

# HIGH SWARTZ

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## LEGAL UPDATE

### *Pennsylvania Home Improvement Consumer Protection Act*

#### **What is the Pennsylvania Home Improvement Consumer Protection Act?**

A Pennsylvania law that puts certain requirements and limitations upon home improvement contractors and their contracts, and mandates certain penalties for non-compliance. The Pennsylvania Home Improvement Consumer Protection Act (“Act”) has been in effect since July 1, 2009.

#### **Who should be concerned?**

Contractors of all trades, home owners and real estate professionals.

#### **Why is this important to you?**

Over a year since the effective date of the Act, many contractors may not be complying fully with the Act, exposing themselves to possible significant liability or loss. Likewise, many home owners are not aware of the Act, or of the very broad protections it affords to them. Real estate professionals should be aware of the Act to the extent that they coordinate work on private residences and can inform their respective sellers and buyers.

#### **What are the specifics of the Act?**

*To whom does it apply?* The Act applies to owners and operators of home improvement businesses, and to persons who offer to undertake, agree to perform, or perform any home improvement, including subcontractors or independent contractors who have contracted with a home

improvement retailer. The Act does not apply to persons who made very low cash value home improvements during the prior taxable year (less than \$5,000) and home improvement retailers having a net worth of more than \$50,000,000.

#### *What constitutes a “home improvement”?*

The term is very broad. The term includes virtually all work, including repairs and most landscaping, of every kind, and of every trade, regarding a private residence, including work upon the land with a cash price of more than \$500.

*Must a contractor register?* Contractors must register with the Bureau of Consumer Protection in the Office of Attorney General of Pennsylvania before holding him or herself out as a contractor or performing any home improvement. Proof of registration must be included by the contractor on all advertisements and on all contracts, estimates and proposals after July 1, 2009.

*Does the Act impose certain requirements on home improvement contracts?* The Act requires, among other things, that home improvement contracts must be in writing, legible, and contain the contractor’s registration number. The contract must be signed by the owner, or his agent, and the contractor or its salesperson, it must contain the entire agreement between the parties and must include all required notices. The contract must include the date of the transaction, and the name, address and telephone number of the contractor. A post office box alone is not a sufficient address.

A home improvement contract must also include the approximate starting date and completion date of the work, a description of the work, the materials and specifications which cannot be changed without a written change order signed by the owner and contractor, the total sales price and must account for any down payment. The Act requires that home improvement contracts be subject to the right of rescission within three business days of the date of signing and that a completed, full copy of the contract be provided to the owner.

*May an owner void a home improvement contract?* A home improvement contract may be voided by an owner if, for example, it contains a hold harmless clause, a waiver of safety or building codes, a confession of judgment clause, a jury trial waiver, a waiver of defenses, or a provision to award the contractor attorney fees and costs.

*Does the Act specifically prohibit certain conduct by a contractor?* Yes. Prohibited conduct includes failing to register as provided by the Act, failing to refund under certain circumstances, accepting a false municipal certification, abandoning or

failing to perform any home improvement contract, deviation from agreed specifications, and false advertising.

*Are there limitations on payments and deposits?* A contractor may not demand or receive any payment for a home improvement contract before it is signed. Also a contractor may not receive a deposit in excess of 1/3 of the contract price plus the cost of special order materials that have been ordered.

*Does the Act create criminal liability?* Yes, the offense of Home Improvement Fraud is created by the Act. Generally, for amounts involving \$2000 or more, a violation constitutes a felony of the third degree. Violations of \$2000 or less generally constitute a misdemeanor of the first degree.

*Are there any special civil penalty provisions?* Yes. It is important to know that a violation of the Act shall also be deemed to be a violation of the Unfair Trade Practices and Consumer Protection Law. That law permits the court to impose up to triple damages and to award attorney fees and costs.



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Mr. Smith's practice focuses on commercial and real estate litigation. Mr. Smith's commercial litigation practice includes the representation of clients in contract and warranty disputes, disputes under UCC-Sales, construction disputes, mechanics' liens, Contractor and Subcontractor Payment Act claims and unfair trade practice claims. Mr. Smith's real estate litigation practice includes adverse possession, easements, boundary disputes, quiet title, reformation and partition. Mr. Smith has served as a court appointed master-in-partition for the Court of Common Pleas of Montgomery County. Mr. Smith's municipal practice includes home rule law as well as municipal litigation.

Please contact Mr. Smith should you wish to discuss this Legal Update, or if you need specific advice.