



**CONSTRUCTION CONTRACT & LIEN LAW UPDATE
APRIL 18, 2011**

AGENDA

HOME IMPROVEMENT CONSTRUCTION CONTRACTS

- Consumer Fraud Act (Treble Damages), N.J.S.A. 56:8-1 *et seq.*
- Contractor's Registration Act, N.J.S.A. 56:8-136 *et seq.*
- Sub-Contractor's Exception, Messoka Sheet Metal case
- Writing Requirement, N.J.A.C. 13:45A-16.2(a)(12)
- Name, Business Address & Registration Number, Id.
- Description of Work, Services, Materials or Equipment, Id.
- Total Contract Price and Finance Charges, Id.
- Time to Start & Time to Complete, Id.
- Statement of Warranty, Id.
- Building Permits, N.J.A.C. 13:45A-16.2(a)(10)
- Commercial General Liability Insurance, N.J.S.A. 56:8-142
- Notice to Consumer of 3 Day Right of Cancellation, N.J.S.A. 56:8-151
- Signatures, N.J.A.C. 13:45A-16.2(a)(12)

OVERVIEW OF THE CONSTRUCTION LIEN

- Construction Lien Law, N.J.S.A. 2A:44A-1 *et seq.*
- Determining the Lien Amount, N.J.S.A. 2A:44A-9
- Filing Requirement, N.J.S.A. 2A:44A-6. Commercial 90 days - Residential 60/120 days, N.J.S.A. 2A:44-21
- Residential- Notice of Unpaid Balance/Right to File Lien Claim, N.J.S.A. 2A:44A-20
- Enforcing the Lien - Commence Action within 1 Year, N.J.S.A. 2A:44A-14
- Public Entities - Filing (60 Days); Enforcement (60 Days) N.J.S.A. 2A:44-132,138
- Improper Filing

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N.J.S.A. 56:8-138. Registration requirements

a. On or after December 31, 2005, no person shall offer to perform, or engage, or attempt to engage in the business of making or selling home improvements unless registered with the Division of Consumer Affairs in accordance with the provisions of this act.

b. Every contractor shall annually register with the director. Application for registration shall be on a form provided by the division and shall be accompanied by a reasonable fee, set by the director in an amount sufficient to defray the division's expenses incurred in administering and enforcing this act.

c. Every contractor required to register under this act shall file an amended registration within 20 days after any change in the information required to be included thereon. No fee shall be required for the filing of an amendment.

N.J.S.A. 56:8-139. Persons subject to provisions of act

Except for persons exempted pursuant to section 5 of this act, any person who advertises in print or puts out any sign or card or other device on or after December 31, 2005, which would indicate to the public that he is a contractor in New Jersey, or who causes his name or business name to be included in a classified advertisement or directory in New Jersey on or after December 31, 2005, under a classification for home improvements covered by this act, is subject to the provisions of this act. This section shall not be construed to apply to simple residential alphabetical listings in standard telephone directories.

N.J.S.A. 56:8-142. Commercial general liability insurance

a. On or after December 31, 2005, every registered contractor who is engaged in home improvements shall secure, maintain and file with the director proof of a certificate of commercial general liability insurance in a minimum amount of \$500,000 per occurrence.

b. Every registered contractor engaged in home improvements whose commercial general liability insurance policy is cancelled or nonrenewed shall submit to the director a copy of the certificate of commercial general liability insurance for a new or replacement policy which meets the requirements of subsection a. of this section before the former policy is no longer effective.

N.J.S.A. 56:8-144. Display of registration numbers

a. All registrants shall prominently display their registration numbers within their places of business, in all advertisements distributed within this State, on business documents, contracts and correspondence with consumers of home improvement services in this

State, and on all commercial vehicles registered in this State and leased or owned by registrants and used by registrants for the purpose of providing home improvements, except for vehicles leased or rented to customers of registrants by a registrant or any agent or representative thereof.

b. Any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided pursuant to section 14 of this act.

N.J.A.C. 13:45A-16.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder.

