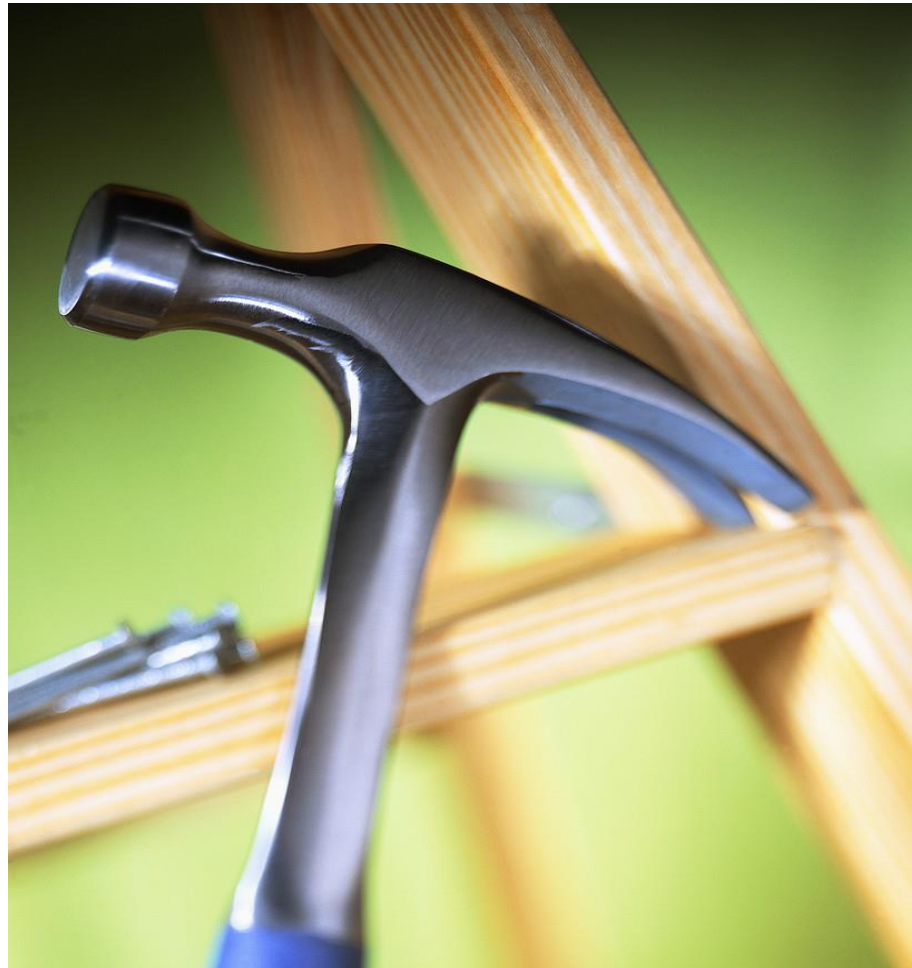
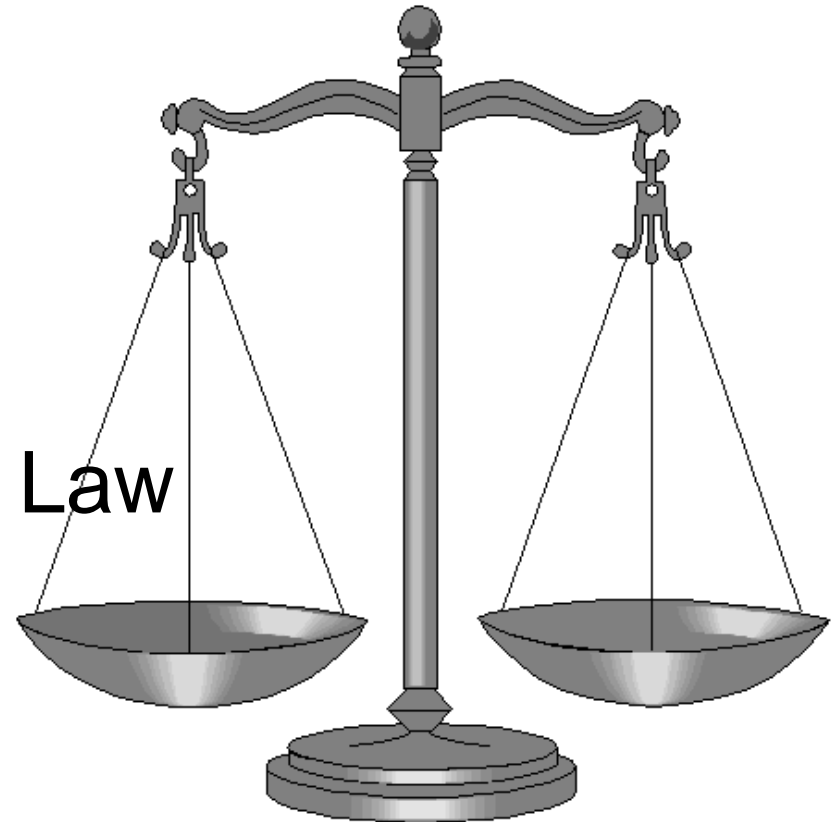


Home Improvement (HI) Contracts



State Laws that Apply to Home Improvement (HI) Contracts

- a. HI Contracts Law
- b. Lien Law
- c. Door to Door Sales Law



The Role of the Attorney General



- can bring legal action to under above laws
- will assist local District Attorneys in bringing criminal charges
- public education re choosing and dealing with HI contractors
- Outreach talks and meetings
- www.nyknowyourcontractor.com

HI Contracts Law

What does this law do?

