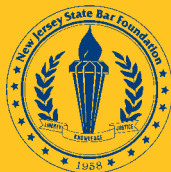


RESIDENTIAL Construction & Renovation



A Legal Guide for New Jersey Homeowners
Second Edition



New Jersey State Bar Foundation

Introduction

Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners was prepared for the New Jersey State Bar Foundation by the New Jersey State Bar Association's Construction and Public Contract Law Section.

While many may envision large construction projects such as malls, highways, bridges, office towers, and the like when they think of construction law, members of the section deal just as frequently with the legal, financial and emotional issues arising out of home repairs, the construction of a new house and other residential issues as they do with the mega projects. Through statutes and regulations, New Jersey has adopted numerous protections for homebuyers and homeowners who want to either have a house built or renovate an existing home. This manual addresses several of the more commonly applied laws that have been adopted for the protection of residential consumers.

The information in this guide is published as a public education service to help explain laws in New Jersey. It does not constitute legal advice, which can only be given by an attorney.

Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners is made possible by funding from the IOLTA Fund of the Bar of New Jersey.

Acknowledgements

The New Jersey State Bar Foundation and the NJSBA Construction and Public Contract Law Section gratefully acknowledge the work of coordinating editors and authors, James H. Landgraf, Esq., Robert J. Incollingo, Esq. and Lee M. Tesser, Esq. for their efforts in developing this manual.

NJSBA Construction and Public Contract Law Section

Steven Cohen, Esq.
Anthony J. Giuriceo, Esq.
Charles F. Kenny Jr., Esq.
Co-Chairs

Robert J. Incollingo, Esq.
Harry E. McLellan III, Esq.
Co-Vice Chairs

Table of Contents

New Homeowner's Warranty 2

Home Inspection Licensing 5

Home Improvement Contracts 9

Contractor Registration 20

Residential Construction Liens 24

Resolving Disputes in Residential Construction
and Renovation 30



New Homeowner's Warranty

Even with the limited space that may be available in New Jersey, construction of new housing is a major industry, and many homeowners make the decision to live in a house that is newly built, hopefully to meet their specific needs and desires. The decision to have a new home built is a major one, and every new homebuyer sees his or her “dream house” without any problems that may have been found in a house that was built for someone else. Unfortunately, new houses do not come with a guarantee that upon opening the door everything will be perfect. The New Jersey Legislature has adopted the New Home Warranty and Builders' Registration Act, which provides a level of protection to those people who have a house built for them. It includes provisions that attempt to ensure that contractors building new homes are responsible and viable, and that they will remain responsive to problems that may arise after the house is finished and sold. The following information discusses some of the provisions of the New Home Warranty and Builders' Registration Act and ways a homebuyer may make use of those provisions to assure that the new home is without significant or major defects.

What is the New Home Warranty and Builders' Registration Act?

For the protection of consumers of residential real estate, a warranty must be issued by all builders of **new** construction. Condominiums and cooperatives are covered under the warranty. The warranty insures certain standards and quality of construction for various components of your new home.

Basically, the warranty coverage can be summarized as follows:

- a. One year from and after the warranty date, the dwelling shall be free from defects caused by faulty workmanship and defective materials due to non-compliance with the building standards as approved by the commissioner overseeing the act.
- b. Two years from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating and cooling systems.
- c. Ten years from and after the warranty date, the dwelling shall be free from major construction defects as further defined in the act. *Major construction defect* means any actual damage to the load-bearing portion of the home, including damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load-bearing function and which vitally affects or is likely to vitally affect use

of the home for residential purposes.

How do I know if the builder of my home is registered?

You can contact the Department of Community Affairs in Trenton (609-292-6420). Any qualified builder of new construction is issued a registration certificate indicating that the builder is registered with the state of New Jersey to issue new home warranties.

Are only new homes covered under the act?

Yes, previously occupied and rehabilitated pre-existing homes do not fall under the protection of the New Home Warranty and Builders' Registration Act.

How do I start a homeowner warranty claim?

The New Home Warranty Division of the state of New Jersey has forms that can be utilized by consumers of new homes to initiate a claim. These forms are also usually included in the papers that builders must give to homebuyers at settlement.

What is my protection under a new home warranty claim?

Under the New Home Warranty and Builders' Registration Act, an arbitrator will be appointed to visit the home, investigate and arbitrate any disputes. The builder is entitled to be present during any inspection. The arbitrator will render a decision in accordance with the act. If the arbitrator determines that a defect exists which is the builder's responsibility, the builder is usually afforded a reasonable amount of time to correct or repair the defects. A builder may offer the reasonable cost of repair in lieu of performing the work.

What if the builder does not fix problems determined to be his or her responsibility under the warranty?

As part of the New Home Warranty and Builders' Registration Act, a security fund is set up with sufficient resources, so the New Home Warranty Security Fund will pay for those items determined to be a builder's responsibility but which the builder refuses to rectify. Note: A builder may choose not to fix a problem, but pay money to the homeowner for the repair or replacement of the defect.

What if I don't want to submit a claim under the home warranty arbitration process, and would rather sue the builder in court?

You may do so. A homeowner can either sue the builder for defects or submit

a claim under the act. You may not, however, do both. Once a process is selected—litigation or arbitration—you cannot use the other forum for the same issue. For example, if your claim involves defects to the roof and you choose to arbitrate under the act, you are bound by the arbitrator’s decision. If you disagree with the result, you may not then sue the builder for the roof defects. A builder may also include a general arbitration clause in the contract, which will prevent a homeowner from being able to use the court system. In that event, general arbitration may be selected by the homeowner instead of using homeowner warranty arbitration.

What if my builder is not registered with the state?

Any builder who fails to register under the New Home Warranty and Builder’s Registration Act shall be subject to a penalty not to exceed \$2,000 for each offense, to be enforced and collected by the Commissioner of the Department of Community Affairs in the name of the state in a summary proceeding in accordance with the Penalty Enforcement Law (N.J.S.A. 2A:58-1 *et. seq.*).

Is it possible that the defects in my new home are not covered under the act?

Yes, the warranty does not cover every defect, only those covered under the act as summarized on page two. For example, landscaping, fences, driveways, patios and pools are not covered under the act. Also, normal wear and tear or normal deterioration are not covered under the act. Insect damage, accidental loss or damage from acts of nature (*i.e.*, floods, fire, falling trees) are likewise not covered. Finally, damage to personal property is not covered.

Can a builder lose his or her registration certificate?

Yes, for the following reasons:

A certificate of registration may be denied or revoked if the registrant or applicant or an officer, partner, director or stockholder of the registrant or applicant has at any time:

1. willfully made a misstatement of material fact in his or her application for registration or renewal;
2. willfully committed fraud in the practice of his or her occupation;
3. practiced his or her occupation in a grossly negligent manner;
4. willfully violated any applicable building code to any substantial degree;
5. failed to continue his participation in the new home warranty security fund or an approved alternate new home warranty security program after

proper notice from the commissioner in writing by certified mail; or
6. violated any provision of this act or any rule or regulation adopted pursuant thereto, after proper notice from the commissioner in writing by certified mail.

