

Home Improvement Contractors – Avoiding Individual Liability for Consumer Fraud

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New Jersey’s Consumer Fraud Act, N.J.S.A. 56:8-2 et seq., (the “Act”), has been described as “one of the strongest consumer protection laws in the nation.” There are three categories of unlawful practices under the Act for which liability can be imposed: (1) affirmative acts, which do not require a showing of intent; (2) knowing omissions; and (3) violations of regulations promulgated pursuant to the Act, such as the Home Improvement Practices Regulations, N.J.A.C. 13:45A-16.1 et seq. (the “Regulations”). As to all categories, the consequences for violation are considerable--plaintiffs who establish a violation causing an ascertainable loss are entitled to treble damages and an award of attorneys’ fees. However, the Regulations should be of particular concern to “sellers” of “home improvements” because strict liability is imposed for violation. Moreover, as the New Jersey Supreme Court has recently clarified, a home improvement contractor’s principals, officers and employees who participate in regulatory violations can be individually liable, in addition to the corporate entity, for damages caused by violations. Equally significantly, the Appellate Division has confirmed that even if a plaintiff fails to prove at trial an “ascertainable loss” caused by a violation of the Act, this will not bar a recovery of attorneys’ fees and costs; fees will be awarded, as long as the plaintiff presents a triable issue as to the loss. Thus, there are significant ramifications for individuals in the construction industry who are subject to the Act when the Regulations, inadvertently or deliberately, are violated.

In light of this potential exposure, it is critical that sellers of home improvements, those directing their policies and practices, and their employees be fully apprised of and comply with the Act and the Regulations.

First, the Regulations apply to “sellers,” persons engaged in the business of making or selling home improvements, inclusive of corporations, partnerships and any other form of business entity, as well as their officers, representatives, agents and employees. N.J.A.C. 13:45A-16.1A. A “home improvement” is a very broadly defined term; it includes remodeling, painting, repairing, renovating, etc. of residential or commercial property. This encompasses installing, replacing or repairing driveways, sidewalks, pools, landscaping, kitchens, bathrooms, garages, central heat, insulation installation, siding, carpeting and many more types of construction work. Those engaging in these types of work must, in order to avoid personal and corporate liability, adhere to the significant mandates of the Regulations and avoid the prohibited practices. The following is a sample of the Regulations that must be followed:

- Home improvement contracts in excess of \$500, and all changes in the terms or conditions, must be in writing. All such contracts, and all changes to the terms, must be signed by the parties.
- All terms and conditions must be accurately set forth in understandable language including, but not limited to:

- The legal name and business address of the seller.
 - The name of the sales representative or agent who negotiated the contract.
 - A description of work to be done, including the principal products and materials to be used and installed, including name, make, size, capacity, model of products or fixtures, type, grade, quality, size or quantity of principal construction materials.
 - The total price to be paid, including finance charges.
 - The date or time period on or within which the work is to begin and be completed.
 - If it is a time and materials contract, the hourly rate for labor and all other terms affecting price.
 - A description of any mortgage or security interest to be taken in connection with financing.
 - A statement of guaranty or warranty as to products, materials, labor or services.
- A seller may not engage in “bait selling”, such as by substituting products or materials for those specified in the home improvement contract or otherwise represented or sold, without the knowledge or consent of the buyer.
 - A seller must provide buyer with a written copy of all warranties as to the labor, services, products or materials furnished.
 - A seller must not fail to begin or complete work on the date or within the time period specified in the contract, unless the delay is for one of the specified reasons, i.e., causes beyond the seller’s control. Any changes in the dates or time period must be agreed to in writing.
 - A seller must not start work until he is sure all applicable state or local building and construction permits required by state or local ordinances have issued.
 - A seller must not demand final payment or request a buyer to sign a certificate of completion until work is completed in accordance with the contract terms.

Numerous additional Regulations exist. A complete understanding of the laws is a primary way to help sellers and their companies avoid costly, and potentially financially devastating, litigation.