1. Model home representations: Misrepresent or falsely state to a prospective buyer that the buyer's residential or noncommercial property is to serve as a "model" or "advertising job", or use any other prospective buyer lure to mislead the buyer into believing that a price reduction or other compensation will be received by reason of such representations;

2. Product and material representations: Misrepresent directly or by implication that products or materials to be used in the home improvement:

i. Need no periodic repainting, finishing, maintenance or other service;

ii. Are of a specific or well-known brand name, or are produced by a specific manufacturer or exclusively distributed by the seller;

iii. Are of a specific size, weight, grade or quality, or possess any other distinguishing characteristics or features;

iv. Perform certain functions or substitute for, or are equal in performance to, other products or materials;

v. Meet or exceed municipal, state, federal, or other applicable standards or requirements;

vi. Are approved or recommended by any governmental agency, person, firm or organization, or that they are the users of such products or materials;

vii. Are of sufficient size, capacity, character or nature to do the job expected or represented;

viii. Are or will be custom-built or specially designed for the needs of the buyer; or

ix. May be serviced or repaired within the buyer's immediate trade area, or be maintained with replacement and repair parts which are readily available.

3. Bait selling:

i. Offer or represent specific products or materials as being for sale, where the purpose or effect of the offer or representation is not to sell as represented but to bait or entice the buyer into the purchase of other or higher priced substitute products or materials;

ii. Disparage, degrade or otherwise discourage the purchase of products or materials offered or represented by the seller as being for sale to induce the buyer to purchase other or higher priced substitute products or materials;

iii. Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale;

iv. Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home improvements by sample, illustration or model, without the knowledge or consent of the buyer;

v. Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands; or

vi. Misrepresent that certain products or materials are unavailable or that there will be a long delay in their manufacture, delivery, service or installation in order to induce a buyer to purchase other or higher priced substitute products or materials from the seller.

4. Identity of seller:

i. Deceptively gain entry into the prospective buyer's home or onto the buyer's property under the guise of any governmental or public utility inspection, or otherwise misrepresent that the seller has any official right, duty or authority to conduct an inspection;

ii. Misrepresent that the seller is an employee, office or representative of a manufacturer, importer or any other person, firm or organization, or a member of any trade association, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract;

iii. Misrepresent the status, authority or position of the sales representative in the organization he represents;

iv. Misrepresent that the sales representative is an employee or representative of or works exclusively for a particular seller; or

v. Misrepresent that the seller is part of any governmental or public agency in any printed or oral communication including but not limited to leaflets, tracts or other printed material, or that any licensing denotes approval by the governmental agency.

5. Gift offers:

i. Offer or advertise any gift, free item or bonus without fully disclosing the terms or conditions of the offer, including expiration date of the offer and when the gift free item or bonus will be given; or '

ii. Fail to comply with the terms of such offer

6. Price and financing:

i. Misrepresent to a prospective buyer that an introductory, confidential, closeout, going out of business, factory, wholesale, or any other special price or discount is being given, or that any other concession is made because of a market surveyor test, use of materials left over from another job, or any other reason;

ii. Misrepresent that any person, firm or organization, whether or not connected with the seller, is especially interested in seeing that the prospective buyer gets a bargain, special price, discount or any other benefit or concession;

iii. Misrepresent or mislead the prospective buyer into believing that insurance or some other form of protection will be furnished to relieve the buyer from obligations under the contract if the buyer becomes ill, dies or is unable to make payments;

iv. Misrepresent or mislead the buyer into believing that no obligation will be incurred because of the signing of any document, or that the buyer will be relieved of some or all obligations under the contract by the signing of any documents;

v. Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract;

vi. Misrepresent or fail to disclose that the offered or contract price does not include delivery or installation, or that other requirements must be fulfilled by the buyer as a condition to the performance of labor, services, or the furnishing of products or materials at the offered or contract price;

vii. Mislead the prospective buyer into believing that the down payment or any other sum constitutes the full amount the buyer will be obligated to pay;

viii. Misrepresent or fail to disclose that the offered or contract price does not include all financing charges, interest service charges, credit investigation costs, building or installation permit fees, or other obligations, charges, cost or fees to be paid by the buyer;

ix. Advise or induce the buyer to inflate the value of the buyer's property or assets, or to misrepresent or falsify the buyer's true financial position in order to obtain credit; or

x. Increase or falsify the contract price, or induce the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit.

