

**DID YOU KNOW THERE IS A STATUTE THAT GOVERNS A HOME
IMPROVEMENT CONTRACT BETWEEN HOMEOWNER AND CONTRACTOR...
AND THERE ARE RECENT STATUTORY CHANGES**

By: Michael P. Sams, Esq.
John G. Hofmann, Esq.
Kenney & Sams, PLLC

Rice Building
10 High Street
Boston, MA 02110

Reservoir Nine
144 Turnpike Rd., Suite 350
Southborough, MA 01772

Introduction

The legislature enacted the Home Improvement Contractor (“HIC”) statute, G.L. c. 142A, on July 1, 1992. At the time, there was a perception that too many home improvement projects were ending in disagreement as the result of confusion in what the parties agreed to in their contract. Many contracts were oral and did not clearly identify the work to be completed, the price for the work, or payment deadlines. In response, the HIC statute sets out rigid guidelines for parties to follow when contracting for home improvements with the intent being to protect homeowners. In addition, the statute created the Residential Contractor’s Guaranty Fund, and provided for administrative and other penalties for violation of the HIC statute.

On November 14, 2024, the state Legislature passed a sweeping economic development bill. This bill is the statewide plan put together by the Executive Office of Economic Development at the start of every Governor’s four-year term of office, as a joint effort between the Governor and the state Legislature. Governor Maura Healey signed the bill on November 20, 2024.

The bill contains nearly \$4 billion worth of investments and tax credits, as well as many policy changes, including amendments to chapter 142A, the Home Improvement Contractor statute.

The changes to chapter 142A are significant and will have obvious implications for both homeowners who hire contractors, and those contractors who are hired to complete home renovations and improvements.

The bill eliminates one section and makes amendments — effective as of November 20, 2024 — to six of the remaining 20 sections. Most important are significant changes to the actual numbers included in the statute.

Did You Know That:

The statutory requirements for HIC contracts are important but often overlooked or misunderstood. The following “*Did You Know*” highlights some of the important points where the HIC statute applies and the potential repercussions for failing to comply with it.

- The Statute sets forth specific guidelines for contracts between homeowners and contractors/subcontractors who solicit, bid on, or perform residential contracting on an existing primary residence (it does not apply where there are more than four residential units in a multi-family building)?
- Any contract for work costing more than \$1,000 must be in writing?
- The contract must contain the registration numbers of the contractor/subcontractor?
- Dates when work will begin and end?
- A description of work and materials?
- The total amount to be paid for the work and a payment time schedule?
- Written notice that the owner of the building has a right to cancel the contract within three days of signing?
- Express warranties and the owner's rights under G.L. c. 142A?
- The contract must contain the dates when work will begin and end?
- The contract must contain a description of work and materials?
- Contractors are explicitly prohibited from the following actions: advertising or operating without a certificate of registration and registration number, false advertising, conducting business under a name other than one registered, making material misrepresentation in order to procure a contract, knowingly contracting beyond the scope of registration, abandoning a project without justification, deviating from plans or specification without the owner's consent, failing to properly credit payments to the homeowner and acting as a mortgage broker or agent for a mortgage lender?
- A homeowner may seek relief in superior court, district court, small claims court, or through a private arbitration program created by the HIC statute?
- All registered contractors and subcontractors who contract for residential improvements impliedly consent to the arbitration provisions of §4 of the statute?
- Although a homeowner can select either court or arbitration as the forum to resolve their dispute, for a contractor or subcontractor to initiate arbitration, an alternative dispute resolution provision must be included in the contract, separately signed and dated by the parties?
- A claim for arbitration must be filed within two years from the date of the contract?

- The HIC statute established a Residential Contractor's Guaranty Fund (the "Fund") as a source of last resort to compensate owners for judgments against contractors which have not been paid?
- A homeowner may apply to the Fund for compensation within six months after obtaining a judgment or arbitration award if all of the following conditions are met: all building permits were obtained by the contractor; the court or arbitrator rules that the work was performed in a poor or unworkmanlike manner, or was in violation of a consumer protection statute (such as Mass. Gen. L. ch. 93A or Mass. Gen. L. ch. 142A § 17); and the homeowner has exhausted all customary and reasonable efforts to collect the judgment before applying to the Fund?
- The Fund Administrator will seek reimbursement from the contractor or subcontractor responsible for the claim after making payment out of the Fund to a prevailing homeowner?
- If a contractor has not repaid the Fund within thirty days of notification from the Fund Administrator, the Administrator may recommend that the contractor's registration be revoked?
- Following revocation for failure to repay the Fund, the contractor will not be eligible for renewed registration until the entire amount of the claim, including interest from the date of disbursement, has been repaid?
- The Attorney General may initiate legal proceedings against the contractor/subcontractor for the amount of the claim satisfied by the Fund?
- If the chief administrator of the Board of Building Regulations and Standards determines that a contractor or subcontractor has violated the HIC statute, he may suspend or revoke a certificate of registration, reprimand the registrant, and may assess an administrative penalty not to exceed \$2,000 per violation, payable within thirty days and deposited in the Fund?
- A contractor or subcontractor who knowingly, willfully, or negligently operates without a certificate of registration, operated during suspension or revocation, or fails to renew, may be punished by a fine not exceeding \$5,000 or imprisonment not exceeding two years, or both?
- A contractor who knowingly and willfully violates any provision of the HIC statute may be punished by a fine of not more than \$2,000 or by imprisonment not exceeding one year, or both?
- When the Director feels a contractor's conduct may harm a Massachusetts citizen, he may seek a temporary or permanent injunction to halt the conduct, and may also seek restitution or an order requiring satisfactory completion of the contract?