Are there any standards which an arbitrator must follow in determining whether a particular item meets acceptable workmanship standards?

Yes. The standards are numerous and can be found in the New Jersey Administrative Code Section 5:25-3.5. The standards should also be included in the paperwork the builder must give to the buyer.

Is a builder's total liability to a new homeowner limited?

Yes. A builder's total liability to a new homeowner is limited to the purchase price of the home.

Are there limits on what can be claimed under the homeowner's warranty?

Yes. An arbitration action under the homeowners warranty is limited to defects and deficiencies under the terms of the warranty. That arbitrator will not decide on issues involving other potential claims, such as consumer fraud, breach of contract, violations of building codes, loss of value or use and similar claims that do not fall within the terms of the warranty. If a homeowner feels that he or she has such a claim, he or she may only pursue those through the court or general arbitration options.

What if the builder goes out of business, or does not have the warranty insurance?

In cases where the builder is no longer in business, and therefore is unavailable to perform the warranty work and did not maintain warranty insurance, the homeowner may seek the same relief under the warranty from the state of New Jersey, Department of Community Affairs, Bureau of Homeowner Protection. When making a claim to this agency, the agency will inspect and make a decision of whether the claimed defect falls within the warranty terms. If it decides the defect is not within the warranty, the homeowner may request arbitration of the decision.

Home Inspection Licensing

Practically all contracts for the purchase of a home include the ability of the buyer to have the home inspected before completing the purchase. Most homebuyers do not have the level of expertise necessary to allow them to walk through a house and determine whether it is constructed properly, whether all the systems are working

or whether there are defects that could impact their future life in the house or require further expenditures after they have purchased the house. In an effort to prevent unqualified inspectors from marketing themselves to homebuyers, and to assure that the inspectors have a level of responsibility, the Legislature has adopted laws requiring home inspectors to be licensed and to maintain financial responsibility for the homebuyers who are relying upon them to provide a thorough and accurate description of any problems, defects or limitations that may exist in the house being purchased.

What is the Home Inspection Professional Licensing Act?

In response to numerous complaints by homeowners that their home inspectors failed to properly perform home inspections, the New Jersey Legislature decided, effective July 6, 1998, to enact legislation governing the actions of residential home inspectors. The legislation, which can be found at N.J.S.A. 45:8-61, was designed to address certain problems with home inspections, including:

- a. poorly trained home inspectors;
- b. home inspection companies that failed to carry insurance to protect consumers from negligently performed home inspections; and
- c. home inspection companies that hire unqualified inspectors.

The Act does not apply to code enforcement officials, licensed architects, engineers, electrical contractors, master plumbers, licensed real estate appraisers or insurance adjusters.

Why is the legislation and regulation of home inspectors necessary for consumers?

The purchase of a home is one of the most important decisions in a person's life. For this reason, the New Jersey Legislature deemed it necessary to protect consumers who seek the advice of home inspectors so that they are properly informed of any construction-related problems in the home. A home inspector should properly advise consumers of any potential material deficiencies or other substantial deficiencies to the home so that homeowners can properly evaluate whether it is in their best interest to purchase the home and/or whether adjustment in the price of the home is warranted.

Who is covered under the Home Inspection Professional Licensing Act?

All residential real estate consumers of a one- to four-family dwelling. New construction is not covered by the Act.

How can consumers insure that a home inspector is properly licensed?

When hiring a home inspector, a consumer should simply ask whether they are properly licensed and ask to see a copy of their license certificate.

What should a homeowner expect from a licensed home inspector in terms of insurance and licensing requirements?

A home inspector with a current and valid license will be deemed to meet the following qualifications:

- a. good moral character;
- b. a high school education or equivalent;
- c. being engaged as a licensed associate home inspector for not less than one year and having performed not less than 250 home inspections for compensation; and
- d. passed the national home inspection exam administered by the Examination Board of Professional Home Inspectors (EBPHI) or the exam offered by the American Society of Home Inspectors (ASHI).

With regard to insurance requirements, a licensed home inspector must maintain and file with the Board of Professional Engineers and Land Surveyors (a department of the state of New Jersey) proof of a certificate of an errors and omissions insurance policy which should be in the minimum amount of \$500,000 per occurrence.

The insurance certificate guarantees that there is insurance coverage for you in the event that your home inspector is negligent in the performance of the home inspection. In other words, in the event your home inspector commits errors and/or omissions in the way the home inspection was conducted and in the resulting conclusions, there may be insurance coverage to cover your loss.

Which state agency oversees enforcement of the Home Inspection Professional Licensing Act?

The Division of Consumer Affairs, under the State Board of Professional Engineers and Land Surveyors. You can contact them if you have any questions regarding a particular home inspector by calling the following number: 973-504-6460.

Can the state board refuse to grant or suspend and/or revoke a home inspector's license?

Licenses may be revoked upon proof that the home inspector:

- a. disclosed any information concerning the results of the home inspection without the approval of the client or the client's representative;
- b. accepted compensation from more than one interested party for the same service without the consent of all interested parties;
- c. accepted commissions or allowances, directly or indirectly, from other parties dealing with their client in connection with work for which the licensee is responsible; or
- d. failed to disclose promptly to a client information about any business interest of a licensee, which may affect the client in connection with the home inspection.

The State Board of Professional Engineers and Land Surveyors is also responsible for establishing certain ongoing standards for continuing education of home inspectors, as well as a code of ethics and standards of practice.

What is an "associate" home inspector, and can they perform home inspections on my home?

Associate home inspectors must train under and be supervised by a fully licensed home inspector. While an associate may perform inspections for a fee, he or she is obliged to perform at least 250 inspections during a year or more. In addition, associate home inspectors must also pass the EBPHI test.

Is a general liability insurance certificate the same as an errors and/or omissions insurance certificate?

No. General liability insurance is insurance for accidents and damage caused by the home inspector during the course of the inspection. In other words, if the home inspector drops his or her hammer through the roof causing damage, the home inspector's general liability insurance would pay for the repair. General liability insurance does not provide insurance to a homeowner in the event the home inspector was negligent in the performance of the inspection.

The errors and omissions liability insurance provides the home inspector with insurance coverage in the event that it is determined an inspection was performed negligently. For example, if your home inspector indicates in the inspection report that the house has no noted deficiencies and you discover

substantial deficiencies in the roof, foundation and plumbing systems one week after your closing, you may be able to seek compensation for the home inspector's failure to properly detect those deficiencies. This insurance coverage would protect a consumer regardless of whether or not the inspection company has assets or is still in business.

Is there a time limitation on suing a licensed home inspector?

Yes. An action for an error or omission in the performance of a home inspection contract must be commenced within four years of the date of the home inspection.

Can a licensed home inspector engage in the practice of architecture or engineering?

