

“Residential or non-commercial property” means a structure used, in whole or in substantial part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures.

“Sales representative” means a person employed by or contracting with a seller for the purpose of selling home improvements.

“Seller” means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

Amended by R.1994 d.396, effective August 1, 1994.

See: 26 N.J.R. 1605(a), 26 N.J.R. 3183(a).

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Two-unit residence would be characterized as “residential property,” relieving co-owners of duty to maintain abutting sidewalks in reasonably good condition, despite fact that only one unit of residence was owner-occupied. *Smith v. Young*, 300 N.J.Super. 82, 692 A.2d 76 (A.D.1997).

Unoccupied property having both residential and commercial uses qualified as “residential or noncommercial property” under Consumer Fraud Act; Act precluded enforcement of alleged oral renovation contract between electrical subcontractor and shareholder of property’s corporate owner. *Marascio v. Campanella*, 298 N.J.Super. 491, 689 A.2d 852 (A.D.1997).

Residential property within scope of Consumer Fraud Act regulations. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Consumer Fraud Act regulation requiring home improvement contracts to be in writing was valid. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Home improvement contract did not comply with Consumer Fraud Act and was unenforceable. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Owners of property characterized as residential not liable for defective abutting sidewalk. *Borges v. Hamed*, 247 N.J.Super. 353, 589 A.2d 199 (L.1990), affirmed 247 N.J.Super. 295, 589 A.2d 169.

13:45A-16.2 Unlawful practices

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization by a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

1. Model home representations: Misrepresent or falsely state to a prospective buyer that the buyer’s residential or noncommercial property is to serve as a “model” or “advertising job”, or use any other prospective buyer lure to mislead the buyer into believing that a price reduction or other compensation will be received by reason of such representations;

2. Product and material representations: Misrepresent directly or by implication that products or materials to be used in the home improvement:

i. Need no periodic repainting, finishing, maintenance or other service;

ii. Are of a specific or well-known brand name, or are produced by a specific manufacturer or exclusively distributed by the seller;

iii. Are of a specific size, weight, grade or quality, or possess any other distinguishing characteristics or features;

iv. Perform certain functions or substitute for, or are equal in performance to, other products or materials;

v. Meet or exceed municipal, state, federal, or other applicable standards or requirements;

vi. Are approved or recommended by any governmental agency, person, firm or organization, or that they are the users of such products or materials;

vii. Are of sufficient size, capacity, character or nature to do the job expected or represented;

viii. Are or will be custom-built or specially designed for the needs of the buyer; or

ix. May be serviced or repaired within the buyer’s immediate trade area, or be maintained with replacement and repair parts which are readily available.

3. Bait selling:

i. Offer or represent specific products or materials as being for sale, where the purpose or effect of the offer or representation is not to sell as represented but to bait or entice the buyer into the purchase of other or higher priced substitute products or materials;

ii. Disparage, degrade or otherwise discourage the purchase of products or materials offered or represented by the seller as being for sale to induce the buyer to purchase other or higher priced substitute products or materials;

iii. Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale;

iv. Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home improvements by sample, illustration or model, without the knowledge or consent of the buyer;

v. Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands; or

vi. Misrepresent that certain products or materials are unavailable or that there will be a long delay in

their manufacture, delivery, service or installation in order to induce a buyer to purchase other or higher priced substitute products or materials from the seller.

4. Identity of seller:

i. Deceptively gain entry into the prospective buyer's home or onto the buyer's property under the guise of any governmental or public utility inspection, or otherwise misrepresent that the seller has any official right, duty or authority to conduct an inspection;

ii. Misrepresent that the seller is an employee, office or representative of a manufacturer, importer or any other person, firm or organization, or a member of any trade association, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract;

iii. Misrepresent the status, authority or position of the sales representative in the organization he represents;

iv. Misrepresent that the sales representative is an employee or representative of or works exclusively for a particular seller; or

v. Misrepresent that the seller is part of any governmental or public agency in any printed or oral communication including but not limited to leaflets, tracts or other printed material, or that any licensing denotes approval by the governmental agency.

