

## WHAT MUNICIPALITIES NEED TO KNOW ABOUT THE NEWLY ENACTED HOME IMPROVEMENT CONSUMER PROTECTION ACT

On July 1, 2009 the newly enacted Home Improvement Consumer Protection Act ("HICPA") will take effect. This legislation is generally intended to protect consumers from dishonest contractors by establishing statewide registration and licensure requirements for home improvements contractors. Under HICPA, contractors will be required to be licensed with the Attorney General's Bureau of Consumer Protection, maintain minimum insurance coverage and use written contracts that contain important information about the contemplated work. From the standpoint of a municipality, it is important to understand how HICPA affects your local contractor licensing and registration requirements.

### GENERAL OVERVIEW OF HICPA

HICPA applies to any person<sup>1</sup> who owns and operates a home improvement business or who undertakes, or agrees to perform any "home improvement." It defines a "home improvement" as work performed on a private residence or in connection with land or a portion of land adjacent to a private residence. There are numerous examples of work specifically listed in HICPA, but examples would include demolition, remodeling, rehabilitation, modernization and general repairs to private residences. However, it would not apply to work with a total price less than \$500.00. HICP only covers work on existing homes. It specifically excludes new home construction.

As stated earlier, a contractor must enter into a written agreement with the owner of a private residence that meets certain criteria. The contract must be signed by all parties and must include the following information:

- all terms of the agreement, including the sales price, amount of down payment, amounts advanced for purchase of special materials, date of the transaction, start date, completion date, description of all work to be performed, materials to be used, and the specifications of the work completed;
- contractor's name, address, telephone number and registration number;
- names, addresses, telephone numbers and registration numbers of all subcontractors known at the date of the agreement;
- contractor must agree to maintain liability insurance in amounts not less than \$50,000.00 for coverage involving personal injury and property damage, along

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<sup>1</sup> HICPA also applies to subcontractors and independent contractors. HICPA also defines a Person as "[a]n individual, partnership, limited partnership, limited liability company, joint venture or corporation."

with a statement identifying the current insurance policy limits that are maintained by the contractor at the signing of the agreement:

- Toll-free number to Bureau of Consumer Protection; and
- Notice of the owner's right to rescind contract within 3 days of signing under the Unfair Trade Practices and Consumer Protection Law.

In addition to HICPA setting forth what must be in a contract between an owner and contractor, it also prohibits the inclusion of certain clauses being added to the contract. Some of the examples of voidable clauses include "hold harmless" clauses, waivers of safety/building code requirements, waiver of a jury trial, waiver of rights under HICPA, and provision wherein the owner would agree not to assert any claims or defenses in the event of a dispute.

HICPA further establishes a new criminal offense identified as "home improvement fraud", which will be enforceable by the Attorney General's office and county District Attorneys. This enforcement provision applies under a multitude of potential fraudulent acts by contractors, and would be either a misdemeanor or felony criminal offense based upon factors such as the amount of money involved in the transaction and the age of the victim.

Under HICPA, a contractor must register with the Attorney General's Bureau of Consumer Protection by submitting an application for a certificate, or renewal of a certificate and each application must be accompanied by a fee of \$50. Renewals of the certificate must be made on a biennial basis by a contractor.

#### PRE-EMPTION OF LOCAL MUNICIPALITY REGISTRATION AND LICENSING

As many municipalities have adopted registration ordinances mandating contractors working in their jurisdiction to be licensed, the question presented is whether HICPA will affect the validity of these ordinances? HICPA contains a specific provision addressing preemption of local registration and states that "[r]egistration under this act shall preclude any requirement of payment of a fee or registration or licensing of any home improvement contractor by any political subdivision." Accordingly, as to the licensing of home improvement contractors, as defined in the Act, the Act clearly preempts local registration or licensing requirements. The definition of "home improvement" in the Act, however, is clearly limited to work involving private residences. Therefore, local municipality registration and licensing ordinances will still remain valid with respect to all other contractors other than those specifically defined "home improvement contractors." For example, local registration and licensing requirements for contractors doing non-residential improvements and commercial construction are permissible. Moreover, since HICPA does not cover new home construction, contractors involved in building new residences may still be subject to licensing and registration requirements on a local level. Thus, unless a contractor's work is solely limited to home improvements as defined in the HICPA, the Township can still require local registration and licensing of contractors. We have attached a copy of the definition of a "home improvement" contained in Section HICPA to help you better understand how home improvements are defined.



HICPA also contains express provisions that do not affect a township's responsibility under the Pennsylvania Construction Code Act, or the Workers' Compensation Act. Thus, a municipality can continue to require that home improvement contractors demonstrate they have worker's compensation insurance as a condition of issuing permits under the building code.

Finally, HICPA does not affect local regulations or standards for liability insurance in effect as of January 1, 2006. Therefore, if a municipality has more stringent insurance requirements in place as of January 1, 2006, it may continue to enforce those provisions as conditions to the issuance of a building permit.

#### SUMMARY

HICPA will help our citizenry avoid costly damages due to contractor fraud and incompetence. However, for municipalities desiring to adopt ordinances for contractor licensing and registration, and for those with such ordinances in place, careful analysis must be undertaken to make sure these local ordinances will not run afoul of HICPA. We will keep you updated as the Attorney General's Bureau of Consumer Protection moves forward to implement HICPA including any regulations that may be adopted by the Bureau throughout the year. If you have any questions, please feel free to call or email.