No.

NOTE: Despite the Home Inspection Professional Licensing Act's enactment in 1998, New Jersey's Home Inspection Advisory Committee has taken some time to fulfill the statute's requirements and the licensing process continues to take more time than originally anticipated. As of May 2006, there were approximately 600 licensed home inspectors. Thus, for the past several years it appears that with some exception, home inspectors have been permitted to operate without a license. A list of licensed home inspectors may be obtained from the Division of Consumer Affairs' website (www.state.nj.us/lps/ca/nonmedical/hiac.htm). Inquiries or complaints about a home inspector should be sent to the Home Inspection Advisory Committee, P.O. Box 45043, Newark, NJ 07101, Attn: Executive Director. The Home Inspection Advisory Committee may also be reached at 973-504-6460.

Home Improvement Contracts

Other than buying a house, a homeowner's largest expense in owning a home is likely to be the expense of having a contractor perform improvements to the house. Contractors who perform home improvements may specialize in a certain type of work, such as plumbing or roofing, or may be general contractors who claim they are able to perform all types of improvement work. In an effort to protect homeowners from poorly performing or dishonest contractors, New Jersey has, through the

Consumer Fraud Act, developed certain minimum requirements that contractors must meet to make a contract for home improvements that is enforceable, or valid. The same regulations allow a homeowner to seek to recover damages against contractors who fail to meet the act's minimum requirements.

The following are some of the more significant portions of the statutes and regulations that cover home improvement construction projects.

Where can I find the statutes and regulations that deal with home improvement contracts?

The basic statute is the New Jersey Consumer Fraud Act located at New Jersey Statutes Annotated 56:8-1 *et. seq.* In general, this law provides a remedy for a consumer victim of commercial fraud as defined by the statute. Specific regulations have been adopted by the Division of Consumer Affairs located at the New Jersey Administrative Codes 13:45A-16.1 *et. seq.* entitled "Home Improvement Practices." These regulations identify specific actions by contractors or sellers of home improvement services, which are established by law as unlawful practices.

What is a home improvement?

The Home Improvement Practices Regulations broadly define a home improvement as any remodeling, altering, painting, repairing or modernizing of residential property. It also includes the construction of additions, and work on the property outside of the house, including driveways, sidewalks, swimming pools, patios, landscaping, fences and the like. It includes specialty trade work such as electrical, plumbing and heating and air conditioning. It includes aesthetic work such as carpeting, painting, floor and wall coverings. In general, if the work that is being performed will be an improvement to the property it will very likely fall under the definition of a home improvement.

Are rental homes covered by the law?

Yes. As long as the property is used for residential purposes, or the specific portion of the property is used for residential purposes, it is covered under the definition of residential property, and therefore any improvements would be covered under the law.

When I am contracting for home improvements, should I get a written contract?

Yes. For all home improvements where the cost will be more than \$500, the contractor is required to give a formal written contract to the homeowner and the contract must be signed by both the homeowner and the contractor in order to be enforceable or valid.

What if I do not receive or do not sign a written contract?

If the contract is for home improvements having a value of more than \$500, and if there is no written contract signed by both the homeowner and the contractor, the contractor does not have the right to enforce payment by the homeowner. The contractor will also be found to be in violation of the Consumer Fraud Act, which may give the homeowner additional rights. A contractor may still have a right to demand the reasonable value of any services or materials provided, but this would not be under the terms of an unsigned or verbal contract. Where no written, signed contract exists, there is no contract to enforce.

What must be in a written contract?

At a very minimum, a written contract (for work in excess of \$500), to be enforceable or valid, must include:

- the legal name and business address of the seller as they are referred to in the statute (the contractor) as well as the legal name and business address of any sales representative or agent who negotiated the contract;
- a description of the work to be done and identification of the primary products and materials to be used;
- the total price to be paid, including all finance charges involved, if any
- if the contract is for time and materials, the hourly rate for the labor;
- the date when work is to begin and end, or if no dates are given, a time period for the completion of the work;
- if the work is being financed, a statement of the existence of the mortgage or any other security interest;
- all guarantees and warranties.

What if these contract terms are not included in the written contract?

A written contract that does not include these essential terms is unenforceable or not valid according to the statute. If the homeowner incurs damages or costs as a result of the lack of any of these terms in a contract, the homeowner may be entitled to damages under the law.

What if there are changes in the work?

If anything is changed before or during the work, for example the homeowner decides to upgrade the carpeting to a more expensive type or a contractor cannot get the type of kitchen cabinets the homeowner wanted and suggests a more expensive type, those changes must be shown in a written form, which is called a change order. All changes, including extra work, additional costs for unexpected problems and the like must be included in a written change order, signed by the homeowner and contractor, or the contractor will be in violation of the law.

What rights does the homeowner have if the contractor misrepresents any of the work he or she is going to perform, changes the type of materials used or misrepresents his or her experience?

The Home Improvement Practices Regulations provide that misrepresentation of products or materials, unapproved substitutions of products or materials, misrepresentation of the contractor's identity, misrepresentation of price or financing terms, or misrepresentation of the contractor's capabilities are unlawful practices giving the homeowner the right to damages under the Consumer Fraud Act.

When do I have to pay the contractor for the work?

A home improvement contract can include any number of payment arrangements. If it is not a financed agreement where the homeowner makes periodic payments over an extended period of time, the contract will usually say that partial payments will be made at the outset of the work, and at certain identified times during the work, with the balance due upon completion. If a contractor seeks final payment before it is due under the terms of the contract, or before the work is completed, it is an unlawful practice and a violation of the Consumer Fraud Act, entitling a homeowner to a right for damages against the contractor.

Must the contractor warrant its work?

The law does not require that the contractor provide any specific warranties. If warranties or guarantees are provided by suppliers of materials or equipment, those must be identified in the contract and must be given to the homeowner. If the contractor makes verbal warranties or guarantees, but does not include them within the written contract, and if the homeowner can prove that the

warranties were made, it would represent an unlawful practice not to include them in the contract.

Does the law require completion of work in any specific time period?

The statute and regulations do not require that the work be completed within a defined time period. The regulations do require that the contract include as one of the terms a start and end date, or a period of time for completion of the work. The regulations also require that it is an unlawful practice for the contractor to go beyond a stated time period, or beyond the stated completion date, without providing, in writing, a notice to the homeowner seeking a time extension because of labor stoppage, unavailability of supplies or materials or other causes beyond the contractor's control. Any request for an extension of time by the contractor must be in writing and signed and agreed to by the homeowner.

Do contractors require a license to perform home improvement work?

The Consumer Fraud Act and the Home Improvement Practices Regulations do not require that the contractor have a license to perform the work. Certain trades, such as electricians and plumbers, do require that the contractor hold licenses. Depending on the type of work involved, the improvement being made to the home may require the issuance of a construction permit, either to the contractor or to the homeowner, before the work begins. A contractor that requires a license or municipal registration, but performs work without one, or performs work without the issuance of a construction permit where a permit is needed, may be found to have committed an unlawful practice under the regulations and the homeowner may be able to make a claim for damages against the contractor. Under the Contractors' Registration Act, (see related section in this booklet) a home improvement contractor must be registered.

