

Home Improvement Contracts (including Custom Homes) in New York

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Every so often, it's good to go back to the basics and make sure you're aware of (and complying with) the laws applicable to your trade. This article provides a brief overview of New York's statutes governing Home Improvement Contracts, Article 36-A of the General Business Law.

A home improvement contract is an agreement between a contractor and an owner for the repair, remodel, alteration, conversion, or modernization of, or addition to, residential property; or for the construction of a custom home. Some examples of home improvement include the construction, erection, replacement, or improvement of driveways, swimming pools, siding, insulation, roofing, windows, terraces, patios, landscaping, fences, porches, garages, solar energy systems, flooring, or basements. A custom home is a new single family residence built on property owned of record by the purchaser at the time of the contract, and which the purchaser intends to live in.

“Home improvement” **does not include** the sale or construction of a new home other than a custom home, the sale of goods not installed by the seller of those goods, the sale or installation of appliances or decorative goods or services like draperies or carpets, or the performance of warranty work.

Every contract for home improvement which exceeds \$500 in value must be in writing and signed by all parties, and must contain several key terms, including:

- basic contact information for the contractor (name, address, telephone, applicable license information);
- approximate commencement and substantial completion dates, including a list of any contingencies that could change those dates, and whether time is of the essence;
- a description of the labor and materials to be provided and the agreed upon price;
- a notice to the owner concerning potential mechanics' lien claims, the precise language of which is set out in the statute;
- a notice to the owner concerning the contractor's trust fund obligations, unless paid on a time and materials basis for work performed prior to payment;

- if progress payments are to be made, a schedule showing the amount of each payment and specific identification of the corresponding progress of the project at the time of payment (there must be a reasonable relationship between payments and work performed); and,
- a notice of the owner's right to cancel the contract within three days of signing, with an exception for cases where the owner initiates contact with the contractor for emergency repair work.

The statute imposes an affirmative obligation upon contractors to get a signed contract before performing any work or accepting any payment. The statute also provides for various civil penalties, including a \$500 penalty for inducing an owner into a contract using false or fraudulent written statements, a maximum \$100 penalty for minor technical violations of the statutory requirements, and a penalty of up to \$2,500 for failing to comply with trust fund obligations or for more substantial violations of the statutory requirements.

Contractors can mitigate the substantial violation penalty if they can show the violations were not intentional and were erroneous, even though they had procedures in place to avoid such an error. The Attorney General is also authorized to seek an injunction against a contractor who is operating in violation of the statute.

Aside from civil penalties, failing to secure a written contract will limit a contractor to *quantum meruit* recovery for work completed – meaning lost profits and other contractual remedies are not recoverable. If you are a “home improvement contractor,” defined as performing more than \$1,500 of home improvement work per year, you should review your contracts to be sure you are following the law and protecting your contractual rights to recovery.