5. Gift offers:

i. Offer or advertise any gift, free item or bonus without fully disclosing the terms or conditions of the offer, including expiration date of the offer and when the gift, free item or bonus will be given; or

ii. Fail to comply with the terms of such offer.

6. Price and financing:

i. Misrepresent to a prospective buyer that an introductory, confidential, close-out, going out of business, factory, wholesale, or any other special price or discount is being given, or that any other concession is made because of a market survey or test, use of materials left over from another job, or any other reason;

ii. Misrepresent that any person, firm or organization, whether or not connected with the seller, is especially interested in seeing that the prospective buyer gets a bargain, special price, discount or any other benefit or concession;

iii. Misrepresent or mislead the prospective buyer into believing that insurance or some other form of protection will be furnished to relieve the buyer from obligations under the contract if the buyer becomes ill, dies or is unable to make payments;

iv. Misrepresent or mislead the buyer into believing that no obligation will be incurred because of the signing of any document, or that the buyer will be relieved of some or all obligations under the contract by the signing of any documents;

v. Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract;

vi. Misrepresent or fail to disclose that the offered or contract price does not include delivery or installation, or that other requirements must be fulfilled by the buyer as a condition to the performance of labor, services, or the furnishing of products or materials at the offered or contract price;

vii. Mislead the prospective buyer into believing that the down payment or any other sum constitutes the full amount the buyer will be obligated to pay;

viii. Misrepresent or fail to disclose that the offered or contract price does not include all financing charges, interest service charges, credit investigation costs, building or installation permit fees, or other obligations, charges, cost or fees to be paid by the buyer;

ix. Advise or induce the buyer to inflate the value of the buyer's property or assets, or to misrepresent or falsify the buyer's true financial position in order to obtain credit; or

x. Increase or falsify the contract price, or induce the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit.

7. Performance:

i. Deliver materials, begin work, or use any similar tactic to unduly pressure the buyer into a home improvement contract, or make any claim or assertion that a binding contract has been agreed upon where no final agreement or understanding exists;

ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

iii. 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.

8. Competitors:

i. Misrepresent that the work of a competitor was performed by the seller;

ii. Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor; or

iii. Use or imitate the trademarks, trade names, labels or other distinctive marks of a competitor.

9. Sales representations:

i. Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veterans' organization, or misrepresent the extent of such aid or assistance;

ii. Knowingly fail to make any material statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading; or

iii. Misrepresent that the customer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement.

10. Building permits:

i. No seller contracting for the making of home improvements shall commence work until he is sure that all applicable state or local building and construction permits have been issued as required under state laws or local ordinances; or

ii. Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer by the seller when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

11. Guarantees or warranties:

i. The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time the seller presents his bid as well as at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

12. Home improvement contract requirements—writing requirement: All home improvement contracts for a purchase price in excess of \$ 200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties

thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

i. The legal name and business address of the seller, including the legal name and business address of the sales representative or agent who solicited or negotiated the contract for the seller;

ii. 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;

iii. The total price or other consideration to be paid by the buyer, including all finance charges. 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;

iv. The dates or time period on or within which the work is to begin and be completed by the seller;

v. A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement; and

vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

13. Disclosures and obligations concerning preservation of buyers' claims and defenses:

i. If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer;

ii. No home improvement contract shall require or entail the execution of any note, unless such note shall have conspicuously printed thereon the disclosures required by either State law (N.J.S.A. 17:16C-64.2 (consumer note)) or Federal law (16 C.F.R. section 433.2) concerning the preservation of buyers' claims and defenses.

Petition for Rulemaking: Denied.

See: 21 N.J.R. 3565(b).

Amended by R.1990 d.125, effective February 20, 1990.

See: 21 N.J.R. 3433(b), 22 N.J.R. 662(d).

Threshold amount at (a)12. changed from \$25.00 to \$100.00.

Amended by R.1995 d.618, effective December 4, 1995.

See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).
 Petition for Rulemaking: Denied.
 See: 31 N.J.R. 2983(a).

R.1982 d.221, effective July 19, 1982.
 See: 14 N.J.R. 464(a), 14 N.J.R. 767(b).

