



## The Grass is No Longer Greener For Landscapers: Budding Legislation Imposes Stringent Requirements For Landscaping In New Jersey

By Richard W. Gaeckle, Esq.

Effective December 31, 2005, any person providing home improvement services to the public must be registered with the New Jersey Division of Consumer Affairs ("Division") and comply with specific requirements as to home improvement contracts pursuant to the Contractors' Registration Act ("Act"). For the purposes of the Act, home improvements apply to any improvement or modification to any part of a residential or non-commercial property. This shall include "construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, [and] porches...." The Act encompasses any such improvement services rendered in connection with a single or multi-unit structure used for residential use, any appurtenant structures, and any portion of the lot or site upon which the structure is located. In short, the Act covers nearly all work performed to any part of the residential property regardless of whether the work is performed to the residence itself or the surrounding landscape. The initial position taken by the Division with regard to landscaping is that if you only mow lawns, you are not subject to the Act; however, "if you plant flowers, shrubs and trees or lay sod or establish a lawn" you are.

In addition to the Division's registration requirements, any person engaged in home improvements must display their assigned registration number conspicuously at their place of business, on all advertising materials and even business vehicles. The home improvement contractor must maintain commercial general liability insurance in the minimum amount of \$500,000 and such proof of insurance must be filed with the Division and provided to every home improvement consumer. Furthermore, all home improvement contracts must be in writing, signed by all parties, and include explicit language allowing the homeowner the right to cancel the contract within three days after signing. The contract must explicitly state the terms of the agreement, the cost of the services, and any finance charges assessed against the consumer. This applies to all contracts for home improvements in excess of \$500.

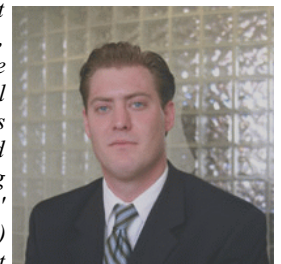
Failure to comply with the Act may result in serious consequences to any individual providing home improvement services. The Act provides that any failure to comply with its provisions shall be a violation of the New Jersey Consumer Fraud Act. In this regard, the contractor may be required to forfeit any payments by the consumer for his services. Additionally, the contractor may be subject to triple the amount of any damages sustained by the consumer. Finally, the contractor may be liable for any attorneys fees and costs incurred in any action by the consumer against the contractor as well as any additional penalties imposed by the Division. Aside from the civil consequences, however, a violation of the Act has penal

ramifications as well. The Act provides that any violation shall constitute a crime in the fourth degree which may be subject to criminal prosecution.

The Act explicitly excludes from its grasp any professionals already subject to regulation, including certified landscape architects. However, this exclusion applies only to the extent that such person is acting within the scope of practice for that profession. The practice of landscape architecture is generally defined as conceptualization, design preparation and contract administration for landscaping projects. Not included within this definition, however, is the physical implementation of the design, such as in a design-build project. At present, legal interpretation of the Act is non-existent. Whether the practice of landscape architecture includes the subsequent construction and implementation of the design for purposes of the Act remains to be seen. Recall, however, that the definition of home improvement services includes the construction, installation, replacement, and improvement of the landscape. Thus, it would appear that while any design and administration services by a landscape architect would be excluded under the Act, any subsequent construction activities to implement the landscape design would likely be construed as home improvement services subject to the Act's requirements.

If you are providing landscaping services which include construction, installation, replacement or improvement of residential landscaping, whether certified as a landscape architect or not, the time to act is now! The Contractors' Registration Act applies to all contracts for home improvement services, including those for landscaping, entered into on or after December 31, 2005. Given its potentially severe ramifications, you do not want to be the first landscaper to test the bounds of the Contractors' Registration Act.

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