

## Right around the Corner: Pennsylvania's Home Improvement Consumer Protection Act Opening for Business

March 30, 2009

As of July 1, 2009, a vast number of home improvement projects in Pennsylvania will become the subject of the state's new Home Improvement Consumer Protection Act ("the Act"). On the Act's effective date, contractors covered by it will face registration and contract document requirements that have not previously been imposed upon the contracting community for these projects.

Registration has now begun through the Pennsylvania Office of Attorney General. The requirements of registration are set forth in the Act and include those contractors who will be performing home improvement work (defined by the Act) as well as certain entities that supply material for home improvement activities. The term contractor includes not only home improvement businesses acting under direct contracts with owners, but also subcontractors or independent contractors who have contracted with a home improvement retailer to provide home improvement services to residential customers.

The Act references specific work and types of construction that are by definition included within the Act's coverage. However, a number of different exclusions are identified within the Act as well, including, notably, new home construction and certain types of (but not all) landscaping activities.

Beyond the registration provisions that are a relatively new concept for contractors in Pennsylvania, specific requirements exist for contracts for work covered under the statute. In the event all of these terms are not addressed, the Act provides that the home improvement contract shall not be valid or enforceable. As a part of these contractual requirements, there are subcontractor identification provisions.

The Act provides certain qualifications on the incorporation of arbitration clauses (*e.g.*, size of font and typesetting requirements) and sets forth a number of specific provisions that are voidable by the owner. Examples of these voidable provisions include:

- any hold-harmless clause
- waivers of federal, state or local health, life, safety or building code requirements
- confession-of-judgment language
- any waiver of the right to a jury trial
- language stating that a contractor shall be entitled to obtain attorney's fees and costs as part of an award in the contractor's favor

Similar requirements are set forth in the Act relating to home improvement retailer contracts as defined within the Act. However, the reach of those provisions is not as extensive as those provisions applicable to home improvement contractors.

In such instances where the contractor has complied with some of the requirements of the Act, the contractor will be permitted to recover the reasonable value of services that were requested by the owner in the event a "court determines that it would be inequitable to deny such recovery." The Act also contains a number of specific provisions regarding home improvement fraud that are, in part, tied to the Unfair Trade Practices and Consumer Protection Law. Moreover, potential criminal penalties for violations of the Act exist.

While the full breadth and depth of the Act's impact may not be immediately known, it is likely that the passage of this Act and the approach of its effective date will cause covered contractors and home improvement retailers to conform their business practices to, at least, the minimum requirements of the Act and to make certain that representations made in promotional materials are not contrary to the statutory dictates. A detailed review of these practices and the creation of compliant contract documents may be keys to successfully navigating this newly created territory of home improvement contracting in Pennsylvania.

### For Further Information

If you have any questions regarding this Alert or would like more information, please contact [Edward B. Gentilcore](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.