

The ILLINOIS HOME REPAIR AND REMODELING ACT AND RECENT COURT DECISIONS INVOLVE IMPORTANT ISSUES FOR BUILDERS AND CONTRACTORS, AND HOMEOWNERS TOO

By Nathan Hinch

The Illinois Home Repair and Remodeling Act¹ (HRRRA) is now a decade old, and yet is still unknown by many contractors and homeowners. The text of the HRRRA is available from the Illinois Attorney General's website, at <http://www.ag.state.il.us/consumers/homeact.html>. There have only been eight cases analyzing the HRRRA that have reached the appellate court level and have published case opinions, including four in the last five months.² The Illinois Supreme Court has only interpreted the law once, in 2008, but recently granted a petition for leave to appeal a second case, and is likely to hear another such petition in January.

Why is the HRRRA important?

In short, by not complying with the HRRRA a contractor risks voiding the contract and thus risks its lien rights and its right to get paid for its work. The contractor may also be exposed to enforcement penalties by the Illinois Attorney General, or a lawsuit by the homeowner under the Consumer Fraud and Deceptive Practices Act. The HRRRA contains specific requirements that:

- Any home repair or remodeling job amounting to \$1,000 or more must have a written contract that includes the total cost and lists parts and materials with "reasonable particularity"
- If the contract contains a binding arbitration or waiver of trial by jury clause (and most industry standard forms do), the contractor must have the customer sign and write "accept" in the margin next to the relevant paragraph
- The contractor must give the customer a copy of the "consumer rights brochure" prepared by the Attorney General's Office, available at <http://www.ag.state.il.us/consumers/homerep0505c.pdf>. The brochure includes a "Consumer Rights Acknowledgement Form" in duplicate. If the job is for \$1,000 or more, the contractor must have the customer sign both copies of the form and keep a copy for its records.
- If the contractor has a net worth less than \$1,000,000 based on its most recent financial statement prepared within the past 13 months, the contractor must carry minimum public liability and property damage insurance:
 - \$100,000 per person / \$300,000 per occurrence for bodily injury
 - \$50,000 per occurrence for property damage
 - \$10,000 per occurrence for "home repair and remodeling not in conformance with applicable State, county, or municipal codes"

It is important to note that the HRRRA defines "home repair and remodeling" broadly, to include construction, installation, replacement or improvement of the following:

¹ 815 ILCS 513/1 *et seq.*

² For a decade old statute, that is a staggering 50% of the total published cases that have occurred since August 2009.

- Driveways
- Swimming Pools
- Porches
- Kitchens
- Bathrooms
- Roofs
- and other improvements to structures within the residence or upon the land adjacent to the residence.
- Basements
- Chimneys
- Chimney Liners
- Garages
- Fences
- Awnings
- Fallout Shelters
- Central Air Conditioning
- Central Heating
- Boilers
- Furnaces
- Electrical Wiring
- Sewers
- Plumbing Fixtures
- Storm Doors
- Windows

The HRRRA specifically excludes carpet work (installation, repair, cleaning, etc.); landscaping; and installation, repair, etc. of home appliances when the work is done by an employee of a store that sold the appliance (for example, if the homeowner bought a dishwasher from Sears and included installation in the purchase).

Recent Cases Of Interest

In *K. Miller Construction Co, Inc. v. McGinnis*³, the First District Appellate Court (Cook County) found that a contractor who had not provided a written contract in violation of the HRRRA, had thus voided the contract and had no mechanics lien rights, but was nevertheless entitled to payment for its work under the equitable theory of “*quantum meruit*.” *Quantum meruit* means that, despite the fact that there was no valid contract, the court will imply one as a matter of law, out of a sense of fairness. This decision conflicts with a previous one in the Fourth District (*Smith v. Bogard*⁴) that held that a similarly situated contractor with no written contract had no recourse to get paid. The *McGinnis* case is currently binding law in Cook County; the *Smith* case is binding law in the Fourth District. Outside of these areas, the law on this point is unsettled for the time being. The Illinois Supreme Court recently agreed to hear the *McGinnis* case and should decide the issue next year.

