

The Consumer Fraud Act &  
Home Improvement Practice Regulations:  
What Homeowners and Contractors Need to Know

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The requirements of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (the "Act") and the Home Improvement Practice Regulations found in the New Jersey Administrative Code at N.J.A.C. 13:45A-16.1 et seq. (the "Regulations"), place obligations on contractors and protect consumers when it comes to home improvements. Contractors should be aware of these provisions in view of the potential costs of non-compliance, and homeowners should familiarize themselves with these provisions prior to undertaking home improvements. Generally, the Act protects consumers from unconscionable commercial practices such as fraud, misrepresentation, and deception by persons involved in the sale of goods and services, including home improvement contracts.

The Act defines contractors as persons engaged in the business of making or selling home improvements, and requires all contractors to be registered with the State of New Jersey. Contractors doing home improvements, defined as all construction work that is not construction of a new residence, are also subject to the home improvement practices regulations. Contractors must comply with the Act and the Regulations, or risk costly litigation and monetary penalties. In many cases, a violation of the Regulations, such as failure to provide a written contract, constitutes a per se violation of the Act and may subject the contractor to triple damages under the Act.

The home improvement contract between the seller/contractor and the consumer/homeowner sets forth the rights and obligations of the parties with respect to the home improvements being performed. Pursuant to the Regulations, all home improvement contracts in excess of \$500, and all change orders of such contracts, must be in writing and signed by the parties. Failure of the contractor to provide a written contract or change order is automatically a violation of the Act, and the homeowner need not prove that the contractor intended to violate the Act. Under the Regulations, the written contract must clearly and accurately, and in understandable language, set forth the terms and conditions of the contract, including the following:

A detailed description of the work to be done and materials to be used.

- A start date and an end date.
- The total price to be paid by the homeowner, including finance charges.
- The legal name and business address of the seller or agent who negotiated the contract for the seller.
- A description of any mortgage or security interest to be taken in connection with the sale or financing of the home improvements.
- A statement of any guarantee or warranty with regard to products, materials, labor and services made by the contractor.

In addition to the contract requirements, the Regulations make it unlawful for contractors to engage in the following practices:

- Misrepresenting that a buyer's home will be used as a model in order to mislead the buyer into believing he will receive a price reduction or other compensation.
- Misrepresenting the products or materials to be used.
- Using "bait selling" tactics such as discouraging products in order to induce a buyer to purchase higher priced items, substituting materials without buyer's consent, and misrepresenting that certain products have a long delivery time or are unavailable so as to induce buyer to purchase higher priced items.
- Offering gifts, free items or bonuses without disclosing the term and conditions of the offer.
- Misrepresenting pricing and financing terms.
- Making misrepresentations about a competitor, such as claiming that the work of a competitor was performed by the seller or that a seller's products, materials or workmanship are equal to or superior to that of a competitor.
- Failing to begin work in a timely manner. Changes in dates and time periods stated in the contract must be agreed to in writing by the parties. The work must begin and be completed within the time periods stated in the contract, unless a delay occurs for reasons beyond the contractor's control, in which event the contractor must give written notice to Buyer of the reasons for the delay and indicate new start and end dates.
- Commencing work before all applicable code requirements are met and construction permits are obtained. If final inspections are required by the local building code, the contractor must provide the homeowner with copies of the inspection certificates prior to final payment or when requested by the homeowner.
- Failure to provide written copies of any applicable warranties, including any exclusions to the scope and duration of the warranties at the time the contractor places the bid and at the time of contracting.

The above is a brief summary of the issues covered by the Act and the Regulations. Contractors should be aware of the requirements, as the costs of non-compliance can be costly. Homeowners should protect themselves by understanding the requirements prior to entering into an agreement for home improvements. The Act and Regulations can also be helpful to homeowners who have had a bad experience with a home improvement contract that they are seeking to address.