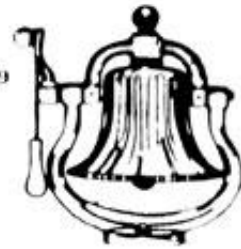


# THE BELLRINGER

2009



**Pennsylvania Burglar and Fire Alarm Association**  
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**NBFAA**

FEBRUARY 2009

## HICPA Update

In late 2008 Pennsylvania enacted the Home Improvement Consumer Protection Act (HICPA), imposing new requirements on home improvement contractors effective July 1, 2009.

### Does HICPA apply to my business?

The answer is yes if you are a contractor and you do more than \$5,000 of home improvement business annually.

### Who is a contractor?

You are if you own or operate a home improvement business or perform any home improvements.

### What is a home improvement?

HICPA defines "home improvement" as any of the following performed at a private residence if the cost is more than \$500:

- 1) Repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation or sandblasting.
- 2) Construction, replacement, installation or improvement of driveways, swimming pools, pool houses, porches, garages, roofs, siding, insulation, solar energy systems, **security systems**, flooring, patios, fences, gazebos, sheds, cabanas, landscaping unless excluded, painting, doors and windows and waterproofing.

Certain activities are not considered "home improvements" and are excluded from the scope of the act:

- 1) Constructing new homes or converting existing commercial buildings into residential buildings;
- 2) The sale of building materials by a seller who only sells the materials;
- 3) Materials furnished for commercial or business use;

### What types of systems are defined as security systems?

Are residential fire alarm systems, personal emergency response systems (PERS), home entertainment systems, home automation systems, telephone systems, etc... included in this regulation? Unfortunately, neither the legislators, nor the Attorney General's office have defined what specifically is defined as a security system. The PBFAA is working through several avenues to seek a clear definition on this term.

### OK, I'm a home improvement contractor. What do I have to do?

First, you must register with the Bureau of Consumer Protection of the Pennsylvania Attorney General. Registration requirements differ slightly depending on whether your business is a sole proprietorship, a partnership or a corporate or similar form. Generally, the information requested is your name, home address, telephone number, driver's license number, social security number, and any names under which you operated a home improvement business in the past. For partnerships and corporations, information as to past businesses must be provided for each partner, officer, or manager. The act includes privacy protections which limit access to personal information.

The registration, which must be renewed every two years, requires that you:

- 1) Provide a complete description of the nature of the business;
- 2) A statement disclosing:
  - a) whether you have ever been convicted of a criminal offense relating to a home improvement transaction, fraud, theft, deception or fraudulent business practices.
  - b) any final civil judgments entered against you relating to a home improvement transaction in the last 10 years, and
  - c) whether you have ever filed for bankruptcy

*continued on page 5*

*HICPA, continued from page 1*

- 3) Whether your certificate or similar license, for your current, or any other past businesses was ever suspended or revoked and if so, the current Status of your licensure
- 4) Whether you have ever been suspended or debarred from participating in any Federal, State, local or non for profit program providing funding or assistance to consumers for home improvements.
- 5) Whether you are registered in another state and, if so, whether you have been subject to any disciplinary action in that state.
- 6) Proof of liability insurance for personal Injury and property damage with minimum limits of \$50,000.

When registration requirements have been met, the state will issue a certificate. There is a \$50 fee for the registration.

**I've registered, Is there anything else I must do?**

**Yes.** HICPA imposes certain requirements on home improvement contracts. Since HICPA becomes effective on July 1, 2009, your contracts will have to be reviewed and in compliance by then. Under HICPA, to be enforceable against the homeowner, a contract must:

- 1) Be in writing, be legible and include your contractor registration number.
- 2) Be signed by the owner and the contractor.
- 3) Contain the entire agreement between the owner and the contractor, including attached copies of all required notices.
- 4) Contain the date of the transaction.
- 5) Contain the name, address (which cannot be a post office box) and telephone number of the contractor.
- 6) Contain the approximate starting date and completion date.
- 7) Include a description of the work to be performed, the materials to be used and a set of specifications. Note that the specifications cannot be changed without a written change order signed by the owner and Contractor.
- 8) Include the total sales price due under the contract.
- 9) Include the amount of any down payment plus any amount advanced for the purchase of special order materials. The amount of the down payment and the cost of the special order materials must be listed separately.
- 10) Include the names, addresses (which cannot be a post office box) and telephone numbers of all subcontractors on the project known at the date of signing the contract.

- 11) Include an agreement to maintain liability insurance in the minimum limits noted above and stating the current amount of insurance coverage maintained at the time of signing the contract.
- 12) Includes the toll-free telephone number for the Bureau of Consumer Protection from which an owner can obtain the registration information about the contractor.
- 13) Includes a notice of the right of rescission. Under HICPA, with certain exceptions, a contract can be rescinded without penalty within three business days of the date of signing.