Here in the Second District, the Appellate Court ruled in *Artisan Design Build, Inc. v. Bilstrom*⁵ that a contractor’s failure to give the homeowner the required consumer rights brochure, absent any other violation of the HRRRA, does not void the contract, and that the arbitration clause was voided where the contractor failed to have the homeowner sign in the margin next to the paragraph. There is a good chance that one or both of the parties will seek to have this case heard by the Illinois Supreme Court next year as well.

The Fourth District Appellate Court (which covers central Illinois) heard two important cases in the last two months of 2009. First, on November 10, the Fourth District ruled in *Tom Geise Plumbing, Inc. v. Taylor*⁶ that, despite the fact that the defendants slept in unfinished spaces on the second and third

³ *K. Miller Constr. Co. v. McGinnis*, 913 N.E.2d 1152 (1st Dist. August 10, 2009). Appeal allowed by ___ N.E.2d ___ (Ill. November 25, 2009) (Table, No. 109156).

⁴ *Smith v. Bogard*, 879 N.E.2d 543 (4th Dist. 2007).

⁵ *Artisan Design Build, Inc. v. Bilstrom*, No. 2-08-0855, ___ N.E.2d ___, 2009 WL 3052362 (2nd Dist. September 22, 2009).

⁶ *Tom Geise Plumbing, Inc. v. Taylor*, No. 4-08-0799, ___ N.E.2d ___, 2009 WL 3838984 (4th Dist. Nov. 10, 2009).

floors of a commercial building and intended to partially convert the building to residential space, the building was not a “residence” under the Act. Therefore, the requirements of the Act did not apply to the contractor in this case, and contractor could pursue a claim for payment and mechanics lien even though there was no signed contract and contractor had not given the defendants the required consumer rights brochure.

Finally, on December 21, 2009, the Fourth District Appellate court held in *Behl v. Gingerich*⁷ that a contractor’s failure to have a signed contract with a homeowner (there was a written work order) and failure to provide the brochure required by the Home Repair and Remodeling Act did not bar the contractor’s breach of contract and mechanics lien claims. The court found substantial compliance and that the homeowner was not prejudiced by the contractor’s failures to comply, stressing the significance of the fact that the defendant homeowner was himself a contractor, that the parties had previously worked together, and that the defendant sought out the plaintiff contractor for an initial proposal. However, the court also held that the contractor was not entitled to any compensation for extra work, because the contractor did not provide any written change order or other notification to the homeowner that the original work order had been modified until the lawsuit was filed.

The Moral of the Story

Whether taking on a full scale home repair or remodeling project, or merely installing a fence on a residential property, a contractor needs to comply with the HRRRA to protect its right to get paid for its work. Contractors should be sure to get their contracts in writing and signed, and document and require signatures on change orders as well. Homeowners should be aware of their rights under the HRRRA and make sure their contractors comply. For more information and suggestions for homeowners, visit the Illinois Attorney General’s website, at http://www.ag.state.il.us/consumers/homerepair_construction.html.

Nathan Hinch is an attorney and principal of Hinch Law in Wheaton, Illinois, an associate member of the Northern Illinois Home Builders Association, and a member of the Wheaton Chamber of Commerce. Nathan is a graduate of Wheaton College (class of 2000) and Chicago-Kent College of Law (2007) and lives in Wheaton with his wife and two children. He concentrates his legal practice in the areas of construction law, mechanics lien, home repair and remodeling law, real estate, and environmental law. Nathan can be reached at (630) 476-0368, or by email at nhinch@hinchlaw.com, or you may visit his website at www.hinchlaw.com.

⁷ *Behl v. Gingerich*, No. 4-08-0974, ___ N.E.2d ___, 2009 WL 5112480 (4th Dist. Dec. 21, 2009).