

Home Improvement Contractor Registration Act 132

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Dramatic change has come to the home improvement contracting business in Pennsylvania, with the Home Improvement Consumer Protection Act, which has an effective date of July 1, 2009. The new law, also known as Act 132 of 2008, and found at 73 P.S. Section 517.1, requires home improvement contractors to register with the state by June 30 to be able to continue to do business on or after July 1. The Act requires contractors to carry liability insurance, links contracting businesses by ownership and management, requires certain terms in Home Improvement Contracts and prevents contractors from using other clauses in their contracts. The law also gives consumers an 800 number and internet access to certain registration information and other data the PA Attorney General's Office, requires contractors to show their registration numbers in advertising, makes contracts which fail to follow its requirements unenforceable, and gives homeowners the right to void contracts if they contain any number of prohibited clauses.

Act 132 creates a new criminal offense in Pennsylvania, called Home Improvement Fraud, which is generally punishable as a misdemeanor of the first degree for amounts up to \$2,000, and a felony of the third degree for amounts involved over \$2,000. Offenses against owners 60 or older, and second and subsequent offenses cause more severe penalties. Any offense can result in a five year suspension or revocation of registration, effectively putting the contractor out of business in PA. All violations of the new law also create violation of the Unfair Trade Practices and Consumer Protection Law (The UTP-CPL), exposing contractors to owners' claims for attorneys' fees, triple damages and more.

While the Act by its terms applies only to repairs and improvements to private residences, and does not require the owner to reside at the property in question to be covered, an owner who owns three or more private residences in Pennsylvania is only considered an owner with respect to one property in which he resides as a primary residence, and other properties only if used for personal recreation purposes. This effectively excludes

coverage for rental properties under the act, but would allow a buyer under an installment land contract to bring an action as an owner. The Act also defines private residences to include only single family homes, duplexes and individual units in condominiums or cooperatives, so work by contractors on other types of properties would not be covered under its terms.

However, it has been my experience in prior cases involving contractors and the Attorney General's Office that it is sometimes difficult for a contractor, particularly on service calls, to fully assess the ownership, occupancy and other factors to determine whether a particular job would be covered by this type of law. Therefore, the only way for a contractor doing such work to be sure he or she isn't violating the law is to follow its requirements for every job they do which might be determined later to fall under the law. This means all those who deal with contractors on repair, remodeling and improvement types of work can expect to see quotes, contracts, and notices required by the new law, even on jobs to which it doesn't apply.

Types of work covered by the Act exclude construction of new homes, conversion of existing commercial structures into residential use, and Emergency Work as defined under the UTP-CPL. Also excluded are sales of appliances like stoves, refrigerators, or room air conditioners, provided they are designed for and easily removed from the property without material alteration. This suggests that sales and installation of built in appliances would fall under the new law. Pest treatments by Department of Agriculture certified landscapers are also excluded, but most landscaping services are covered specifically or by implication.

Act 132 covers all parts of work where the total cash price of the work is more than \$500.00, and specifically includes repair, replacement, remodeling, demolition, removal, renovation, conversion, modernization, improvement, rehabilitation and sandblasting. It includes services rendered on driveways, swimming pools, pool houses, porches, garages, patios, fences, gazebos, sheds and cabanas. Covered items specifically include, but are not limited to roofs, siding, insulation, doors and windows, solar energy systems and security systems, painting and waterproofing. Storm windows, central heating and air conditioning and awnings are covered by the Act regardless of whether they are affixed to the property. Contractors are defined under the Act as the persons who own and operate home improvement businesses, or who offer to undertake or agree to

perform home improvements, as long as the total cash value of all the home improvements during the previous tax year was at least \$5,000.00. This suggests an exemption from the Act for all contractors during their first year of business, but was probably intended to exempt commercial contractors who very rarely perform covered residential work. The Act also excludes from the definition of Contractor home improvement retailers with a net worth of over fifty million dollars, and their employees who do not perform home improvements. This is clearly the Home Depot and Lowe's exclusion, but the Act specifically includes as Contractors covered by the act the independent installers who subcontract with home improvement retailers to provide services to their customers. It is not clear whether price of the item sold by the excluded retailer counts in determining whether the included installer is over the \$500.00 threshold, but as a practical matter, most installation transactions will reach the threshold without inclusion of the cost of the items being installed.

Act 132 has very detailed provisions for contractors to register, starting with the provision that as of July 1, 2009, it is illegal for anyone to hold himself out as a contractor or to perform any home improvement without being registered with the Bureau of Consumer Protection of the Attorney General's Office. The Attorney General has indicated that he will not require registration for contractors who don't meet the \$5,000.00 per year business requirement under the Act. Application forms can be obtained online at www.attorneygeneral.gov, and completed in ink on a preprinted form. However, the Attorney General's Office has indicated it is taking several weeks to process these paper forms, and that electronic registration is available and faster. Applications are submitted with a fifty dollar fee and proof of liability insurance of \$50,000 each for personal injury and property damage caused by the contractor. Forms of the contracts being used by the contractor are not required to be submitted with the application.

Once registered, personal information on the contractors like social security numbers and drivers' license numbers of individual owners of contractors, will be kept privately by the Bureau. The rest of the information on the contractors, including things like related companies with common ownership, the prior names under which the contractor has done business, a description of the contractor's business, criminal and civil judgment histories related to home improvement transactions in Pennsylvania and elsewhere, will all be available to the public. Access will be by 800 number

to the Attorney General, or online. The data collected will pose problems for some contractors, but will give consumers of contracting services, whether covered by the Act or not, another resource in choosing contractors more wisely.

