonpayment)
- Materially deviating from the plans or specifications without a signed change order that includes a price change
- Assisting in financing a home improvement contract with knowledge that the contract overstates the actual price of the home improvement
- Advertising a home improvement contract price while intending to not perform the contract for the advertised price
- Demanding or receiving payment for home improvement before the contract is signed
- Obtaining a deposit in excess of one-third of the home improvement contract

Any violation of the provisions of HICPA shall also be deemed to be violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTCPL). That requirement is significant inasmuch as the UTCPL provides for awards of treble damages and attorney's fees at the discretion of the court.

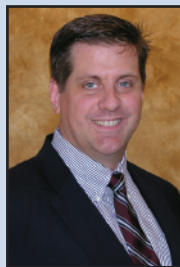
Conclusion

The foregoing is merely a summary of HICPA's many provisions. As with any new piece of legislation, how the courts will interpret and apply these provisions is not yet known.

The changes wrought by HICPA are significant, and the consequences of failing to comply are even more significant. Parties entering into home improvement contracts must immediately update their business practices and standard contract terms to make them HICPA compliant if they have not already done so. If you need assistance in this regard, please do not hesitate to contact the Stradley Ronon Construction Practice Group. ■

About the Author

A partner in the firm's Litigation Practice Group, Patrick Kingsley has handled construction matters for more than 17 years.



Patrick R. Kingsley

Mr. Kingsley represents owners, contractors, subcontractors, sureties, insurance companies, design professionals and manufacturers of construction products. He has handled claims relating to delay, acceleration, unforeseen site conditions, lost productivity, defective workmanship, design errors, as well as payment and performance bond claims.

Patrick has tried cases throughout the United States before juries, judges, arbitration panels and referees. He has handled complex construction and surety matters involving construction projects all over the world, including a surety claim involving the largest building ever built in Saudi Arabia.

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