What are my rights if a contractor commits an unlawful practice under the Home Improvement Practices Regulations?

If a contractor violates the Home Improvement Practices Regulations, in addition to a homeowner's right to try to recover additional costs that they may have paid or will have to pay as a result of the violation, such as completion or repair costs if damages were actually caused by the violation of the regulations, the homeowner would be entitled to three times (treble as the regulations call it) those damages. The homeowner would also be entitled to recover costs, including legal fees, resulting from having to pursue the contractor in court.

Am I automatically entitled to these additional damages?

The treble damage provisions and attorney's fee provisions under the Consumer Fraud Act are damages that a homeowner may recover in a lawsuit if it is found that the contractor violated the terms of the Consumer Fraud Act or the Home Improvement Practices Regulations. If a court finds a violation it is able to award the homeowner damages related to the homeowner's attorney's fees and costs.

The court is not required to fully reimburse the homeowner for all attorney's fees and costs. If the homeowner suffers damages as a result of the violation of the Consumer Fraud Act, those damages may be trebled (or tripled) only if they relate to a violation of the laws. If the homeowner's damages are related only to poor workmanship that is not a result of a specific violation of the act or regulations, the act does not provide for treble damages. As an example, if a concrete driveway is built, but is uneven and has cracks in it, this may be poor workmanship to which a homeowner's remedy may only be the cost of repair or replacement without the treble damage claim and without the ability to recover counsel fees. On the other hand, if work is performed without a required building permit and must later be removed and replaced because of the building permit requirements, the treble damages and attorney's fee provisions may apply.

How do I know if I have a claim under the Consumer Fraud Act and Home Improvement Practices Regulations?

Some of the more common practices that occur in home improvement construction that may allow a home improvement practices/consumer fraud remedy are the following:

- Lack of a written contract—simply giving a written estimate without having this signed by the homeowner and contractor does not represent a valid home improvement contract.
- An estimate or contract that does not identify when the work is to start and when it is to be completed, or how long it will take.
- Failure of a contractor to complete the work within a contracted time period without proper reason or cause and a written extension of the time.
- A contractor performing work without being registered with the municipality or performing trade work that requires licensing (electrical or plumbing) without holding those licenses.
- A contractor performing work without the issuance of a building permit.

- A contractor seeking payment before it is due under the terms of the contract or payment in full before the work is complete.
- A contractor starting to work and failing to return to complete the work.
- A contractor substituting materials; for example substituting certain brand name products with generic products when the brand name products were either verbally promised or called for in the contract.
- Despite verbal promises of certain types of products, the failure to list those products in the contract.
- A contractor attempting to charge additional money for work claimed to be outside of the scope of the contract, without having a written and signed change order, where scope means the general size and type of work that the contract is for.

What can I do to protect myself when searching for a contractor to perform home improvements?

When seeking estimates for home improvement work, more than one contractor should be contacted. Each contractor should be asked to provide references. The references should be contacted and asked questions regarding the quality of the work, the timeliness of the contractor's performance of the work and other information about the contractor's ability to complete the project. A list of all registered home improvement contractors is available on the Division of Consumer Affairs website. The construction code office representatives should also be asked whether they have any experience with this particular contractor and asked to describe the nature of their experience. The Better Business Bureau and the county's office of consumer protection should also be contacted to see if they have any record of problems with a particular contractor. When speaking with your municipal construction code office, the homeowner should also ask whether the type of work anticipated requires a building permit.

Once a contractor is selected, the contract must be in writing and signed by both the homeowner and the contractor. It should include the full name and address of the contractor, the price, and the start and completion dates (or a period of time in which the work is to be performed) and identify when payments are supposed to be made. If a construction permit is required, the contract should state who is going to obtain the permit, and that the last payment will not occur until the construction code official inspects and approves the work by issuing what is called a certificate of occupancy. In the event that the contractor has verbally identified any particular products that are going to be included within

the work, they should be specifically listed in the contract.

The contract should

state in detail what is going to be performed. A homeowner should not sign any contract containing blanks. The homeowner should ask that the contractor provide proof that it has insurance. The contractor should have liability insurance to cover both damage that the contractor may cause to the homeowner's property, and automobile accidents. The contractor should also have workers compensation insurance that covers claims by other persons that could, under certain circumstances, be brought against the homeowner if the contractor does not have that type of insurance. The written contract should include the contractor's representation or promise that he or she does maintain these types of insurance coverage and that the contractor will provide a certificate from its insurance carrier to the homeowner as proof.

Other than the Consumer Fraud Act and Home Improvement Practice Regulations, do I have other rights against a contractor who fails to do the work, does it improperly or otherwise causes damages to me?

In addition to the specific protections and remedies provided under the Consumer Fraud Act and the regulations, homeowners have the right to enforce the specific terms of the contract. They additionally have the right to assure that the work is performed in at least a good and workmanlike manner, which is consistent with the industry standards for that type of work. A contractor that does not perform consistent with those standards could be liable to a homeowner for the costs in completing, correcting or replacing work that is incomplete or improperly constructed.

Additionally, other laws have been adopted that may become involved in home improvement contracts. Contracts for home improvements often fall under the control of other New Jersey Consumer Protection Statutes. These laws, known as the Home Repair Financing Act, and the Door-to-Door Home Repair Sales Act, apply to home improvement contracts, particularly where longer term financing is involved.

The **Home Repair Financing Act** is an extension of some of the provisions of the Retail Installment Sales Act specifically directed to home repairs. The **Door-to-Door Home Repair Sales Act** adds another level of protection where



the seller of home improvements solicits the homeowner to the extent that paperwork is presented for signing at the home.

Each of these statutes provides for certain disclosures to the homeowner, including language that is required to describe financing costs where a home improvement is being paid for over a period of time. They provide homeowners with a right to terminate the contract within three business days after signing and provide for penalties to contractors and other sellers of home improvements who fail to meet these provisions.

What contracts are controlled by the Home Repair Financing Act?

Under the terms of the Home Repair Financing Act, “home repair installment contracts” are controlled. This includes contracts, where the buyer is paying the purchase price for home repairs in two or more installments over a period of time, that extend beyond the completion of the repair work.

As a homeowner contracting for home improvements, how does the Home Repair Financing Act help me?

The Home Repair Financing Act requires that a purchase over a period of time through installments must be clearly identified, and each of its terms, including the interest rate, the amount of payments, the total financing cost that will be paid over the period of time, the monthly payments and other details with respect to what is being paid, must be stated on the face of the contract.

Does the Home Repair Financing Act protect me only from the contractor?