Each registered contractor gets a certificate of registration, and a unique home Improvement Contactor Number. This number must be displayed in all advertisements distributed by the contractor in PA, and must appear on all contracts, estimates and proposals created by the contractor after the effective date of the Act.

In addition to the registration number, contracts must be written, signed by both the owner or his agent or designee, and by the contractor or his salesperson. The contract is required to contain the entire agreement with the owner, as well as attached notice about Act 132 and the toll free number for the Attorney General, and the attached notice of three day rescission rights and emergency waiver required under the UTP-CPL.

Contracts which fail to meet these and the following requirements are not valid or enforceable against owners, though nothing in the Act prevents them from being enforced against the contractor. To be valid and enforceable against owners, contracts must also contain the date of the transaction, which I believe means the date of the contract, must have approximate stating and completion dates, and must contain the name, street address and telephone number of the contractor. For purposes of this requirement, a P.O. Box is not considered an address. Contracts covered by the Act must also include descriptions of the work to be performed and materials to be used, and a set of specifications, which can be plans, detailed drawings, lists of materials, stated allowances and other items customarily used in the industry together to describe the work, workmanship, materials and quality of materials being used.

Contracts must specify the total sales price due, and include the amount of any deposit required and the cost of any special order materials. If the contract is for more than \$1,000, such deposits cannot be more than one third of the contract price, plus the cost of special order materials, if any. Special order materials are defined by the Act to be products, equipment or materials not carried in stock, which are ordered from a factory or distributor for the specific contract, which are not returnable for credit by the contractor and which have no usefulness for other home improvement contracts. The very limited definitions of special order materials and a provision which makes it criminal fraud for a contractor to misrepresent

items as special order make this provision subject to great risk for contractors.

Covered contracts are also to include the names, street addresses and telephone numbers of all subcontractors known to the contractor at the time of entering the contract. This provision is designed to prevent contractors with big advertising budgets but few or any employees from appearing to do a high volume of work for consumers, but really just being a referral source for other businesses. The owner must be provided with a copy of the contract with all required notices at the time it is signed. This means the contract must be signed in duplicate, or must be a carbonless type form, creating the second copy.

While arbitration clauses are not prohibited by the Act in home improvement contracts, the Act allows them to be stricken by the courts under any other applicable PA law, and requires courts to deem the clauses void before commencement of the arbitration, if they are not in capital letters in 12 point boldface type, on a separate page from the rest of the contract, with dated, executed signature lines for owners and contractors, the date of which must match the date the contract was signed. The arbitration clause must also clearly state whether the decision of the arbitrator(s) is binding or can be appealed to Common Pleas court, and whether the facts of the dispute, related documents and the decision of the arbitrator are required by the terms of the clause to remain confidential. Other clauses which render an entire contract containing such a clause, if covered by the Act, voidable by the owner include provisions holding contractors harmless from liability for their actions, inactions or other claims, clauses waiving Federal, State or Local health, safety or building code requirements, confessions of judgment and waivers of jury trial. Of course, there is a conflict in the law between allowing mandatory arbitration, which means a waiver of jury trial, and then not allowing such a waiver clause. Contracts may not contain assignments of the contract or orders for payments of wages or other compensation for services to third parties, may not allow owners to waive any claims or defenses, and may not permit a contractor to be awarded attorneys fees and costs in any action between the contractor and the owner.

Contractors also cannot include in their contracts clauses which waive liability of the contractor for actions taken by the contractor to collect payment or repossess goods, or clauses which waive rights under Act 132 itself, and automatic renewal of contracts is severely limited, with special

notice provisions required. Many of the requirements and prohibitions of the Act are also applicable to contracts with home improvement retailers, though they are otherwise not covered by the Act.

Contractors whose contracts meet the thirteen points required by the Act, but whose contracts also have provisions in their contracts which make them voidable, may still be able to recover from owners for some reasonable value of their services, if a court determines that it would be inequitable not to require some payment.

Once a contract meets the requirements of the Act, the contractor is still bound by other provisions of the law. Home Improvement Contractors cannot also be licensed as mortgage lenders or brokers by the PA Department of Banking, and current contractors who are so licensed will not be able to renew their licenses. Contractors can be prosecuted under the Act for misleading statements to solicit work, for receiving payment and failing to perform the services contracted, for concealing the real name or address of the contractor or business, for damaging property to solicit home improvement services, for misrepresenting the contractor as having government affiliation, and for false advertising. Contractors also violate the Act if they fail to refund money within ten days of a written request if more than 45 days have passed since the starting date specified in the contract, and no substantial portion of the work had been performed, if they abandon a job without justification, deviate from plans without a written change order signed by the owner and contractor, which must disclose price changes, or if they participate in arranging inflated price financing for the improvements being made, among other specific violations.

The Act does preempt local governments which have not yet imposed contractor registrations from doing so, but leaves most current local registrations and higher insurance requirements of those ordinances intact. Just describing the provisions of the Home Improvement Consumer Protection Act has taken a rather long article. Developing strategies for real estate investors to use working with contractors, and for contractors to use with consumers will take much more time.

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