

# BACE LAW REPORT

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LEGAL NEWSLETTER

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## Home Improvement Contractor Disputes in Massachusetts

Nearly every homeowner will hire some sort of contractor to perform work on their property. Whether it is an electrician, a plumber, or a general home improvement contractor that you invite onto your property, the laws and regulations that govern these professionals and your contractual relationships are vast. The nature of the contractor-homeowner relationship is unique, and one that can invariably lead to heated disputes. As stated in previous newsletters, individual's homes carry a special emotional attachment, as well as the gigantic financial commitment associated with most people's largest investment. If you add to the equation a professional who has been hired to tear apart a portion of the home, for example, and piece it back together according to the homeowner's strict instructions, it is not difficult to imagine how these relationships can quickly

breakdown and result in formal disputes. The Commonwealth has enacted the "Home Improvement Contractor Act," which provides for some strict regulations and largely favors consumers. The below article attempts to summarize and navigate the many facets of the law.

### What Is Required?

Anyone who contracts to perform "residential contracting" on an existing one to four family owner-occupied home must register as a Home Improvement Contractor.

According to the Act, residential contracting is defined as:

"the reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, or demolition, or the construction of an addition to any pre-existing owner occupied building...or to structures which are adjacent to such residence or building." (M.G.L. 142A § 1).

This broad and general definition appears to include almost any small or large scale renovation project or upgrade to a residential building. Unfortunately, from a

practical perspective, small renovation projects generally do not always fit into this neat definition. More often than not, licensed plumbers, for example, will upgrade an entire bathroom, including the fixtures, floors, shower stalls, etc...It appears that a bathroom renovation, even by a licensed plumber, would require that plumber to also register as a Home Improvement Contractor; Generally, any project that requires a building permit, will require Home Improvement Contractor Registration. Electrical, plumbing, and other professional licensure generally include regulations that restrict these individuals from performing work *beyond the scope* of their license.

In addition to registration, the Act requires a litany of other rules that must be adhered to. The following is a list of those rules, and is not intended to be all-inclusive:

- ▶ All contracts over \$1,000.00 MUST be in writing.
- ▶ The contract must include the contractor's name, start and completion dates, description of the work, total contract amount, and signatures of all parties.
- ▶ Contractor MUST NOT demand a deposit greater than 1/3rd of the

contract total.

- ▶ Final payments cannot be demanded until all parties are "satisfied."
- ▶ The contract must list all required permits.
- ▶ The contractor's registration number MUST appear on the contract, the permits, and any advertising.
- ▶ The contractor MUST adhere to all building codes and regulations.

Clearly, these restrictions favor the consumer, and are designed to prevent unethical contractors from taking advantage of the unassuming homeowner.

### **What Are My Remedies?**

Generally, any violation of the Home Improvement Contractor Act triggers a cause of action for the homeowner against the contractor for their damages. Additionally, any violation of M.G.L. 142A, is a *per se* or automatic violation of the Commonwealth's Consumer Protection Act. This can have severe implications for any contractor. The Consumer Protection Act, in certain circumstances, can provide for double damages, treble damages, and the court-ordered award of attorney's fees. Prior to the filing of litigation, however, there are more informal or alternative approaches to a dispute. *Mediation* is an informal and voluntary process in which both parties present

the issues to a neutral mediator. The goal of any mediation is to achieve a mutual agreement, and avoid further escalation of the dispute. If the contractor is legally registered, the Commonwealth has a mechanism by which homeowners can apply for binding *Arbitration* to solve the dispute. Arbitration is an alternative dispute resolution system that avoids the Court and litigation, but is also binding and enforceable. The Commonwealth has also instituted a *Guaranty Fund*. The fund is maintained by the Commonwealth, and supported by registrant contributions. Generally, after certain conditions are met, any owner whose contractor violates any provision of the law may receive some or all of their damages from this fund, and enforce their Arbitration Award or Court Judgment through the fund.

### **How Do I Prevent A Dispute?**

With respect to large scale projects, additions, and renovations, homeowners should consult an attorney prior to signing or negotiating contracts. Legal fees paid at the *outset*, can potentially save money, time, and stress in the event of a dispute. The benefits of preventative legal oversight cannot be overstated. A small expenditure at the onset is

far more effective than addressing a dispute after it has occurred. For smaller projects, a little preparation can ensure your project is more likely to proceed in a satisfactory manner.

Attorney Andrea Goldman captures the often tenuous relationship between homeowners and contractors in a recent article entitled, "How To Hire a Home Contractor and Stay Out of Trouble." Attorney Goldman suggests that most homeowners are unrealistic in their expectations as to costs and timelines, which can escalate disputes. She wisely suggests, "As you think about your project. Make two columns. They should be labeled "Must Haves" and "Desired." Whatever your designation, try to limit your requirements and be flexible."

Whether you are planning a small or large-scale renovation, consult your attorney early in the process. Should you find yourself in a dispute or disagreement with your contractor, or homeowner-client, only an attorney licensed in the Commonwealth can help you navigate the complex rights and duties surrounding these matters.

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