No. The Home Repair Financing Act applies not only to a seller of goods or services, such as a contractor, but also to finance companies that typically will provide the financing by paying the initial purchase price to the contractor and then receiving the payments back from the homeowner together with the financing charges.

What is required in a home repair contract?

All home repair installment contracts must be in writing and must be signed by the homeowner and the contractor. They are invalid if they are signed at a time when they contain blank spaces. A copy of the contract is to be provided to the buyer or homeowner and the contract must include language notifying the buyer of his or her right to receive a copy at the time he or she signs.

Are there any provisions that cannot be put in a home repair installment contract?

Yes, the law includes a number of prohibited contract provisions. These provisions have been identified because, in the past, they were frequently included in contracts and used against consumers who tried to protect their rights. A home repair installment contract cannot include what is known as an acceleration clause, which would allow the seller or finance company to immediately demand payments that were to be due in the future if they felt insecure with the buyer's ability to continue payments. The contract cannot include any provisions where the buyer waives any right, claim or defense against the seller or the sales finance company. The contract cannot include any provisions that would relieve the seller or the holder (this is a company that may buy the rights to receive payments under the installment sales contract from the seller or original finance company) from liability.

What happens if required terms are not included in the contract or if improper terms are included?

While this may depend on the specific terms, including terms that have been determined as improper by the law, in effect removes those terms from the contract. In other words, if one of the prohibited contract provisions is included in the contract, it will be considered by the court to be unenforceable. If the seller has failed to include required provisions, while the Home Repair Financing Act does not, itself, discuss or address damages or other remedies to the buyer, it does provide for fines and penalties against the seller. Additionally, if the seller includes improper charges, the entire contract may be found to be void and unenforceable, and the buyer may be entitled to recovery of all monies previously paid.

What additional protections does the Home Repair Financing Act provide?

- a. If an installment agreement for home repairs has terms that are in violation of the act, no finance, delinquency, collection or refinancing charge may be recovered. This means that if the contract is in violation of the requirements of the act, a homeowner may not have to pay all of the financing charges that were otherwise included in the purchase of the home improvements.
- b. This act now also places a criminal sanction or penalty on a contractor or finance company that knowingly violates the act.

Do the Home Improvement Financing Act protections apply to a contract where there will be more than one payment, but there will be no financing costs involved?

Most home improvement contracts involve a series of payments during the course of the work with the first payment being made before work starts, and the last payment being made once the work has been completed. Under the definition of a home repair contract, this applies only to contracts where installments will extend over a period of time greater than 90 days, and where the homeowner is agreeing to pay what is known as the time sales price that includes financing costs. If the contract simply involves periodic payments during the course of construction without any financing costs, the Home Repair Financing Act provisions would not apply.

What protections do I have under the Door-to-Door Home Repair Sales Act?

The Door-to-Door Home Repair Sales Act applies to situations where the contract papers are brought to the homeowner's home or to some other location other than the contractor's place of business for signing. In this situation, the act requires that a period of three business days be afforded a homeowner after signing such a contract, during which time the homeowner can change his or her mind and terminate or rescind the contract.

Does a Door-to-Door Home Repair contract require any specific provisions or terms?

Yes. The contract that is to be signed at the homeowner's home, usually resulting from telemarketing or door-to-door marketing efforts by a contractor, must include a bold print notice to the homeowner advising her of her right to rescind the contract within three business days. The contract must also state the manner in which that termination must occur. The homeowner must receive two copies of the contract, including the notice at the time of signing. The contract must include the home repair contractor's name and place of business, a description of the goods and services sold, the amount of money to be paid, and the homeowner's signature.

What if the contractor delivers materials for the job before the three days run out and/or the homeowner wants to terminate or rescind?

If the notice of termination or rescission is given within the three days, the contractor must, within 10 business days after receipt of the notice of intent to

rescind, pick up any goods or materials, at his or her own expense, which were delivered, and must refund the homeowner all monies paid.

What if the contractor fails to honor the terms of the statute?

In that event, the contractor faces a disorderly persons charge (semi-criminal) and a fine. Additionally, the homeowner has a right to sue for any monies that were paid, but not returned, as well as attorney's fees and costs of the lawsuit. The homeowner is also entitled to all other rights that he or she may have, including those discussed in the previous sections of this manual that deal with the New Jersey Consumer Fraud Act, breach of contract claims, or any other damages that may have occurred.

Contractor Registration

What is the Contractors' Registration Act?

The Contractors' Registration Act (N.J.S.A. 56:8-136 et seq.) took effect December 31, 2005 as an amendment to the Consumer Fraud Act. It requires contractors who sell or make home improvements in New Jersey, unless they are otherwise exempt, to be registered with the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety. To carry out the provisions of the new statute, the DCA passed new administrative regulations (N.J.A.C. 13:45A-17) for the application, disclosure and other program requirements, and amended existing home improvement practices regulations (N.J.A.C. 13:45A-16.1) to make those rules consistent with the new law.

Can I find the Contractors' Registration Act on the Internet?

Yes. The DCA has a link to the text of the Contractors' Registration Act (N.J.S.A. 56:8-136 et seq.), as well as the new and amended regulations on its website at www.state.nj.us/lps/ca/contractor.htm. The site also has an application packet for registration, and related bulletins for those who must register.

Can I get in trouble if I hire an unregistered contractor?

No, not under the present setup.

Why should I care if my contractor is registered?

The Contractors' Registration Act was passed in response to the problem of consumer fraud in the home improvement business. The new law and regulations require an applicant's disclosure of any history of misconduct, with

continuing updates to the DCA of further incidents. The DCA may refuse to issue or renew, or may suspend or revoke any home improvement contractor's registration, so that a valid registration is at least some minimum assurance of the business character of the contractor.

A valid, current registration also depends on the contractor's having commercial general liability insurance in required minimum amounts, although such insurance does not cover claims for abandoned or shoddy work. Under the new Contractors' Registration Act, a registered contractor must provide his customer with legally compliant contract forms, disclosures required by law, and a three-day right of rescission. Should he fail to obey the home improvement practices regulations, his registration and thus his livelihood are at risk if he does not play by the rules.

What happens to a contractor who does not register?

Any home improvement contractor who is required to register but who has not received a registration number by December 31, 2005 is barred by law from advertising, selling or making home improvements. An unregistered contractor who continues to sell or make home improvements or who violates any other section of the Contractors' Registration Act is subject to civil monetary penalties of up to \$10,000 for the first offense and up to \$20,000 for each subsequent offense. Anyone who knowingly violates the Act is considered guilty of a crime of the fourth degree and faces additional fines as well as possible jail time. Moreover, municipalities are barred from issuing construction permits to an unregistered home improvement contractor who is required to register. There is an exception for pending applications, discussed below.

How can I check to see if a contractor is registered?

A home improvement contractor who is complying with the law will have its registration number displayed on all contracts, advertisements, correspondence and vehicles. The DCA has a link to its searchable database of registered home improvement contractors on its website at www.state.nj.us/lps/ca/contractor.htm.

