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COUNSELLORS AT LAW

## *“What are the Legal Requirements for New Jersey Home Improvement Contracts?”*

New Jersey’s enacted the Contractor’s Registration Act (**Act**) in December 2005. The courts have since liberally interpreted the Act in favor of the consumer. The New Jersey’s Division of Consumer Affairs (**DCA**) is charged with enforcing the Act’s provisions and with educating and regulating contractors about its provisions. The provisions of the Act are further broadened by coupling it with the New Jersey’s Consumer Fraud Act. (**CFA**), and as a result, even a technical violation of the contract language requirements of the consumer-protection statutes and regulations can trap a contractor and create for them a personal legal and financial nightmare, even if they contracted with the consumer using a Limited Liability Company or a Corporation. This personal liability was confirmed as recently as July of 2011 by the NJ Supreme Court in the case of *Allen vs. V and A Brothers, Inc.*

The Act regulates all contractors doing work on residential and non-commercial property, and does include conversions of existing commercial property into non-commercial property. Since 2005, the courts have ruled that the Act applies to a broad range of services including, but not limited to the following: work to install or repair residential driveways, terraces, patios, additions, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements, waterproofing, HVAC systems, sidewalks, water systems, insulation installation, roofing and siding, floor coverings and etc.

To comply with the Act, all people and companies that work in the home-improvement industry must first register with the DCA, who function as the Act’s administrative watch dog. The DCA is responsible to review and approve requests for registration by contractors, and to supervise and discipline contractors, and implement appropriate procedures to effectuate those ends. In most cases, a contractor will be able to complete the State registration application and disclosure statement without much difficulty. However, a contractor needs, and is well advised to engage an attorney to help create a written contract that complies with the very strict technical requirements of the Act, as well as the even stricter requirements of the CFA. The applicant must also understand that he must be truthful in providing the information required to register with the DCA, since a breach of this responsibility can cause a revocation or suspension of the contractor’s registration, a criminal prosecution, or civil liability under the CFA.

Even a technical violation can produce civil liability under the CFA and an enforcement action from the DCA. As a result a contractor should never provide a consumer with any home-improvement services or products that exceeds \$500 unless that consumer has signed a contract that is fully compliant with every term and condition required by the Act and the CFA to be in that contract. Indeed, given the jeopardy involved with a violation of this responsibility, a contractor opens himself up to serious risk if they fail to seek the assistance of an attorney to ensure their form home-improvement contract meets the strict requirements of the Act.

What are the penalties for a contractor who disregards these strict rules. Quite simply they are very severe. A person who knowingly violates the Act is guilty of a fourth degree crime, which authorizes the sentencing judge to impose an 18-month period of imprisonment and a maximum fine of \$10,000. Also, anyone who violates the Act can face administrative penalties including up to \$10,000 for a first offense and up to \$20,000 for each subsequent offense. **However the most utilized weapon used against contractors for failure to comply with the Act is the CFA.**

It is critical that a contractor understand that the New Jersey CFA is one of the strongest consumer-protection laws in the nation. Its fundamental purpose is to prevent “unconscionable business practices. Any attorney, who represents a

consumer in this type of situation, will quickly raise the CFA as a weapon against the contractor. The weapon is powerful and will allow the consumer to obtain triple the actual damages sustained by the consumer. It also allows the court to shift responsibility of litigation costs, including attorney's fees, to the contractor who has violated the requirements of the CFA. **This fee-shifting weapon will apply, even if the consumer can not prove that damages actually resulted from a contractor's conduct, because the conduct itself was unlawful.** In fact a consumer does not even have to prove that a contractor acted fraudulently. The simply failure to comply with the Act will create strict liability for the contractor, irrespective of their lack of fault or bad faith. In fact just a technical violation of the written contract requirements (must be in full technical compliance) can render a claim for payment unenforceable, and may require the contractor to return all of the money previously received from the consumer for work performed, simply because he used no written contract or a defective contract that failed to have all the legally required language.

Finally, and most damaging to the contractor, since this would be a violation of the CFA, the contractor can not shield his personal assets from a consumer judgment by operating as a limited liability company or corporation. Further, any insurance policies held by the contractor will probably have a clause that allows the insurance company to avoid paying any claim involving fraud.

If you have additional questions of how this might apply to your individual situation, please contact:

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