

**DID YOU KNOW THERE IS A STATUTE THAT GOVERNS A HOME
IMPROVEMENT CONTRACT BETWEEN HOMEOWNER AND CONTRACTOR**

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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.

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

DID YOU KNOW THAT:

- The Statute sets forth specific guidelines for contracts between homeowners and contractors/subcontractors who solicit, bid on, or perform residential contracting on an existing one to four unit owner-occupied 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.

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.