- Requires a signed, written contract **BEFORE** beginning work under a HI contract.
- Tells you what provisions must be in the contract
- Tells you how much money you can take up front
- Tells you what you must do with the money

What is a Home Improvement Contract?

HI Contract is a contract for “home improvement” work between a “HI Contractor” and an “Owner” where the total contract price is more than \$500.



All these need to be there:

- If the work is for \$500 or less, it's not an HI contract and not subject to the law.
- If the person you are working for is not the "owner," it is not subject to the law
- If you are not a "home improvement contractor," law doesn't apply
 - If the work is not "home improvement" (e.g., you are repairing a piano), law doesn't apply

Who is a home improvement contractor?

- If you do more than **\$1,500** in home improvement work in an period of more than **12 months**, you are a HI contractor. Exception: if you are an employee or co-owner of the property

Who is an owner?

An owner or a tenant of residential property.

- So ... if you are contracting with a landlord, it is not a home improvement contract.
- If you are contacting with a general contractor and you are a sub(contractor), your contract is NOT a home improvement contract and is NOT subject to the law.

What is “home improvement”?

- the repairing, remodeling, altering, converting, or modernizing of, or adding to, **residential property** and shall include, but not be limited to, the construction, erection, replacement, or improvement of **driveways, swimming pools, siding, insulation, roofing, windows, terraces, patios, landscaping, fences, porches, garages, solar energy systems, flooring, basements**, and other improvements of the residential property and all structures or land adjacent to it.

What is “home improvement?”

- Includes installation of burglar alarms, texture coating, fencing, air conditioning, heating equipment, and any other goods which ...become a part of real property whether or not severable therefrom.
- Does NOT include installation of appliances that are removable or installation of decorative goods like drapes or carpets.
- Does NOT include warranty work.

What is “home improvement?”

- Some highlights: things which are HI under the law that we don't think of as HI:
 - **landscaping** (e.g., pruning trees or taking them down, planting shrubs, etc.)
 - **installing fences or garden sheds**
 - **excavation** – putting in a driveway or putting in the pad for double-wide.

What is “home improvement”?



- Building a “**custom home**,” i.e., on land owned by the consumer. Could be stick built, modular, or log.

What must be in a HI Contract?



Contract Provisions - General

- Contract must be IN WRITING
- SIGNED by BOTH PARTIES before work begins
- Any CHANGES must be IN WRITING

Contract Provisions - General

- Anticipated **START** and **COMPLETION DATES**
 - List of things which might delay either of above
 - Is time “of the essence”?

Contract Provisions (cont.)-

General

- Description of work to be done
- Description of materials to be provided
- The total \$ amount due from the customer (unless time and materials contract)

Contact Provisions (3) – Claim for Unpaid Work

- Notice that a contractor's or materialman's **lien** could be placed on house if contractor, subs, or suppliers not paid (must be in bold face type)

Contract Provisions (4)- Progress Payments

- Dates and DOLLAR AMOUNTS of all **PROGRESS PAYMENTS**
- Specific completion events that trigger progress payments

-
- *NOTE: Progress payments must bear reasonable relationship to the work performed and / or materials purchased.*
 - *NOTE: Above not required in “time and materials” contracts*

Contract Provisions (4) – Deposit and Separate Accounts

- Notice that the contractor is required to **put any deposits in separate bank account within 5 days**
- Name of bank (or supply within 10 days)

Lien Law – Requirements (1)

- Deposits under HI contract must be put into a separate bank account until used for purposes of the contract
- Must be deposited within 5 days after receipt of funds.

Lien Law – Requirements (2)

- **You don't need a separate account for each job.** It is sufficient to have a bank account separate from your general business account. For example, you can have the “Acme Building Co. General Business Account” and the “Acme Building Co. Customer Deposit Account.”

Lien Law – Requirements (3)

Funds **remain the property of the consumer** until properly transferred to the contractor for purposes of the contract.

➔ You cannot use one customer's downpayment to fund another's job!

Lien Law – Penalties

- What these requirements do:
- It is **ILLEGAL** to use payments from one job to fund another (“kiting”)
- Make it a **CRIMINAL OFFENSE** to take funds out of the customer account for purposes other than your expenses and profit related to that job

Contract Provisions (6) - Cancellation

- Notice of **UNCONDITIONAL 3-day right to cancel**
“In addition to any right otherwise to revoke you may have under law, you may cancel this home improvement contract until midnight of the third business day after the day on which you signed it. Cancellation must be IN WRITING. Cancellation occurs when written notice of cancellation is given to the contractor or put in the mail to the contractor at the address above with proper postage.”
- *NOTE: Above does not apply in real emergency situations, as described, where customer acknowledges in writing the need for emergency service and that s/he has no 3-day cancellation right.*

Contract Provisions (7) – Financing Disclosure

- Disclosure must be made to the customer of any connection you have with any party financing the home improvement
- Written agreement of customer to proceed in light of this disclosure

HI Law – Penalties

Technical Violation: **\$100** per contract

Substantial Violation: **\$250-\$2,500**
per contract

Door-to-Door Sales

- Door to door sales law applies to most home improvement contracts signed at the consumer's home unless
 - Contractor has a showroom or
 - Work is limited to repair of personal property

Door-to-Door Sales (2)

- Requires this language or similar in bold print near signature line
- **“YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.”**

Door-to-Door Sales (3)

- *Cancellation notice must meet a number of requirements, including (among others) that it be in duplicate, attached to contract but easily detachable and in not less than ten-point bold face.*
- Use the language found on the “Notice of Cancellation” attached to the end of the handout.
- Include your refund policy. If you do not, then the seller may be entitled to a full cash refund, as provided in the statute.

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