

Consumer fraud: "any unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation" in connection with the sale of goods, services or real estate. N.J.S. 56:8-2.

The New Jersey Consumer Fraud Act provides that there are three ways in which an act of consumer fraud may be committed:

1. **Affirmative Misrepresentation** - An affirmative misrepresentation is a statement of fact that is untrue. It does not matter whether the party making the statement knew that it was untrue. If the statement is untrue, then it is consumer fraud. Thus unlike traditional concepts of fraud which require an intentional misrepresentation (i.e., a "lie"), consumer fraud may be a negligent, unintentional misrepresentation.
2. **Knowing Omission** - Consumer fraud can be the "knowing concealment, suppression or omission of any material fact." N.J.S. 56:8-A knowing omission occurs when a party knows a fact that is important to the transaction but fails to disclose it.
3. **Violation of Certain Laws** - The Act itself. Such statutes and regulations define specific conduct prohibited by law.
4. **Ascertainable Loss** - Any type of damage that is quantifiable or measurable. Thiedemann v. Mercedes-Benz, USA, LLC, 183 N.J. 234 (2005). It does not have to be a loss that you have already experienced but may include a future out of pocket expense that you will be required to make. Cox v. Sears Roebuck & Co., 138 N.J. 2 (1995).

The written contract must contain specific information including:

1. The contractor must be a registered home improvement contractor with Division of Consumer Affairs (DCA)
2. The contract and ALL documents must provide the contractor's registration number in at least 10 point bold face type
3. H.I. Contractors are required to purchase and maintain a commercial liability insurance policy with minimum coverage of \$500,000 per occurrence. Proof of coverage to be filed with the DCA and any changes must be provided to the DCA before the term of the original policy expires.
4. Proof of the home improvement contractor's commercial general liability insurance policy in a minimum amount of \$500,000 per occurrence that complies with the requirements of N.J.A.C. 13:45A-17.12; and
5. H.I. Contractor registration number MUST be displayed in at least 10 point bold face type On all: business cards; correspondence, contracts; brochures; sales material; etc...
6. The contractor's Commercial work Vehicles must display his Contractor registration number in lettering at one inch in height
7. The contract must provide the toll free telephone number for the DCA:
 - a. **FOR INFORMATION ABOUT CONTRACTORS AND THE CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS AT 1-888-656-6225.**

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8. The contract must include a 3 day right to cancel the contract in at least 10 point bold face type:
"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."

9. The contract must be signed by the parties. (Husband & Wife)
10. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products are to be used, a description of such products or materials shall be clearly set forth in the contract;
11. Give the contracted homeowner a detailed description of the work to be done and the principal products and materials to be used.
12. All finance charges including any hourly rates must be stated clearly with the total price to be paid by the buyer. If the contract is one for time and materials, the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated;
13. Any warranty or guarantee on any products, materials, labor or services must be included.
14. A Start and Completion date for the work to be done
15. Any changes in the Start and Completion dates or time periods stated in a written contract shall be agreed to in writing; CHANGE ORDER! or Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.
16. Any changes to the Contract must be in writing or the contractor is liable for consumer fraud. There need not be any intent by the Contractor. Per se – NO Defense. CHANGE ORDER!
17. Every contractor required to register under the "Contractors' Registration Act" shall have in his possession an identification badge, whenever the contractor is performing, or engaging, or attempting to engage, in the business of making or selling home improvements. (No badges yet)
18. Contractor is RESPONSIBLE for all construction permits and comply with all state and local building codes. A copy of all required final inspections certificates must be given to the buyer prior to final payment or when requested by the buyer.
19. Contractor must give a written copy of any warranty or guarantees involved in the project, to the Homeowner/buyer when bidding (proposal given) and at the time of contracting.
20. Contractor must give a description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement
21. Contractor / Sellers legal name and address must be on the contract.
22. Applies to any contract in excess of \$500.

23. The original registration certificate or a duplicate registration certificate issued by the Division at each place of business; and

The list above is not exhaustive. There are other requirements found in the Contractor's Registration Act (NJSA 56:8-136 et seq) and the Home Improvement Practices regulations (NJAC 13:45A16 - 17). Given the myriad requirements, only the most diligent home improvement contractor may comply with the law. The vast majority of home improvement contractors are not diligent and are using illegal contracts that are unenforceable.

LEGAL DISCLAIMER: Please understand that this information is not intended to be legal advice. You must consult a competent attorney for specific application or use.

New Jersey Consumer Fraud Act Penalties

Treble Damages – Payment of three times (3X) the amount of damages awarded to the other party. The court has no discretion on this point.

Individual Liability of Company Owners, Employees and Agents -

The Consumer Fraud Act's expansive definition of "person" has far reaching consequences for owners, officers, employees and agents of a business. This law allows the piercing of the protection assumed to exist under the corporate veil:

The New Jersey Supreme Court ruled that company management can be held personally liable to a plaintiff under the Consumer Fraud Act where management participated in an activity for the company that was a regulatory violation. In *Allen vs. V & A Brothers, Inc.*, 208 N.J. 114 (2011), the Court ruled that both employees and officers of a corporation may be individually liable under the Consumer Fraud Act for actions taken for the company. In that case, the defendants were landscapers subject to home improvement contractor law and regulations. They were alleged to have committed several regulatory violations including the failure to obtain a written contract, the failure to obtain final approvals before accepting final payment and the failure to obtain the homeowner's consent to modifications to designs and plans for the project. The trial court had dismissed the claims against the corporate employees and officers. The Appellate Division upheld the trial court. The Supreme Court reversed both lower courts. The Supreme Court opined that principals of a business may be individually liable if they set policies that are in violation of the Consumer Fraud Act. Thus, under the New Jersey Consumer Fraud Act, the owner of a company who sets a policy that unwittingly violates a statute or regulation may not have "limited liability" and instead may be personally liable for business decisions.

<https://www.njconsumeraffairs.gov/Statutes/Consumer-Fraud-Act.pdf>

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