- That when a violation of the HIC statute occurs, resulting in damages to the homeowner, the homeowner can recover damages, costs and attorney's fees. The Court also has discretion to double or treble any damages assessed.

Changes to the Statute

For example, the numbers in Section 4 of chapter 142 have been changed: from “two” to “5.” The former version of Section 4 required that claims for arbitration be filed within “two years from the date of the contract.” Now, an arbitration claim has to be filed within “5 years from the date of the contract.” That change *more than doubles* the time an owner has to file a claim for arbitration. The purpose behind this change is clearly to give homeowners much more time to pursue arbitration, and to encourage the use of arbitration to resolve these disputes. Contractors can expect to have to arbitrate more claims, for work completed within the last 5 years.

Likewise with Section 7. The maximum amount a homeowner can recover from the Guaranty Fund has been more than doubled, from \$10,000 to \$25,000. And the total amount that can be recovered in a calendar year because of any single contractor has also been increased, from \$75,000 to \$150,000. This change likely reflects simple inflation, and the increased costs of labor and materials.

And under the new version of Section 7, a homeowner now has 7 years from the date of the contract to file a claim with the Fund (if they have also complied with section 3 and obtained a judgment or arbitration award). The old version required a homeowner to file a claim with the Fund within 6 months of obtaining a judgment or arbitration award.

Besides larger dollar amounts and longer time periods, the amendments also lower the quantum of proof for an owner to be able to collect from the Fund. The old version spoke of a claimant having “exhausted all such customary and reasonable efforts” to collect a judgment or arbitration award from a contractor. Now, the standard is showing the homeowner has made “reasonable efforts” to collect the judgment or arbitration award. This new language appears in both Section 5 and 7.

The amendments have also added more protection for homeowners from allegedly unscrupulous home improvement contractors. Under a new sub-paragraph of Section 9, when a contractor applies for an initial or renewal of his or her registration, a CORI check will be conducted. New paragraph (e) says that if a CORI check shows the applicant has been convicted of “gross fraud or cheat at common law, as defined in section 76 of chapter 266,” then that CORI result shall be transmitted to the director. The words “gross fraud or cheat,” however, are not actually defined in section 76. And it is not clear exactly what the director can or must do with that information — deny the application or renewal, take it into consideration, or merely add it to the applicant's file?

Perhaps the answer lies in the changes to Section 17. That section, which lists examples of conduct that are prohibited, has three brand new sections. New paragraph (17) says that gross fraud or cheat, under ch. 266, section 76, is prohibited. New paragraph (18) is a reciprocal

discipline provision — if a contractor’s license is “revoked, cancelled, suspended, not renewed or otherwise acted against” in another jurisdiction, that can constitute a violation of chapter 142A. Under new paragraph (19), a contractor is prohibited from not repaying the Guaranty Fund (plus interest) for any amount the Fund pays because of that contractor’s (mis)conduct.

New paragraph (20) is simply old catch-all paragraph (17), providing that “violating any other provision of this chapter” is prohibited. The Legislature also added a new paragraph to the end of this section. It clarifies that “the conduct of a contractor or subcontractor shall be deemed to include the conduct of their agents, employees, salesperson or subcontractors, whether or not an express relationship exists, if the work or activities is within the scope of the contract and not for additional work beyond the contract undertaken by separate agreement with the owner.”

Finally, a sentence has been added to the first paragraph of section 18 of chapter 142A. It states that the director may enter into a “consent agreement with a registrant to impose 1 or more administrative penalties.” This provision, together with the new reciprocal discipline provision of section 17, indicate that a contractor’s registration is being treated more like a professional license, as overseen by the state’s Division of Occupational Licensure and the 26 boards of registration under it.

In sum, these changes represent substantial changes to the Home Improvement Contractor statute — that contractors, subcontractors and homeowners need to be aware of.

Conclusion

It is essential that contractors be familiar with the HIC statute. Complying with it will lessen the potential for confusion and disagreements. Moreover, a contractor’s failure to follow the statute can result in substantial penalties, including revocation of its registration, fines, and the assessment of treble damages and attorney’s fees should the homeowner file suit.