In addition to specifying terms that must be in the contract, HICPA provides that **including certain terms makes the contract voidable at the option of the owner.** Including such terms in your contracts is now a risky proposition. These terms are:

- 1) A hold harmless clause by which the owner holds you harmless, or indemnifies you, from any liability;
- 2) A waiver of Federal, State or local health, life, safety or building code requirements.
- 3) A confession of judgment clause.
- 4) A waiver of any right to a jury trial.
- 5) An assignment of or order for payment of wages or other compensation for services.
- 6) A provision by which the owner agrees not to assert any claim or defense arising out of the contract.
- 7) A provision that the contractor shall be awarded attorney fees and Costs.
- 8) A clause by which the owner relieves the contractor from liability for acts committed by the contractor or the contractor's agents in the collection of any payments or in the repossession of any goods.
- 9) A waiver of any rights provided under HICPA.
- 10) A provision providing for the automatic or renewal of any provisions of the agreement, unless certain specific requirements are met, including a) a requirement that the contractor must notify the owner of an upcoming renewal and b) a procedure, which must be clearly described, by which the owner can terminate such renewals.

You must provide a copy of the contract, with all required notices, to the owner, without charge at the time the contract is executed.

HICPA permits arbitration clauses, but requires that the arbitration clause appear on a separate page from the rest of the contract, be printed in capital letters in 12-point boldface type, and be separately signed by the parties. The clause must also state clearly whether the decision of the arbitration is binding or may be appealed and whether the proceeding is confidential.

*continued on page 6*

HICPA, continued from page 5

### Is there anything else I should be concerned about?

Yes, several things.

First, HICPA eliminates your ability as a contractor to obtain attorneys fees and costs, but the owner may recover attorney fees and costs, as well as treble damages under the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

Second, the disclosure of any adverse past history, including judgments, means there is more at stake when deciding whether to bring or settle an action.

Third, HICPA provides both civil and criminal penalties for home improvement fraud.

### What is home improvement fraud?

Generally, it's what you might think: (1) making false or misleading statements; 2) failing to return any advance payment when the home improvement has not been performed when specified in the contract; 3) misrepresenting or concealing your real name, the name of the contractor's business, the contractor's business address or any other identifying information when soliciting an owner's business; 4) damaging a person's property for the purpose of inducing that person to enter into a home improvement contract; 5) posing as an employee or agent of the Federal, Commonwealth or municipal government, when soliciting a home improvement contract; 6) misrepresenting an item as a special order item or misrepresenting the cost of the material that is truly special order; 7) altering a document related to home improvement contract, and 8) publishing false or deceptive advertising about home improvement.

### Criminal Penalties

Home improvement fraud is punishable as a felony or a misdemeanor depending on the amounts involved, the age of the owner (more serious penalties are provided for preying on senior citizens) and whether there have been prior convictions.

### Civil Penalties

HICPA prohibits certain acts and makes them a violation of the Unfair Trade Practice and Consumer Protection Law, exposing the violator to the attorney fees and treble damages provisions of that act. A contractor may not:

- 1) Fail to register as required by HICPA;
- 2) Fail to refund the amount paid for a home improvement within ten days of a written request for a refund if no substantial portion of the contracted work has been performed and more than 45 days have elapsed since the starting date specified in the written contract;
- 3) Accept a municipal certificate of occupancy or other proof that performance of a home improvement contract

is complete when he or she knows that the document or proof is false and the performance is incomplete.

- 4) Use a false completion certificate to (i) assign the right to receive payment under a home improvement contract; or (ii) obtain credit using the right to receive payment under a home improvement contract.
- 5) Abandon or fail to perform any home improvement contract unless such conduct is justified. A violation of the contract by the owner, including failure to pay as required provides such justification.
- 6) Deviate from or disregard plans or specifications, in any material respect, without a written change order which must be signed and disclose price changes for each deviation.
- 7) Participate in the financing of a home improvement contract knowing that the contract states a greater monetary obligation than the actual price of the home improvement.
- 8) Advertise to perform home improvements if the person does not intend to do any of the following: (i) Accept a home improvement contract; (ii) Perform the home improvement, or (iii) Charge for the home improvement at the advertised price.
- 9) Demand any payment for a home improvement before the home improvement contract is signed.
- 10) Demand a deposit in excess of one third of the contract price (plus the cost of special order materials) for any home improvement contract in which the total price is more than \$ 1,000.
- 11) As a salesperson, fail to pay to the contractor any payment received in connection with a home improvement contract,
- 12) After entering into a home improvement contract, changes your business name, liability insurance, business address or any other identifying information in a fraudulent or deceptive manner without advising the owner in writing within ten days following any such change.

In recent years, there have been several well publicized cases involving homeowners who have been victimized by unscrupulous home improvement contractors. HICPA is the Legislature's attempt to protect consumers and curb abuses by such contractors. In doing so, however, the Legislature has placed a heavy burden on all contractors, large and small.

You should carefully review your operations, with the assistance of counsel, to determine whether you are subject to the act. If you are, you must meet the registration requirements and should have counsel review your registration filings.

continued on page 17

*HIPCA, continued from page 6*

**You cannot conduct business as you have in the past. For example, how many times have you changed the plans or specifications based on an oral agreement with your customer? Doing so now, without a signed change order which states the price of each such is a violation of HICPA.**

HICPA imposes new requirements and penalizes non-compliance harshly. For those subject to its provisions, it is imperative that counsel review all contracts to assure compliance.

The PBFAA is working on seeking clarification on the various grey areas of this regulation with several legislators, attorneys, a legislative affairs firm, and the Attorney General's office. All members are encouraged to attend their monthly regional meetings to stay up-to-date on what additional info PBFAA has received.

All members are also encouraged to forward any information they receive concerning information they receive on this regulation to the PBFAA State Office.