Who has to register with the DCA?

It's easier to say who doesn't have to register, since unless they come in under a specific exemption, all home improvement contractors and persons who advertise as home improvement contractors in this state must be registered. Out-of-state home improvement contractors working in New Jersey, and

subcontractors who are hired by other home improvement contractors to make or sell home improvements are all required to be registered as well. Important exemptions from registration include:

- Any person registered pursuant to the “New Home Warranty and Builders’ Registration Act” in conjunction with the building of a new home;
- Any person performing a home improvement upon a residential or non-commercial property owned by that person or by the person’s family;
- Any person performing a home improvement upon a residential or non-commercial property owned by a bona fide charity or other non-profit organization;
- Any person regulated by the state as an architect, professional engineer, landscape architect, land surveyor, electrical contractor, master plumber, locksmith, burglar alarm business, fire alarm business, or any other person in any other related profession requiring registration, certification, or licensure by the state, who is acting within the scope of practice of that profession;
- Any person employed by a community association or cooperative corporation who is making home improvements within the person’s scope of employment at the residential or non-commercial property that is owned or leased by the community association or cooperative corporation;
- Any public utility;
- Any person licensed as a home financing agency, a home repair contractor or a home repair salesman as long as the person is acting within the scope of such license (licensed on a financed job); or
- Any home improvement retailer with a net worth of more than \$50,000,000 or any employee of such home improvement retailer who is making or selling such home improvements within the person’s scope of employment by the home improvement retailer.

My remodeler is already registered with the state as a new home builder and says he doesn’t need to be registered for home improvement. Is that correct?

No. Except for public utilities, the exemptions listed above are applicable to the exempt classes only when persons in that class are acting within the scope of practice, performance or employment applicable to that exempt class. So, in the case of an improvement project on an existing house, a license to build new homes would be insufficient. The new home builder would be breaking the law if he or she were not also registered with the DCA under the Contractors’ Registration Act.

My contractor was sent to me by my local home improvement warehouse store, and says he is exempt from the registration requirement. Is this right?

No, not unless he is an employee of the “big box” store. Most such tradesmen are actually independent contractors, and are working as subcontractors to the referring retailer. As such, they need to be registered.

I have a landscaper mow my lawn and trim my shrubs. Must he be registered, too?

No, but the landscaper must register if he plants flowers, shrubs and trees or lays sod to establish a lawn, or plants bricks in a pathway. Even though the regulatory definition of “home improvement” includes landscaping, it requires some element of “remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or noncommercial property or the making of additions thereto.” Cutting grass and trimming shrubs doesn’t fit the definition, but almost everything else does.

My contractor works for a registered home improvement contracting company and is working for me on the side. Does he need to be separately registered?

Yes. If he is moonlighting, he needs his own personal registration. Even if his day job is with a company that is exempt from registration, your contractor still needs to be registered. Officers and employees of a registered home improvement contractor are not required to register separately from a registered business entity as long as their home improvement activities are done solely within their respective scope of performance for that registered business.

In the past I’ve hired day laborers directly or from a temporary help agency for household projects. Do they each need to be registered, too?

The new law makes no distinction between individuals who hire out as laborers and any other contractor or subcontractor.

My handyman is retired and only does home improvement jobs “on the side.” Does he have to be registered?

Yes. The Contractors’ Registration Act applies to any person, corporation, partnership or association engaging in the business of making or selling home improvements — regardless of whether the home improvements are done on a full-time or part-time basis.

My remodeler says his company already has a license to work as a home improvement contractor in my town. Is that sufficient?

No. The Contractors' Registration Act supersedes any municipal law or regulation that provides for the licensing or regulation of home improvement contractors. However, contractors must still obtain construction permits from the municipality in which they are working and must submit to inspections by municipal construction code officials.

My contractor says he or she applied for a license but it hasn't been issued yet. Can he or she legally work for me?

He or she probably can if the application for registration was submitted before the December 31, 2005 deadline. For the purpose of compliance with the Contractors' Registration Act and the regulations which interpret it, the DCA will consider a contractor registered for the purpose of obtaining a construction permit from a municipality when the contractor has, prior to December 31, 2005: 1) filed with the DCA a completed application, including the disclosure statement and all documents required to be filed with the application, which has not been denied, 2) the required minimum \$500,000 per occurrence commercial general liability insurance policy in full force and effect, and 3) paid the registration fee and, when applying for a construction permit, provides the appropriate municipal official with a certification attesting to the fact that a completed application for registration has been filed with the DCA by December 31, 2005, which as of the date of the certification has not been denied by the DCA. Consumer advisory forms are available on the DCA website to be given by contractors to consumers before signing a home improvement contract, to make the consumer aware of the contractor's registration status and compliance with the Act. If you have questions regarding your contractor's pending application for registration, you may contact the DCA at 1-888-656-6225.

How long is a home improvement contractor registration valid?

Initial registration is valid for one year and may be renewed for additional one-year periods by filing an application on a form to be provided by the DCA.

Residential Construction Liens

A construction lien is a claim for payment recorded against real estate for the price of labor or materials used to improve the property. A construction lien, also called a mechanic's lien, provides a way for a contractor to get paid by

forcing the sale of the lien property. A construction lien may be claimed by a contractor, a subcontractor or a supplier. A lien is like a line that ties the property to the debt. Liened property becomes collateral to secure repayment.

Why treat residential construction liens differently?

Buying a house and making home improvements are two of the largest expenditures that a person will ordinarily make. Disputes can and do arise among homeowners, contractors and subcontractors. As a fair compromise of these competing rights, the Construction Lien Law places the residence at risk of a lien sale to satisfy an unpaid bill, but it also provides a homeowner with protections not found in commercial construction.

What is residential construction?

The law defines a residential construction contract as any written contract for the construction or improvement of all or part of a one- or two-family dwelling. Dwelling means a house, condominium, co-op, townhouse, and other more exotic types of housing so long as the structure is intended for occupancy by one or two families. The owner can only have his or her property legally liened if there has been a written contract for the construction.

What if the residential construction contract is between a contractor and a tenant?

If a tenant contracts for home improvement without written authorization from the owner, a lien will attach only to the right of the tenant to occupy the property. If the terms of the lease do not forbid, the leasehold can be sold on foreclosure of the construction lien. This rarely happens, and a smart contractor makes sure the true owner signs any improvement contract.

What if the residential construction contract is between the contractor and a condominium or co-op owner?

For work performed solely within a unit in a condominium or cooperative, the lien will only attach to the interest of the homeowner in the condominium or cooperative unit. Other units and common areas stay free of the lien.

What if there is no written contract between the owner and the contractor?

An enforceable written contract is a prerequisite to the filing of a valid lien claim. Without a residential construction contract between the owner and the prime contractor, a lien is void.

What if there is no written contract between the contractor and the person who claims a lien?

