

By Tirza S. Wahrman, Esq. ©



"The ache for home lives in all of us..." Maya Angelou

I have used this space previously to write about New Jersey's Consumer Fraud Act, and its importance in protecting consumers, homeowners and tenants from a variety of "bad practices." One of the Act's strongest weapons for harmed homeowners is the feature that allows a homeowner who wins in court to collect her attorney's fees. For many of us, our home is our most precious physical asset. To trust our home to a stranger who enters it, promising to do a repair, an addition or renovation on time and on budget, can be a daunting proposition.

Today, we will delve more deeply into what to look for when selecting a contractor, and how the protections of the Consumer Fraud Act can be used to hold home improvement contractors liable for their bad acts.

These are the kinds of questions to ask, when selecting a home improvement contractor.

1. Is the contractor licensed with the Division of Consumer Affairs? Any person or corporation that undertakes home improvements must be registered with the Division of Consumer Affairs. To check that a contractor has the appropriate license, visit <http://www.njconsumeraffairs.gov>. Look for the Office of Consumer Protection icon, and look on the left side of the screen for Home Improvement Contractors.
2. Is the contractor insured? New Jersey law requires a home improvement contractor to carry a minimum liability insurance policy of \$500,000.00. Before he or she starts the work, ask to see the Declarations page of his or her policy.
3. Is the work on my home a "home improvement"? The law defines "home improvements" broadly to include remodeling, altering, painting, repairing or modernizing of residential property. It also includes the construction of additions and work on the property outside of the home, including driveway, sidewalks, swimming pools, patios, landscaping, fences and the like. Even rental properties are covered.
4. Have I been given a written contract? For all home improvements where the cost will exceed \$500, the contractor must provide a written contract. A written contract must include: A. The legal name and business address of the contractor; a description of the work to be done; B. total price to be paid, including any finance charges which apply; C. if the contract is for time and materials, D. the hourly rate for the labor; E. the date when work is to begin and end, or if no dates are given, a time period for completion of the work; F. if the work is being financed, a statement of the existence of the mortgage or any other security interest; G. all guarantees and warranties.
5. Does the work on my home require a permit? As a general rule, minor repairs do not; however, renovations that expand the footprint of the home or increase energy or water usage may require a permit. It's best to check first with the Township and make sure that your contractor is in full compliance with permit requirements.
6. When should I pay the contractor? Many homeowners make the mistake of making full payment up front. Any number of payment arrangements can be agreed to: I counsel homeowners to make a small deposit to start, and make payment only when certain thresholds in the work are achieved. Never agree to make a final payment until you have sign off from the Township inspector that all required permits have been obtained.

How does the Consumer Fraud Act protect me?

Rightly known as one of the strongest consumer protection laws in the nation, the Act is interpreted liberally in favor of homeowners. The State's Division of Consumer Affairs enforces the law and the statute allows individual homeowners to bring actions in Superior Court.

What must you prove to prevail on a claim under the Consumer Fraud Act?

There are three elements that must be satisfied: First, you must show that you suffered an "ascertainable loss." Second, you must show that the contractor engaged in an "unlawful practice." Third, you must show a causal relationship between the ascertainable loss and the unlawful practice.

New Jersey courts interpret the term "unlawful practice" broadly. An unlawful practice can include any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact. An unlawful practice can include any violation of the home improvement regulations that apply to contractors.

For example, suppose your contractor fails to get an interim inspection when he or she has commenced work on your property, and you learn this when you confer with your town inspector. If you terminate your contractor and engage a new one to get the proper inspections done, the additional costs you incur may be recovered if you can show that your additional costs were caused by the first contractor's failure to get the proper interim and final inspections.

Here's another example: the contractor submits plans to the Township indicating he will use a certain kind of material to build an addition. You subsequently learn the contractor used a less expensive material inconsistent with what was described in the plans he submitted to the Township. That is an unlawful act for which you can seek recovery of your damages—that is, the additional costs you incur when you pay to substitute the material you originally contracted to use.

Here's a final example: the contract states that the work will be completed within 30 business days. The work is not completed within that timeframe, and the contractor does not ask for more time, which must be agreed to in writing. Unless the delay is caused by factors outside the contractor's control, the contractor may be liable for an unlawful practice.

Under the statute, a private plaintiff victimized by an unlawful practice can collect three times her damages. This is a powerful incentive allowing private parties to pursue their claims. In addition, a claimant under the Consumer Fraud Act is permitted to collect her attorney's fees, another powerful incentive for homeowners who suffer harm to pursue their claims.

I regularly represent homeowners who have been damaged by the unlawful acts of a home improvement contractor. Know your rights, and call me early in the process for a free consultation.



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