

# Ten Years of Pennsylvania's Home Improvement Consumer Protection Act: Is Your Home Improvement Business Compliant with the Law?

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In October 2008, the Pennsylvania General Assembly passed the Home Improvement Consumer Protection Act ("HICPA"), 73 P.S. §517.1 *et seq.*, which created a statutory framework to protect homeowners from unscrupulous home improvement contractors. HICPA placed significant new requirements on home improvement contractors in terms of how they conduct business, including (1) mandating certain contents of their contracts with customers, (2) dictating how they accept payment from customers, and (3) requiring all home improvement contractors to register with the state.

Along with the creation of a new crime for home improvement fraud, the law also gave homeowners powerful new civil remedies in court to sue contractors who violate the law, including the ability to collect treble (i.e. tripled) damages and attorneys' fees if they prevail in their claims. With HICPA just passing its 10<sup>th</sup> anniversary as a law, it would be wise for every contractor that performs work on any residential home to conduct a "check-up" to see if they are in compliance with the law.

Contractors should start with a few basic questions to see if they are compliant:

- ***Are you registered as a home improvement contractor with the state Attorney General?*** HICPA requires all home improvement contractors to register their business with the Pennsylvania Attorney General and to receive an identification number. Registration is an easy process that can be completed online, but failure to register is a violation of HICPA. A contractor is required to include its registration number on all estimates, contracts, and advertising.
- ***Is your customer contract compliant with HICPA?*** HICPA places strict requirements on home improvement contractors in terms of certain provisions which must appear in their contracts with homeowners. It also has deemed certain other provisions as unenforceable against the homeowner. For instance, the contract must be in writing, must be signed by both the contractor and the homeowner, must contain an approximate start and completion date, and must include a notice describing the homeowner's right to rescind the contract within three business days. Moreover, "legalese" which was once ubiquitous in home improvement contracts — such as a hold harmless clauses, confession of judgment provisions, jury trial waivers, and waivers of state and local health, life, safety and building codes — are now deemed to be unenforceable. And if the contract does not comply with all of the requirements of HICPA, it may not be enforceable if the contractor needs to sue the homeowner to get paid after the job is complete.
- ***Are you taking care to avoid specifically prohibited acts by HICPA?*** HICPA identifies a number of specific practices which it has now deemed to be illegal. For example, a contractor may not accept a down payment from a customer before a contract is signed. Additionally, a contractor may not deviate from the original plans for the project in any material way without a written and signed change order. And for any project exceeding \$5,000, a contractor may not accept more than 1/3 of the contract price as a down payment.

Every home improvement contractor needs to be cognizant of the requirements of HICPA. While HICPA does require some additional attention by the contractor to assure compliance, the downside is a potentially costly suit by a homeowner

under HICPA's very consumer-friendly legal remedies, or even worse, a criminal prosecution.

Tucker Arensberg can assist home improvement contractors remain compliant with HICPA. A good start would be a review of your existing contract documents for compliance with the law. For additional information, contact Chris Cahillane.