The Construction Lien Law provides no remedy for unwritten contracts. In the absence of an enforceable written contract to support the claim, no construction lien should be recorded. A subcontractor or supplier who claims a lien must also have an enforceable written contract for the services or supplies which are the subject of the claim.

Can a subcontractor claim a lien when the contractor has been paid?

Yes, but only to the extent there is money owing on the owner/contractor contract at the time. The amount of a lien claim is limited by law to the lesser of the contract price or any unpaid portion of the contract price for the work, services, material or equipment provided.

What can a homeowner do if a subcontractor or supplier claims it has not been paid?

A homeowner whose property is liened can withhold and deduct the amount claimed from the unpaid part of the contract price. The homeowner can then pay that amount directly over to the lien claimant, and credit the payment to the contract price, unless the contractor or subcontractor who allegedly owes the money responds to a written request within 20 days to state why the claim is no good.

How does a homeowner know if a lien has been recorded?

Within 10 business days following the filing of a lien claim, the claimant is supposed to personally serve or mail (registered or certified) a copy of the lien claim to the last known business address or place of residence of the homeowner. In the absence of notice, a homeowner who suspects a lien has been filed can search the records of the county clerk.

How can a homeowner avoid liens?

A homeowner will want ongoing assurances that all subcontractors and suppliers have been paid by the prime contractor, and can condition paying bills or payment requests by the prime contractor on proof of its payment to its subcontractors. An owner should make sure he or she gets a list of all subcontractors, to stay on top of these payments and avoid liens. The homeowner can send a written request to a contractor, a subcontractor, or both, for an accurate and full list of the names and addresses of each

subcontractor and supplier who may have a right to file a lien against the residential property. The law requires that the contractor or subcontractor must, within 10 days, provide the owner with that list, verified under oath. This requirement can also be written into the contract, to require the contractor to perform similar requests of the subcontractors, so that second-tier subcontractors (suppliers or subcontractors to a subcontractor who could be potential lien claimants) can be identified.

Can a lien be recorded at any time?

No. Construction lien claims must be signed, acknowledged and verified under oath by the claimant and filed with the county clerk no later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. Warranty calls and service calls made after completion or termination of the contract do not extend the deadline. A lien claim can be recorded before the end of the contract work, but it will be limited to the amount then due and owing. The claimant can update the lien claim with amounts earned later by recording an amendment to the lien claim with the county clerk, as long as the amended claim is filed by the 90-day deadline.

Doesn't the contractor have to file something else before the lien?

Yes, but it has to be the right something. Before the Construction Lien Law took effect in April 1994, a New Jersey contractor had to record a mechanic's notice of intention before working or supplying materials, or else lose the right to later claim a lien. That pre-filing process often created distrust and friction between contractors and owners. In an effort to simplify the process, the Construction Lien Law eliminated the notice of intention, but for residential construction, the Construction Lien Law instituted entirely new pre-lien filing requirements—the NUB and expedited arbitration.

What is a NUB?

NUB is short for Notice of Unpaid Balance and Right to File Lien. A NUB is a form used to notify the owner and other interested parties that there may be a lien filed at some future point, which will relate back to the record date of the NUB. Before filing any lien arising under a residential construction contract, a lien claimant must first file a NUB in the office of the county clerk. Although they look similar, a NUB is not a claim of lien, and filing one does not substitute for a properly recorded lien. A NUB can be amended in much the same manner as a lien, by filing an amended NUB with the county clerk.

What is expedited arbitration?

Expedited arbitration is fast-track arbitration on limited issues relating to the right to file the lien. A prospective lien claimant must file a demand for arbitration for the right to file a lien with the American Arbitration Association, and must serve that demand on the owner with a copy of the NUB. The parties must then fulfill all the requirements and procedures of the American Arbitration Association for expedited arbitration.

What if there's no NUB or arbitration award?

If a residential construction lien is recorded without a prior NUB filed in the records of the county clerk, or without a prior arbitration award of the right to file that lien for the amount claimed, the lien is no good and must be removed on demand.

Will filing a NUB extend the deadline for filing a lien?

No. The contractor or supplier has to file the NUB and complete arbitration in advance of the 90-day deadline for filing its lien claim. In practice, this is an extremely tight schedule.

What happens at a lien arbitration?

When a demand for arbitration is filed, the American Arbitration Association will notify the parties that it is proceeding with administration of the claim. The homeowner has a short period of time to respond in writing to the claim, by filing a written answer, setoff or counterclaim, to which the claimant contractor may reply. Arbitration follows on the papers submitted and without a hearing unless one is requested. Other parties whose interests are affected (such as the contractor if the claim is filed by a subcontractor) may join in the arbitration, but the arbitrator will not determine the rights or obligations of those parties except to the extent those rights or obligations are affected by the lien claimant's NUB. The American Arbitration Association has detailed rules for expedited lien arbitrations, and these rules may change from time to time, so that anyone facing arbitration should obtain a current copy of the rules from the association.

Can I argue all my points in arbitration?

No. The expedited arbitration is limited by statute to consideration of: (a) whether the NUB was prepared and properly served in compliance with the Construction Lien Law; (b) the validity and amount of any lien claim which may be filed pursuant to the NUB; (c) the validity and amount of any setoffs

or counterclaims to any lien claim which may be filed; and (d) the allocation of costs of the arbitration among the parties.

Does an arbitration award create a lien?

No. An arbitrator can only award the right to file the lien, which must still be formally recorded by the prevailing lien claimant within 10 days receipt of the determination and within the 90-day deadline prescribed by law.

Can the arbitration award be appealed?

Yes. If either the lien claimant or the homeowner feels wronged by the arbitrator's award, that party may sue in the Superior Court, Law Division, for the vacation, modification or correction of the award. Although the Construction Lien Law requires the court to render its decision after giving due regard to the time limits and procedures set forth in the act, as a practical matter there will be very little time left before the 90-day deadline to appeal and record a claim of lien.

How long is a construction lien enforceable?

A lawsuit to enforce a lien can be filed up to one year from the date of the last provision of work, services, material or equipment, payment for which the lien claim was filed, or within 30 days following the receipt of written notice, by personal service or certified mail, return receipt requested, from the homeowner requiring the claimant to start suit to establish the lien claim. If the lawsuit is not started within either of these time frames, the claimant must immediately discharge the lien of record in the office of the county clerk.

What happens if a lien claimant files an invalid lien, or fails or refuses to discharge an invalid lien?

A claimant loses all claimed lien rights and rights to file subsequent lien claims to the extent of the face amount claimed in a groundless or procedurally defective lien claim. Such a claimant, as well as any lien claimant who forfeits a lien and fails to discharge that lien of record, may be liable for all damages suffered, and court costs and reasonable legal expenses incurred by the homeowner, the contractor, or subcontractor, or any combination, in defending or causing the discharge of the lien claim.

What happens if a homeowner presents a baseless defense against a lien claim?

A homeowner arguing such a defense may be liable for all court costs, and

reasonable legal expenses, as well as judgment for damages suffered by anyone adversely affected by the frivolous defense.

