

Overlook These Home Improvement Contract Requirements . . . And Risk Not Getting Paid

By Jeremy Donnelly, Esquire

The Home Improvement Act (the Act) was designed to protect consumers from unscrupulous individuals holding themselves out to be qualified home improvement contractors. Most professionals are aware that the Act requires contractors to register with the Department of Consumer Protection. Its most important – and most overlooked – section, however, relates to the requirements for home improvement contracts.

A well intentioned and qualified contractor who fails to strictly comply with the Act's contract provisions will be unable to collect from a homeowner who refuses to pay. This is true even if the work completed is of good quality and the contractor complied with state and local law in every other way. Most contractors know that a home improvement contract must be in writing. Many, however, use contracts that omit the Act's necessary contract provisions. Connecticut General Statutes § 20-429 requires that:

1. The contract be in writing,
2. Signed by the homeowner AND the contractor,
3. Contain the entire agreement between homeowner and contractor,
4. The date of the transaction,
5. The name and address of the contractor and the contractor's registration number,
6. A notice of the owner's cancellation rights in accordance with Chapter 740 of the General Statutes,
7. The start and completion dates of the project,
8. A section that states that the contract is entered into by a registered salesman or registered contractor, and finally
9. A provision disclosing all of the other home improvement companies operated by the owners of the contractor within the previous five years.

Failing to use a contract that includes the items listed above on each and every home improvement will result in the contractor being unable collect for breach of contract if a dispute arises with a homeowner.

A contractor may be able to collect under a theory of unjust enrichment if the contract includes sections 1, 2, 6, 7, and 8 listed above. It should be noted, however, that the contractor may not collect for the full value of the contract in this situation. The court will only order damages in the amount that the homeowner was "unjustly enriched." Essentially, a contractor in this situation is leaving its ability to collect anything completely in the hands of a judge.

If there is no contract at all (or if there is a contract that



does not include sections 1, 2, 6, 7, and 8), the contractor will not collect anything. Violating the Act is a complete bar to all forms of recovery. The amount owed to the contractor and the quality of the work completed is completely irrelevant. The consequences for failing to comply with the Act can be devastating to a contractor's business.

In addition, a violation of the Home Improvement Act is considered a *per se* violation of the Connecticut Unfair Trade Practices Act (CUTPA). A contractor can be ordered to pay treble damages to the homeowner. Since it is a "*per se*" violation, the homeowner only has to prove the amount of the damages. The additional consequences under CUTPA are severe but can easily be avoided with a compliant home improvement contract.

There is one saving grace for a contractor who fails to comply with the Act. A homeowner who acts in "bad faith" is not protected. This exception, however, is far too nuanced to be relied on. It is often impossible to discover the facts necessary to prove bad faith. In addition, the law on this issue is open to a great deal of interpretation. A compliant contract saves the contractor from having to overcome an enormous legal burden.

It should also be noted that the contract provisions of the Act also apply to contractors doing repairs, remediation, or mitigation for a loss under an insurance policy. In that situation, additional requirements under Connecticut General Statutes § 38a-313a are imposed on the contractor. That statute is beyond the scope of this article. That being said, it is important that a contractor is aware of these requirements to assure full compliance.

While the consequences are severe, there is no excuse for a contractor who fails to comply with the Act. The most efficient and sound practice is to create a standard form contract to be used in each and every home improvement. The contract should use the exact language of the General Statutes. Project specific information can later be filled in by the contractor and homeowner when reviewing the project. Any disputes will then be limited to the quality of the contractor's work and the homeowner will not receive a windfall due to the contractor's failure to comply with the Act.

This article cannot cover all of the potential pitfalls in creating a contract specific to your business and should not be relied on as legal advice. All contractors are encouraged to contact a qualified attorney to help draft a compliant contract. Copying another's or using online products is not the best practice. The Act is specific to the State of Connecticut and the consequences of failing to comply are too severe to take shortcuts.

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