

Required Home Improvement Contract Provisions

Prepared by Glen F. Michaels, Assistant Attorney General, New York State
Revised January 1, 2006

Note: The purpose of this summary is to assist home improvement contractors and their attorneys in drafting agreements which comply with the New York State Home Improvement Contracts Law, found at General Business Law, Article 36-A, sections 770 and following. Other provisions of law and court interpretations of these statutes may be relevant to particular contract situations. Therefore, it is important for contractors and their attorneys to examine the entire Home Improvement Contracts Law, as well as Lien Law, Article 3-A, and Personal Property Law, Article 10-A. Use this summary only as a helpful "starting place" and not as a final interpretation of the law.

The Law

Summary of Requirement(s)

General Business Law § 771.

Contract provisions	§	Contract must be IN WRITING
1. Every home improvement contract subject to the provisions of this article, and all amendments thereto, shall be evidenced by a writing and shall be signed by all the parties to the contract. The writing shall contain the following:	§	SIGNED by BOTH PARTIES
	§	Any CHANGES must be IN WRITING
(a) The name, address, telephone number and license number, if applicable, of the contractor.	§	Contractor's name, address, and phone number and (if applicable), license number
(b) The approximate dates, or estimated dates, when the work will begin and be substantially completed, including a statement of any contingencies that would materially change the approximate or estimated completion date.	§	Anticipated START DATE
	§	Anticipated COMPLETION
	§	List of things which might delay either of above
(b) [continued] In addition to the estimated or approximate dates, the contract shall also specify whether or not the contractor and the owner have determined a definite completion date to be of the essence.	§	The following or similar language: "Is time of the essence in the completion of this contract? <i>check one</i> <input type="checkbox"/> Yes <input type="checkbox"/> No"

The Law

Summary of Requirement(s)

(c) A description of the work to be performed, the materials to be provided to the owner, including make, model number or any other identifying information, and

§ Description of work to be done
§ Description of materials to be provided

(c) [continued] the agreed upon consideration for the work and materials.

§ The total amount due from the customer

(d) A notice to the owner purchasing the home improvement that the contractor or subcontractor who performs on the contract or the materialman who provides home improvement goods or services and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws. Such home improvement contract shall also contain the following notice to the owner in clear and conspicuous bold face type:

§ The following language (in bold face type):

“The contractor or subcontractor who performs on the contract or the materialman who provides home improvement goods or services and is not paid may have a claim against the owner which may be enforced against the property in accordance with the applicable lien laws. Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to your home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing of a mechanic's lien may invalidate such lien. The owner may contact an attorney to determine his rights to discharge a mechanic's lien.”

[Required language is in right-hand column]

(e) A notice to the owner purchasing the home improvement that, except as otherwise provided in paragraph (g) of this subdivision, the home improvement contractor is legally required to deposit all payments received prior to completion in

The Law

Summary of Requirement(s)

accordance with subdivision four of section seventy-one-a of the lien law and that,

Lien Law §71-a(4).

(a) Under a home improvement contract, payments received from an owner by a home improvement contractor prior to the substantial completion of work under the contract shall be deposited within five business days thereafter by the recipient in an escrow account in a bank, trust company, savings bank, or state or federal savings and loan association, located in this state. No depository institution acting on the instructions or otherwise dealing with a home improvement contractor shall be obliged to inquire into the validity or propriety of any deposits to or withdrawals from any escrow account established by the home improvement contractor in compliance with this subdivision or to insure that any withdrawals from such account are applied for any specific purpose or purposes by the home improvement contractor. Such deposit or deposits shall remain the property of such owner except as otherwise provided herein. Unless the home improvement contract specifies the name of the depository where the funds will be placed, no later than ten business days after the deposit has been made, the recipient shall advise the owner in writing of the name of the depository where the funds have been placed. The recipient shall not be required to keep in separate depository accounts the funds of the separate owners from whom payments have been received, provided his books of account shall clearly show the allocation to each owner of the funds deposited in his general or special depository account or accounts.

* * *

(e) The recipient shall not withdraw deposits from the escrow account in excess at any time of the total amount shown in the schedule of payments in the home improvement contract. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials purchased, or expenses for which the contractor would be obligated.

§ The following or similar language:

“The contractor is required to deposit all payments received from you prior to substantial completion of the work in a separate bank account no later than five (5) business days after receipt by the contractor.
(check one)

G These funds will be on deposit in account number _____ at

(e) [continued] In lieu of such deposit, the home improvement contractor may post a bond, contract of indemnity or irrevocable letter of credit with the owner guaranteeing the return or proper application of such payments to the purposes of the contract.

The Law

Summary of Requirement(s)

(Name of Bank, Branch Location)

G No later than ten (10) business days after receiving funds, the contractor will provide you with the name of the banking institution in which your funds have been placed.

In any case, the contractor may not withdraw or use these funds (i) except for purposes of fulfilling this contract and (ii) in amounts in excess of the total shown in the schedule of progress payments.”

NOTE: Above paragraph is not required if a bond or irrevocable letter of credit is provided and the customer is notified of this

(f) If the contract provides for one or more progress payments to be paid to the home improvement contractor by the owner before substantial completion of the work, a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

The Law

Summary of Requirement(s)

The Law

Summary of Requirement(s)

The Law

Summary of Requirement(s)

(g) If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of paragraph (f) of this subdivision, and shall not be required to be deposited in accordance with the provisions of paragraph (e) of this subdivision.

(h) A notice to the owner that, in addition to any right otherwise to revoke an offer, the owner may cancel the home improvement contract until midnight of the third business day after the day on which the owner has signed an agreement or offer to purchase relating to such contract. Cancellation occurs when written notice of cancellation is given to the home improvement contractor. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of the owner not to be bound.

NOTE: Above not required in "time and materials" contracts

§ The following or similar language:

“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.”

The Law

Summary of Requirement(s)

(h) [continued] Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which the owner has initiated the contact and the home improvement is needed to meet a bona fide emergency of the owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the owner's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this paragraph the term "owner" shall mean an owner or any representative of an owner.

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 must be legible and in plain

§ If the contract references another

2. The writing shall be legible, in plain English, and shall be in such form to describe clearly any other document which is to be incorporated into the contract.

2. [continued] Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor. The writing may also contain other matters agreed to by the parties to the contract.

The Law

Summary of Requirement(s)

§ Customer must be given a copy of

§ 771-a. Responsibilities of home improvement contractors

No home improvement contractor shall engage in any activity, transaction, or course of business or pay or receive any fee,

The Law

Summary of Requirement(s)

payment, money, or other thing of value in connection with the financing of a home improvement contract without fully disclosing such activity, transaction, or course of business and any fees, payment, or other thing of value paid or to be paid in connection therewith, and without having obtained the agreement in writing from all parties to the transaction to such activity and the payment therefor.

The Law

Summary of Requirement(s)

§ Disclosure must be made to the

The Law

Summary of Requirement(s)

The Law

Summary of Requirement(s)

§ Written agreement of customer to

The Law

Summary of Requirement(s)