

# CONTRACTING TOPICS

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## REGISTRATION FOR HOME IMPROVEMENT CONTRACTORS

**Contractor's Registration Act.**

On May 13, 2004, the Governor signed the Contractors' Registration Act, establishing a new registration program for home improvement contractors. The Act goes into effect on November 9, 2004.

Now, contractors engaged in "remodeling, altering, renovating, repairing, restoring, modernizing, demolishing residential or non-commercial property" will have to register annually with the Division of Consumer Affairs. Under the Act, contractors must file disclosure statements with the DCA revealing criminal backgrounds. The DCA can refuse to register a contractor who has engaged in fraud, a single act of "gross incompetence" and even "repeated acts of negligence".

The Act also requires contractors to maintain a minimum of \$500,000 of commercial general liability insurance and to prominently display their registration number on all business documents, advertisements and owned commercial vehicles. Home improvement contracts must also incorporate (in addition to existing terms required under current regulations, NJAC 13:45A-16.1 et seq.) the contractor's name, address and registration number, a certificate of insurance

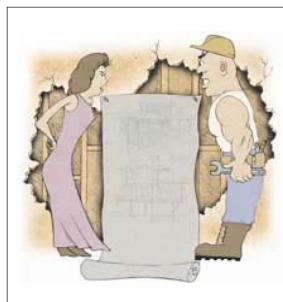
with the telephone number of the insurance company, and the total contract price. Finally, the Act requires the following language in the contract:

**"NOTICE TO CONSUMER**

**YOU MAY CANCEL THIS CONTRACT AT ANY TIME BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER RECEIVING A COPY OF THIS CONTRACT. IF YOU WISH TO CANCEL THIS CONTRACT, YOU MUST EITHER:**

1. SEND A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED; OR
2. PERSONALLY DELIVER A SIGNED AND DATED WRITTEN NOTICE OF CANCELLATION TO:  
(Name of Contractor)  
(Address of Contractor)  
(Phone Number of Contractor)

*If you cancel this contract within the three-day period, you are entitled to a full refund of your money. Refunds must be made within 30 days of the contractor's receipt of the cancellation notice."*



**Proposed Regulations**

The DCA has published proposed regulations under the Act (NJAC 13:45A-17.1 et seq.) While the regu-

lations are too detailed for full discussion in this newsletter, they contain the following highlights:

- The Act is deemed to apply to all contracts in excess of \$500 and covers all "changes, repairs, or improvements made in or on, [or] attached to" a residence. However, new home builders are exempted.
- Subcontractors to home improvement contractors must also register with the exception of licensed professionals (architects, etc.) or licensed trades (electricians, plumbers, etc.)
- The DCA application asks whether any person with an ownership interest of 10 percent or more has been adjudged liable in a civil proceeding of negligence, malpractice or incompetence involving selling or making of a home improvement.
- The DCA may refuse to issue, renew or may suspend or revoke any registration under the Act for a violation of the DCA regulations (e.g. contracts without start and end dates and unsigned change orders.)
- The contractor must file proof of the required commercial liability insurance with the DCA.

## TIPS ON FILING A RESIDENTIAL CONSTRUCTION LIEN

One method of protecting a contractor's rights is the filing of a Construction Lien pursuant to N.J.S.A. 2A:44-1 *et seq.*

However, contractors involved with construction and renovation of residential properties may be unaware that the requirements for filing a lien against a residential property are more complex than those for a commercial or public property.

In New Jersey, a lien against residential property can be filed only after 1) a Notice of Unpaid Balance and Right to File Lien is filed with the county and 2) an arbitration demand is filed with the American Arbitration Association to determine whether the lien is proper. N.J.S.A. 2A:44A-18. Not only is there more paperwork, there are also critical timing issues; the Notice of Unpaid Balance and arbitration demand must be filed and the arbitration decision permitting the lien must

be received before the actual lien can be filed.

Because a construction lien in New Jersey must be filed within ninety days of the last work performed on the property, the arbitration demand must be filed and decided within the ninety day period. The time frame for filing is not extended because of the arbitration requirement.

Consequently, we recommend that residential contractors, who have not been paid, file a Notice of Unpaid balance and Arbitration Demand with the American Arbitration Association (the entity designated by the Lien Law to hear the residential lien arbitrations) within thirty or forty days of the last day of work. This gives the AAA plenty of time to render a decision and the contractor time to file a

lien once the decision has been issued.

The arbitration is typically done on paper submissions, but the parties can insist on a hearing. The homeowner or other contractors may bring counterclaims in this forum, but the



Arbitrator's decision on these counterclaims is not binding except to limit (to the extent the counterclaims are deemed successful by the arbitrator) the amount of the contractor's lien.

*The requirements for filing a lien against a residential property are more complex than those for a commercial or public property.*

## JOHNSON & CONWAY, LLP

Johnson & Conway, LLP is a law firm serving public and private clients in the construction industry throughout New Jersey. Its three partners, **Geoff Johnson**, **John Napolitano** and **William "Mickey" Conway** have a total of 48 years of legal experience working with small and large construction firms as well as construction professionals. In addition, John Napolitano has a background in engineering and is a licensed engineer.

We handle a wide range of matters including contract review and negotiation, corporate counsel and succession planning, employment disputes, and litigation, both complex and small before the courts and regulatory bodies.

Please feel free to call any of our partners for more information or visit our web site ([www.constructionlawyers.us](http://www.constructionlawyers.us)) for additional information about the firm and its attorneys.

