

## Tips to Avoid Claims Under the Massachusetts Home Improvement Contractor Law

It is fairly common for contractors to perform residential construction work without ever executing a contract with the homeowner. Sometimes, the parties “shake on it;” other times, the contractor simply provides the homeowner with a basic invoice identifying the scope of work and a total cost. Whether you are a residential contractor or a homeowner interested in making improvements to your property, you should be familiar with the laws governing home improvement contractors in Massachusetts, including Massachusetts General (“Mass. Gen.”) Laws Chapter 142A.

### VERBAL AGREEMENTS OR SIMPLE INVOICE CONTRACTS LIKELY VIOLATE CHAPTER 142A.

In 1992, the Massachusetts legislature adopted the Home Improvement Contractor (“HIC”) Law, known as Chapter 142A of the Massachusetts General Laws. Even though the law was passed approximately 25 years ago, it is still common for contractors and homeowners to enter into agreements for home improvement work that blatantly violate Chapter 142A. By following a few basic rules with regard to written contracts, contractors may better protect themselves from claims and, importantly, create a road map for homeowners to better understand project scopes and time frames.

#### *Here are some simple rules to live by:*

The HIC Law provides a list of particular provisions that must be included in any home improvement contract for work valued in excess of \$1,000. Those requirements are paraphrased below:

1. The contract must be in writing.
2. The contract must include a clear description of all other documents, plans, drawings and/or specifications that are incorporated into the contract.
3. The contractor must include its HIC registration number, along with complete address information.
4. The date on which the parties signed the contract must be included. The signatures of all parties must be affixed to the contract.
5. The contract must state the date on which the work is scheduled to begin *and* the date on which the work is scheduled to be substantially completed.
6. The contractor must include a detailed description of the project work and the materials to be used.
7. The total contract price must be stated, along with a time schedule of payments. For example, the contractor might

require a one-third deposit upon the parties’ execution of the contract, plus additional payments for completion of future project tasks (e.g. rough framing and electrical, building inspection, finishes).

8. If any deposit is required under the contract before the work starts, the contractor cannot request a deposit greater than one-third of the total contract price.
9. The contractor cannot seek any final payment under the contract until the project work is “completed to the satisfaction of the parties.”
10. The contractor must “inform the homeowner” of any permits required, that the contractor shall obtain necessary permits, and homeowners who secure their own permits will be excluded from the HIC guaranty fund, which may provide monetary protection (up to \$10,000) to homeowners who obtain unpaid judgments against registered contractors.
11. The contract must contain a clear and conspicuous notice stating:
  - a. that “all contractors and subcontractors must be registered by the [HIC] director and that any inquiries about a contractor or subcontractor relating to a registration should be directed to the [HIC] director”;
  - b. that the homeowner has “three-day cancellation rights” (meaning that the homeowner has the right to cancel the contract within three days following its execution);
  - c. any warranties under the contract for the home improvement work;
  - d. that the homeowner has certain rights pursuant to Chapter 142A;
  - e. whether the contractor intends to record any liens against the project property; and
  - f. “Do not sign this contract if there are any blank statements” in ten-point or larger font size directly above the space provided for the parties’ signatures.

*See M.G.L. c. 142A, § 2.*

The foregoing contract requirements are straightforward and promote clear expectations between the contractor and homeowner before the commencement of a project. Moreover, if a contractor fails to satisfy these basic requirements, it may be liable not only for violations of the HIC Law, but also of the Massachusetts Consumer Protection Act, Mass. Gen. Laws Chapter 93A.

### ***Violation of Chapter 142A could lead to multiple damages against the contractor.***

Chapter 142A explicitly provides that a violation of the HIC Law constitutes an unfair or deceptive act under Chapter 93A, the violation of which may support a homeowner's claims for attorney's fees and multiple damages against a breaching contractor. In addition to the written contract requirements, the HIC Law also provides a list of "prohibited acts" that may serve the basis for a homeowner's Chapter 93A claim. Those prohibited acts include, without limitation, the following:

1. Operating without a certificate of registration issued by the Office of Consumer Affairs and Business Regulation.
2. Abandoning the project without justification or deviating from plans or specifications without the homeowner's consent.
3. Failing to credit the owner for payments made.
4. Making misrepresentations that caused or persuaded the homeowner to execute the contract for home improvements.
5. Violating the Massachusetts building code or applicable building laws.
6. Demanding or receiving payment in violation of the contract's time schedule.
7. Conducting a residential contracting business in any name other than the one in which the contractor is registered.

*See M.G.L. c. 142A, § 17.*

### **CONCLUSION**

Home improvement contractors can avoid unnecessary risk by preparing model contracts that comply with Chapter 142A. Furthermore, the legislature has not only identified provisions that must be included in written contracts with homeowners, but also certain prohibited acts the violations of which could lead to multiple damages and attorneys' fee awards against contractors. By abiding by these rules that have been laid out for approximately 25 years, contractors will limit the types of claims brought against them and set better expectations for their home construction projects. **FT**

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