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HOME IMPROVEMENTS:  
HOW COMPLYING WITH THE NEW JERSEY CONSUMER FRAUD ACT  
CAN PROTECT YOU

By Kathleen McCormick Campi

It has been said that people go into litigation like pigs and come out like sausages and anyone who has ever been involved in a law suit over a home improvement project would be unlikely to disagree. Putting an addition on one's home or remodeling a kitchen can be one of life's most stressful experiences. Most people are novices; they rarely do it more than once and consequently they do not know what to look for in a written contract with their builder to best prevent disagreements. Typically these contracts are drafted by the builder and are not reviewed by attorneys before the parties enter into the agreement. Builders generally lack any formal training in drafting contracts and are working from a bare bones proposal or estimate. The homeowner may have one understanding of what the deal is, while the builder's understanding is significantly different.

It is far better to avoid disagreements and costly litigation by making sure that the contract meets certain basic requirements mandated by the New Jersey Consumer Fraud Act and related legislation. If the homeowner follows some simple steps to insure that the written agreement complies with the Consumer Fraud Act both the homeowner and the builder will be protected and both parties will know exactly what to expect.

The New Jersey Consumer Fraud Act is one of the strongest in the country and is intended to protect consumers in a variety of transactions, including home improvements. Obviously it prohibits outright deceptive practices, such as bait and switch and false misrepresentations, but this article is for homeowners dealing with a reputable builder and is intended to provide guidance as to how to avoid pitfalls that can lead to misunderstandings about each party's responsibility. If the following simple steps are followed before you begin your home improvement project you may save yourself a world of difficulty during and after.

**1. GET IT IN WRITING.** The Consumer Fraud Act and related administrative code provisions require that any contract for home improvement work costing in excess of \$500.00 be in writing and signed by the parties. It is an often overlooked requirement, especially for small home improvement jobs of less than a couple thousand dollars, however it cannot be emphasized enough; a clear written contract is the most important ingredient in protecting yourself and your contractor from later disputes.

**2. GET IT ALL IN WRITING.** The written agreement should contain the full legal name and business address of your contractor, a description of the work to be done, the dates when work will begin and end, the full cost of the work, method of and timetable for payment, and it should state that the builder is responsible for obtaining all necessary building

permits and interim and final municipal inspections of all work done. These are the basics, but in addition it should describe the work to be done **very specifically**, so that both parties know exactly what is included at what cost. It should also describe the materials to be used specifically, with reference to manufacturer, make, model numbers and size or the type, grade and quality of materials to be used.

Since your builder is not a lawyer he may not want to spend hours drafting a detailed contract or hire an attorney to do it for him. The best way to insure that the work is described with sufficient specificity is to incorporate by reference in the written agreement the plans and specifications drawn up by your architect. You have already paid the architect for the plans and specifications, which are quite specific. Now use them! Make sure you are getting from the builder exactly what the architect said was needed for your project. The contract should state that the work “will be done in accordance with the plans and specifications dated June 1, 2002 and prepared by John Smith AIA, a true copy of which are annexed to this contract as Exhibit A.” Then make sure that a copy of the plans and specifications *actually are* attached to the written agreement. If your builder balks at this because he prefers a vague estimate stating merely that he will construct an addition for a family room on your existing house for \$25,000.00, find another builder. It is reasonable for both the homeowner and the builder to view the plans and specifications as the complete description of what work is to be done.

If your builder tells you that something contained in the plans is excluded make sure this exclusion is set forth in the agreement. And if he sets forth that a particular number of items, such as track lights, are included, be sure that number conforms with the plans, i.e. if he says ten (10) lights are included be sure the plan does not call for fifteen (15). The builder may not want

to draft a contract with the necessary specificity and so it is best to simply incorporate the plans and specifications by reference and put the onus on the builder to exclude in writing anything he does not want to provide. If he excludes too much then you will be paying significantly more than his estimate. The bottom line is, let the plans and specifications be your guide and insist that any bid submitted to you be in complete conformance with the requirements contained in them.

