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Part One: New Jersey's "Home Improvement Practices" Administrative Regulations

Perhaps the most commonly overlooked piece of construction industry legislation in the State of New Jersey - often unknown even to contractors with decades of experience - is the "Home Improvement Practices" administrative regulations contained in the New Jersey Administrative Code. N.J.A.C. 13:45A-16.1 et seq.

This first article (which is part of a multi-article series regarding the "Home Improvement Practices" regulations) will examine the definitions contained in N.J.A.C. 13:45A-16.1

"Home Improvement" Defined

The broad application of these regulations is established by the definition of the term "home improvement" which is defined as "the remodeling, altering, painting, repairing, or modernizing of residential or noncommercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, security protection devices, central heating and air conditioning equipment, water softeners, heaters,

and purifiers, solar heating or water systems, insulation installation, aluminum siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or noncommercial property and includes any of the above activities performed under emergency conditions."

However, the fact that these administrative regulations do not extend to new residential construction was affirmed by the Superior Court of New Jersey in the case Splash of Tile, Inc., v. Steven J. Moss, 357 N.J. Super. 143 (App.Div. 2003). In this case, a tile company brought action against general contractor, seeking to recover money owed for installation of a kitchen floor. The general contractor

Continued on reverse page...

Great Quotations

"Well, I don't know as I want a lawyer to tell me what I cannot do. I hire him to tell me how to do what I want to do."

- J. P. Morgan

"Law school taught me one thing: how to take two situations that are exactly the same and show how they are different."

- Hart Pomerantz

This article was written by Leonard S. de Palma, Esq.

counterclaimed, alleging violation of the Consumer Fraud Act. The Superior Court, Special Civil Part, Hunterdon County, denied the general contractor's motion to transfer the counterclaim to the Law Division, but awarded the general contractor damages. The general contractor subsequently brought an action against the tile company, alleging breach of contract and violation of the Consumer Fraud Act. The Superior Court, Law Division, Hunterdon County, dismissed that claim and the parties appealed.

The Appellate Division of the Superior Court, in an opinion written by Judge Carchman, J.A.D., noted that "there was no regulatory violation by Splash for not providing a 'detailed written agreement' under N.J.A.C. 13:45A-16, as this regulation only applies to a 'home improvement,' which 'does not include the construction of a new residence,' N.J.A.C. 13:45A-16.1, the factual circumstance presented here."

Two-Family Homes

Also of interest in this regard is a personal injury case titled Smith v. Young, 300 N.J. Super. 82 (App.Div. 1997). In the Smith case, it was held that a co-owned, two-family home, is "unquestionably residential in use." One of the co-owners, defendant Young, occupied the first floor, and had been living on the property for more than twenty-five years.

The co-owner of the remaining interest in the property was the estate of Ms. Young's sister, defendant Lorraine Benjamin, who died before plaintiff's injuries occurred, and who lived on the second floor before her death. At the time plaintiff's injuries occurred, the estate's co-ownership interest in the property was managed by Deborah Benjamin, Lorraine's daughter, an Ohio resident. Deborah Benjamin rented out the second floor to tenants and collected the rent on behalf of the estate.

The Appellate Division ruled that the property at issue was distinctly residential in the common understanding of that term. "Although courts may

choose to label the rental of a single flat, presumably at market rates, as commercial for [certain] classification purposes, ... doing so does not transform the activity, as a matter of fact, into a business. Even if we were to remand ... for findings [as to] whether the rental income exceeds the carrying costs of the property -- an artificial determinant at best -- the essentially residential nature of the use would remain unchanged."

Oral and Written Contracts

Next, the regulation brings both written and oral arrangements under its regulatory umbrella by defining "Home improvement contract" as "an oral or written agreement between a seller and an owner of residential or noncommercial property, or a seller and a tenant or lessee of residential or noncommercial property, if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the seller is to perform labor or render services for home improvements, or furnish materials in connection therewith."

Part Two of this series appears in the Summer 2004 Issue of The Advocate



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