

## PENNSYLVANIA HOME IMPROVEMENT CONSUMER PROTECTION ACT UPDATE

EFFECTIVE JULY 1, 2009

The Pennsylvania General Assembly has enacted the Home Improvement Consumer Protection Act (the "Act"), which requires contractors to register with the Bureau of Consumer Protection (the "Bureau") of the Pennsylvania Attorney General. The Act also mandates the form and content of contracts between contractors and homeowners. While the Act places various burdens, costs and restrictions on every contractor, the Act was created to protect consumers from "home improvement" unscrupulous contractors and scam artists. The Act will go into effect on July 1, 2009. All contractors must be prepared to register (and maintain registration) with the Bureau of Consumer Protection by the effective date and to bring their contracts into compliance with the Act, or risk being a party to an unenforceable contract, and being subject to civil or criminal penalties.

### Who must comply?

The Act applies to contractors doing over \$5,000 of business from home improvement contracting annually. The Act defines a "contractor" as any person who owns and operates a home improvement business or who undertakes, offers to undertake or agrees to perform any home improvement, and includes a subcontractor or independent contractor who has contracted with a home improvement retailer (Home Depot, Lowes, etc.) to provide home improvement services to the retailer's customers. "Home improvement" is defined broadly to include the following:

- The repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, and rehabilitation of land adjacent to a private residence or of a building which is used or designed to be used as a private residence; and
- The construction, replacement, installation or improvement of driveways, swimming pools, pool houses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, painting, doors and windows, waterproofing, and certain types of landscaping.

The application fee to register with the Bureau of Consumer Protection is \$50 (plus a \$1.25 processing fee). Registration can be done online at [www.attorneygeneral.gov/hic.aspx](http://www.attorneygeneral.gov/hic.aspx). Following registration, each contractor will receive a registration number, which must be included in all advertisements and on all contracts.

### **Contract Requirements.**

The Act requires that a written contract must be signed between a contractor and homeowners for all home improvements valued at more than \$500.00. Most emergency repairs are excluded. No home improvement contract is valid or enforceable against a homeowner unless it meets the specific requirements for home improvement contract contained in the Act. Valid and enforceable home improvement contracts must contain the approximate starting date and completion date of the work. A valid contract must also describe the work to be performed, the materials to be used, and contain a set of specifications for the project. The Act does not permit a change in work, materials, or specifications without a written change order signed by the contractor and the homeowner. The Act limits the amount that a contractor can seek as a down payment, and requires that contractors maintain a minimum amount of liability insurance to protect against personal injury and property damage. A valid contract must also contain notice of a homeowner's right to rescind a contract up to three days after execution.

In addition, the Act also provides that certain clauses (deemed to be unfairly advantageous to a contractor) may not be contained within a home improvement contract and are voidable where they remain in such agreements. Such clauses include hold harmless/indemnification clauses, confession of judgment clauses, and clauses awarding attorney fees and costs to a contractor. Further, the Act sets forth very specific requirements governing any agreement to arbitrate a dispute that arises from the home improvement contract.

### **Penalties.**

Failure to comply with the provisions of the Act may subject a contractor to civil penalties and, in certain cases, even constitute the crime of Home Improvement Contractor Fraud. The state Attorney General's Office and the county district attorneys will have authority to investigate and institute criminal proceedings for any violation of the Act. In addition, the public has been provided with a toll-free number by which any individual can contact the Bureau to report violations of the Act. As a result, it is imperative that all home improvement contractors register with the Bureau immediately and that the form agreements used by any such contractors be reviewed, revised, and rewritten as necessary to ensure compliance with the Act.