**3. IF THERE ARE ANY EXTRAS, GET THEM IN WRITING TOO.** Do not agree verbally to pay for any extras. If the builder comes to you during the project and suggests that you need something not provided for in the original written agreement or you request a change, make sure that you have a written addendum signed by both parties that specifically addresses the extras. For example, if it is for an upgraded window, set forth in the written addendum exactly what the window is, i.e. “Pella model number \_\_\_\_\_ at a cost of \$1,200.00.” This requirement that the extras be in writing is more imperative for the builder than it is for the homeowner because should the homeowner subsequently refuse to pay for the extras the builder cannot recover their cost in a suit, they are disallowed unless agreed to in writing. It will save much confusion and potential disagreement if all extra work is agreed to in writing.

**4. INSIST YOUR BUILDER OBTAIN ALL NECESSARY PERMITS.** A building permit will be necessary for any significant home improvement work. Reputable builders obtain building permits. If your builder suggests that a permit is not necessary, find another builder. The issuance of a building permit means that there will be periodic inspections of the work, including plumbing, electrical and construction, which will insure that the work complies with the building code. While these inspections are no guarantee that the work will be

perfect, they do afford the homeowner some measure of protection from shoddy work or work that does not comply with the building code. It will also mean that when the work is completed you will receive from the municipality a final approval of the work or a certificate of occupancy certifying that the work was completed according to code. It is the builder's responsibility to provide the final certificate of occupancy and it is a violation of the Consumer Fraud Act for a builder to request final payment before a certificate of occupancy or final municipal approval has been obtained.

**5. DO NOT MAKE FINAL PAYMENT UNTIL ALL WORK IS COMPLETED AND FINAL APPROVAL OBTAINED.**

Usually the builder will want to be paid one-third of the total cost up front, one-third halfway through the job and the balance upon completion. Sometimes the parties make different payment arrangements, with more or less installments. Whatever arrangement you are comfortable with be sure that the final payment is sufficient to insure completion of the work and is not due until completion of all the work and issuance by the municipality of final approval of the work and a certificate of occupancy. Be sure that the amount of the final payment is sufficient to insure the builder's continued interest in finishing the project and obtaining the necessary final approval. If he has already received the lion's share of what is due it may not be worth his while to return and finish.

As stated above, it is the builder's responsibility to obtain all necessary final municipal approvals and/or certificates of occupancy for the work. Do not let them tell you that it is not their responsibility. Any reputable builder should know that it is a legal requirement that he obtain final approval. It is also a violation of the Consumer Fraud Act for a builder to request final payment for work before it is completed and final municipal approval obtained. Copies of

all certificates of occupancy or final municipal approvals should be given to you by the builder before final payment is made. Do not sign anything stating that the work is complete until you have this paperwork in hand.

**6. GET A WARRANTY OR GUARANTEE OF THE WORK.** If the builder says he stands behind his work that is great, but get it in writing. He should be willing to put in the written agreement that he warrants the work to be free of defects for at least one year and free of major structural defects for ten years. If your builder refuses, get another builder. Your builder should also pass along to you any written warranties for material or appliances and this, too, should be provided for in the contract.

Taking care to include the above items in the written agreement will go a long way toward preventing potentially costly disputes with your builder. If the above requirements are not met, builders are at risk under the Consumer Fraud Act. If a builder sues a homeowner for monies claimed due and has violated the requirements of the act he is at risk not only of not recovering but of having to pay some portion of the attorney's fees incurred by the homeowner in defending. If the homeowner files suit the builder is at risk for damages caused by him and also for any portion of the homeowner's attorney's fees flowing from his breach of the Consumer Fraud Act.

But the cautious homeowner will not rely on the provisions of the Consumer Fraud Act for protection after the deal has gone sour. It is far better to make sure there is compliance before the work begins. The requirements for home improvements are intended to insure that agreements are reduced to writing and contain terms sufficient to protect homeowners from

overreaching by builders, but compliance will actually protect both parties by assuring that their expectations are as consistent as possible from the outset. The result will be a homeowner who loves their improved home and refers their friends to their builder.