Post script

The Construction Lien Law is highly technical and easily overstepped by homeowners and lien claimants alike. While the costs of compliance are slight, the downside risks to mishandling a residential construction lien are considerable. When confronted with a claim of lien, seek the advice of an experienced attorney.

Resolving Disputes in Residential Construction and Renovation

At some point in time, a homeowner or a purchaser of a home may reach a stage where a dispute with the contractor cannot be solved through negotiations. The homeowner, whether it involves the purchase of a new home or renovations to an existing home, may then be required or need to use outside assistance in resolving the dispute. The most common forms of outside assistance are the court system, arbitration or mediation. In some instances, as discussed in the previous sections of this manual, there are limits and requirements on whether, and under what circumstances, the homeowner may look to the courts or arbitration. As an example, on new home construction disputes, a homeowner has the option of using the arbitration process under the Home Warranty or using the court system. Similarly, in disputes involving residential construction liens, there is a required arbitration proceeding administered by the American Arbitration Association.

Other than the above situations where specific arbitration or use of the courts are required, the homeowner and the contractor/builder may include in the contract the selection of a specific method of resolving disputes. The contract may require that all disputes be handled by the courts or that all disputes must be handled by arbitration. The contract may require that prior to arbitration or use of the courts that the homeowner and contractor/builder must use mediation. If the contract requires a particular method of resolving disputes, that contract will be enforced by the courts and the homeowner and contractor/builder will be required to use the method identified in the contract. If the contract does not provide for a method of resolving disputes, any disputes between the homeowner and contractor/builder are to be addressed in court. The following comments describe some of the differences between these methods of resolving disputes:

How can I resolve disputes with my contractor?

First, you should talk directly with the contractor to try to settle your disagreements. If that doesn't work, your dispute can be settled by arbitration or by mediation or in the courts.

How do I know which method to use in settling my dispute?

In certain types of disputes such as residential construction liens and homeowner new home warranty claims, the statutes will require that a particular method be used. Otherwise, the contract may describe the method that must be used. If the contract does not require use of the courts or arbitration and the dispute is not controlled by a statute, the court system would be the method of resolving the dispute.

What is arbitration?

Arbitration is a process in which the parties present their positions regarding the dispute to at least one neutral third person who will make a decision based on the merits of each party's position. That decision is usually final and binding, meaning that there is no right of appeal from an arbitration decision. An advantage of arbitration is that it should be quicker and less formal than using the courts. A second advantage is that the parties will select the arbitrator, who will often have experience in the types of problems that would be raised. The disadvantages of arbitration are that the award by the arbitrator usually cannot be appealed and the parties must pay for the arbitrator's time.

How can I get my dispute arbitrated?

Arbitration has been discussed in this pamphlet in connection with warranty claims and lien claims. Arbitration may also be called for in your written agreement with your contractor. Or, you and the contractor can agree after a dispute has arisen to have it decided by arbitration. Arbitration organizations and individual arbitrators advertise and are listed in business directories.

What is mediation?

Mediation is a process in which an impartial third party - the mediator - meets with the parties in an effort to help them reach a mutually acceptable settlement of their dispute. The mediator does not make a decision about the outcome of the dispute. Instead, the mediator assists the parties in developing a solution to the dispute. Advantages of mediation are that it may be less adversarial, is quick and less expensive, is less formal, may be more flexible, and permits the parties to

arrive at solutions that may not be possible in arbitration or in court. Another advantage of mediation is that if the parties do not reach an agreement, they will still have the opportunity to have their disputes heard and resolved in either arbitration or court. A disadvantage of mediation is that the parties must pay for the mediator's time. Also, mediation requires both sides to agree and neither side can be forced to agree to any particular settlement. Mediation organizations and individual mediators can also be found listed in business directories.

How does use of the courts differ from arbitration or mediation?

If your contract does not require arbitration, you are entitled to use the court system to resolve your disputes with the contractor/builder. Depending on the monetary value of your claim, you may use the Small Claims Court, the Special Civil Part of the Law Division of the Superior Court or the regular Law Division of the Superior Court. Your claim would be started by the filing of a Complaint or, if the contractor/builder has filed a Complaint, you would need to file an Answer.

At your county courthouse, you will find much free information to help you decide whether and how to get your dispute to court. In general, how you proceed depends on the amount of money in dispute. For smaller, uncomplicated disputes you may decide that you can manage in Small Claims Court or in Special Civil Part on your own. The advantages of use of the court system is that other than the filing fee and attorney's fees if you have employed an attorney, you do not pay for the time of the judge. The decision by the judge, or jury, is enforceable without seeking or starting a separate lawsuit to enforce a judgment and if you are dissatisfied with the decision of the judge or jury, you will have a right to appeal. Some disadvantages of using the courts are that it can often be a longer process than using arbitration and it is much more formal which may require your hiring a lawyer to assist you in meeting the court requirements.

Must I have an attorney?

Whether mediation, arbitration or use of the courts are involved, there is no requirement that a homeowner have an attorney representing them. In larger and complex cases, particularly within the court system, you are well advised to seek professional legal assistance. Even in smaller court cases, arbitrations or mediations, particularly those arising out of some of the statutes discussed

in this manual, you may be best advised to at least consult with a lawyer experienced in residential construction to determine whether you would benefit from full representation.

About the New Jersey State Bar Foundation

The New Jersey State Bar Foundation, founded in 1958 as the charitable and educational arm of the New Jersey State Bar Association, is an organization dedicated to promoting free law-related education and giving all New Jersey residents a basic understanding of the legal system. Programs sponsored by the Foundation include seminars on such topics as wills, landlord-tenant matters, divorce, special education, real estate, disability law and health issues. Dedicated to providing programs for children and teachers, the Foundation sponsors mock trial competitions for elementary, middle and high school students, training sessions for teachers on conflict resolution and peer mediation, as well as teasing and bullying. For students, the Foundation publishes a legal newspaper for kids, *The Legal Eagle*, and a newsletter promoting tolerance called *Respect*.

Other publications published by the Foundation include *Consumer's Guide to New Jersey Law*, *Law Points for Senior Citizens (second edition)*; *Domestic Violence: The Law and You*; *AIDS and the Law in New Jersey*; *Disability Law: A Legal Primer* (fifth edition), cosponsored with the Essex County Bar Association; *Students' Rights Handbook (second edition)*, cosponsored with the American Civil Liberties Union of New Jersey; and *The Right to Special Education in New Jersey—A Guide for Advocates*, cosponsored with the Education Law Center. Some of these publications are available in Spanish, and all are available in alternative formats for individuals with disabilities. For more information or copies of program materials, visit the Foundation online at www.njsbf.org or call 1-800 FREE LAW.



New Jersey State Bar Foundation

New Jersey Law Center

One Constitution Square

New Brunswick, NJ 08901-1520

www.njsbf.org

1-800-FREE-LAW