7. Performance:

i. Deliver materials, begin work, or use any similar tactic to unduly pressure the buyer into a home improvement contract, or make any claim or assertion that a binding contract has been agreed upon where no final agreement or understanding exists;

ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

8. Competitors:

i. Misrepresent that the work of a competitor was performed by the seller;

ii. Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor; or

iii. Use or imitate the trademarks, trade names, labels or other distinctive marks of a competitor.

9. Sales representations:

i. Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veterans' organization, or misrepresent the extent of such aid or assistance;

ii. Knowingly fail to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading; or

iii. Misrepresent that the customer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement.

10. Building permits:

i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances; or

ii. Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer by the seller when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

11. Guarantees or warranties:

i. The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time the seller presents his bid as well as at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

12. Home improvement contract requirements--writing requirement: All home improvement contracts for a purchase price in excess of \$500.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including, but not limited to, the following:

i. The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of

principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a description of such products or materials shall be clearly set forth in the contract;

iii. The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials, the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated;

iv. The dates or time period on or within which the work is to begin and be completed by the seller;

v. A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement; and

vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

13. Disclosures and obligations concerning preservation of buyers' claims and defenses:

i. If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer;

ii. No home improvement contract shall require or entail the execution of any note, unless such note shall have conspicuously printed thereon the disclosures required by either State law (N.J.S.A. 17:16C-64.2 (consumer note) or Federal law (16 C.F.R section 433.2) concerning the preservation of buyers' claims and defenses.

N.J.A.C. 13:45A-17.13 Requirements of certain home improvement contracts

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home improvement contract in which a person required to be registered as a home improvement contractor is a party shall comply with the provisions of N.J.S.A. 56:8-151.

N.J.S.A. 56:8-151. Contracts; required terms and conditions

a. On or after December 31, 2005, every home improvement contract for a purchase price in excess of \$500, and all changes in the terms and conditions of the contract, shall be in writing. The contract shall be signed by all parties thereto, and shall clearly

and accurately set forth in legible form and in understandable language all terms and conditions of the contract, including but not limited to:

- (1) The legal name, business address, and registration number of the contractor;
- (2) A copy of the certificate of commercial general liability insurance required of a contractor pursuant to section 7 of this act and the telephone number of the insurance company issuing the certificate; and
- (3) The total price or other consideration to be paid by the owner, including the finance charges.

b. On or after December 31, 2005, a home improvement contract may be cancelled by a consumer for any reason at any time before midnight of the third business day after the consumer receives a copy of it. In order to cancel a contract the consumer shall notify the contractor of the cancellation in writing, by registered or certified mail, return receipt requested, or by personal delivery, to the address specified in the contract. All moneys paid pursuant to the cancelled contract shall be fully refunded within 30 days of receipt of the notice of cancellation. If the consumer has executed any credit or loan agreement through the contractor to pay all or part of the contract, the agreement or note shall be cancelled without penalty to the consumer and written notice of that cancellation shall be mailed to the consumer within 30 days of receipt of the notice of cancellation. The contract shall contain a conspicuous notice printed in at least 10-point bold-faced type as follows:

"NOTICE TO CONSUMER

YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIVING A COPY OF THIS CONTRACT. IF YOU WISH TO CANCEL THIS CONTRACT, YOU MUST EITHER:

1. SEND A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR
2. PERSONALLY DELIVER A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION TO:

(Name of Contractor)

(Address of Contractor)

(Phone Number of Contractor)

If you cancel this contract within the three-day period, you are entitled to a full refund of your money. Refunds must be made within 30 days of the contractor's receipt of the cancellation notice."