Law Review and Journal Commentaries

Consumer Fraud Act—Attorneys' Fees. Steven P. Bann, 138 N.J.L.J. No. 3, 45 (1994).

Case Notes

Unoccupied property having both residential and commercial uses qualified as "residential or noncommercial property" under Consumer Fraud Act; Act precluded enforcement of alleged oral renovation contract between electrical subcontractor and shareholder of property's corporate owner. *Marascio v. Campanella*, 298 N.J.Super. 491, 689 A.2d 852 (A.D.1997).

"Unlawful" within meaning of Consumer Fraud Act; no person misled or deceived. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Merchant who agreed to perform home improvement work on residence engaged in "unlawful acts". *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Violation of specific regulation; strict liability. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Homeowner sustained "ascertainable loss" within meaning of the Consumer Fraud Act. *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 647 A.2d 454 (1994).

Property was residential in character under Consumer Fraud Act, even though part was used as a tavern and liquor store. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Regulations did not exceed Consumer Fraud Act authority. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Home improvement contract did not comply with Consumer Fraud Act and was enforceable. *Blake Const. v. Pavlick*, 236 N.J.Super. 73, 564 A.2d 130 (L.1989).

Finding of N.J.A.C. 13:45A-16.2(a)6v violation upheld; total recovery under the Consumer Fraud Act for compensatory damages in small claims division court may not exceed \$1,000; judgment reduced to limit. *Wisser v. Kaufman Carpet Co., Inc.*, 188 N.J.Super. 574, 458 A.2d 119 (App.Div.1983).

Violation of Consumer Fraud Act. *Swiss v. Williams*, 184 N.J.Super. 243, 445 A.2d 486 (Dist. Ct. of Mercer Co.1982).

SUBCHAPTER 17. (RESERVED)

SUBCHAPTER 18. PLAIN LANGUAGE REVIEW

13:45A-18.1 Fee for contract review

Any creditor, seller, insurer, lessor, or any person in the business of preparing and selling forms of consumer contracts, requesting a review of a consumer contract, or writing required to complete the consumer transaction, to determine its compliance with the Plain Language Act, N.J.S.A. 56:12-1 et seq., shall pay to the Director of the Division of Consumer Affairs a fee in the amount of \$50.00.

SUBCHAPTER 19. PETITION FOR RULEMAKING

13:45A-19.1 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Director of the Division of Consumer Affairs or with any board, bureau, committee or other agency located within the Division to promulgate, amend or repeal a rule.

(b) With respect to a petition for a new rule, the petitioner shall include his or her name and address, the substance or nature of the request, the problem or purpose which is the subject of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(c) With respect to a petition for an amended rule, the petitioner shall indicate any existing text to be deleted and include any new text to be added.

(d) Within 15 days of receiving the petition, the Director shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of petition pursuant to N.J.A.C. 1:30-3.6(a).

(e) Within 30 days of receiving the petition, the Director or the board, bureau, or other agency located within the Division shall, pursuant to N.J.S.A. 52:14B-4(f), either deny the petition, giving a written statement of its reasons, or proceed to act on the petition, which action may include initiation of a formal rulemaking proceeding. The Director or the administrative head of the appropriate board, bureau, committee or other agency located within the Division shall advise the petitioner in writing of the response to the request and shall file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition pursuant to N.J.A.C. 1:30-3.6(b).

SUBCHAPTER 20. RESALE OF TICKETS OF ADMISSION TO PLACES OF ENTERTAINMENT

13:45A-20.1 Delayed effective date of regulation

Pursuant to P.L. 1995, c.169, which became effective October 5, 1995, the provisions of N.J.A.C. 13:45A-20.5(c) and 20.5(e) will become effective April 5, 1997.

New Rule, R.1995 d.618, effective December 4, 1995.
 See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A-20.1A Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Advertisement means any attempt by a licensee to directly or indirectly induce the purchase of tickets, appearing

in any newspaper, magazine, periodical, circular, sign or other written matter placed before the public, or in any radio or television broadcast or any other media, electronic or otherwise.

“Director” means the Director of Consumer Affairs in the Department of Law and Public Safety.