

Contractors Need Protection From NJ Homeowner Protections

By **Gary Strong and Madison Calkins** (February 29, 2024)

The New Jersey Consumer Fraud Act was designed to prevent deception and misrepresentation in connection with the sale and advertisement of merchandise and real estate.

Specifically, the CFA attempts to further three main goals: (1) compensate victims for actual losses; (2) punish wrongdoers through the award of treble damages; and (3) "by way of the counsel fee provision ... attract competent counsel to counteract the community scourge of fraud by providing an incentive for an attorney to take a case involving a minor loss to the individual." [1]

However, while the CFA protects innocent homeowners, it is often used as a weapon against sincere, hardworking contractors by homeowners who simply do not want to pay their contractors.

For example, pursuant to the CFA, a homeowner may sue a competent contractor for treble damages for merely failing to include a start and end date in the contract.

Recent New Jersey state legislation, S.B. 1890 and A.B. 2138, concerning more stringent licensing requirements for home improvement contractors, combined with the requirements of the CFA puts contractors at jeopardy for minor technical violations of the new legislation and the CFA.



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The Home Improvement Practice Regulations

The New Jersey Consumer Fraud Act and the Home Improvement Practice Regulations place obligations on contractors in an attempt to protect consumers in relation to home improvement projects.

The CFA and the regulations were originally intended to be used in concert to protect innocent homeowners from fraudulent contractors who would require a homeowner to pay a hefty deposit upfront, and then take the money and walk away from the project without performing any work or without performing quality work.

In many instances, these fraudulent contractors would open a new company shortly thereafter and continue the cycle of deception. This was especially true during the period of time following the natural disasters of Superstorm Sandy and Hurricane Ida.

Honest contractors, however, are now being penalized for the actions of a few bad apples. Now, more than ever, homeowners are either hearing from friends or discovering on the internet that they can succeed on a CFA claim and can recover treble damages and attorney fees for minor violations of the regulations.

Specifically, a contractor who violates the regulations is considered to have committed a per se violation of the CFA. Although a homeowner must show a violation of the regulations and an ascertainable loss in order to actually recover treble damages and attorney fees, if a

contractor violates the regulations, which can be something as minimal as failing to include the contractor's complete home improvement license number on the contract, the damage is done.

There are now grounds for the homeowner to sue the home improvement contractor, who will likely have to place his or her insurance carrier on notice and now must spend time and effort to defend the CFA claim.

Since most cases end in some sort of settlement, when the homeowner commences a lawsuit where there is merely a technical violation of the regulations, the contractor is the one who is ultimately damaged as he or she must pay his or her attorney fees and likely a check to the homeowner to quell the threat of treble damages and attorney fees.

Accordingly, some homeowners make the calculated decision to simply not pay the home improvement contractor and use the CFA as a sword against the contractor.

New Home Improvement Contractor Licensing Requirements

New Jersey law previously did not require contractors to get a license. Rather, contractors only had to register with the state and buy a liability insurance policy, which is far less than what is required of many other professions.

For example, hair stylists must undergo 1,200 hours of instruction and pass a state exam to get a license. Similarly, manicurists must undergo 300 hours of instruction and pass an exam to be licensed.

No proof of training, skill or experience was required to work on a New Jersey resident's home. Additionally, a contractor did not have to provide proof of adequate monetary resources to compensate consumers in the event of defective construction work.

However, this recently changed due to the governor signing S.B. 1890 and A.B. 2138 into law on Jan. 8.

This new legislation, read in concert with the CFA, takes a belt-and-suspenders approach to protect New Jersey consumers from home improvement contractors who fail to complete their work or who do a shoddy job.

The legislation establishes a state board to further regulate home improvement contractors, similar to licensing boards for professionals like doctors and lawyers.

The New Jersey State Board of Home Improvement and Home Elevation Contractors will establish the following: (1) a code of ethics for new and existing home improvement contractors to maintain their license; (2) education standards for new and existing home improvement contractors to earn a license; and (3) experience requirements for new and existing home improvement contractors to earn a license.

Additionally, pursuant to this new legislation, new contractors will either have to complete an apprenticeship or training program, or, in the alternative, have a minimum of two years of experience under the direct supervision of an approved professional in order to obtain a license.

New contractors will also need to pass an exam that will test their knowledge of the field and related state law. Under this legislation, existing contractors will be grandfathered in if

they have the requisite experience.

Although these new regulations were likely a long time coming, the legislation as a whole is flawed. Specifically, this new legislation, read in concert with the onerous provisions of the CFA, is defective in that it does not consider the contractor who may have technically violated the regulations by omitting specific language in the contract but, overall, performs timely and good quality work.

As discussed above, once the lawsuit is filed, the contractor is in it for the long haul. This means retaining counsel, notifying insurance carriers, and expending time and money on an issue that the contractor likely would have corrected if given the proper notice.

Accordingly, the Legislature, as well as the legal system, need to consider ways to balance the needs of the homeowner while also protecting the honest contractors who perform good work.

One way in which this balance can be accomplished includes requiring the homeowner to place the contractor on notice of a technical defect in the contract and allowing the contractor two weeks to cure the defect.

Another idea could be to create a board that would review the CFA claim within the first 90 days of the case to determine if the claims are meritorious, akin to the New Jersey Affidavit of Merit Statute.

Overall, the purpose of the new legislation read in concert with the CFA is commendable; however, there needs to be protection for the hardworking contractor who performs his or her work properly.

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[1] Roberts v. Cowgill, 316 N.J. Super. 33, 45 (App. Div. 1998).