

# **The Indiana Home Improvement Contracts Act Explained**

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## ***What is the Indiana Home Improvement Contracts Act?***

The Indiana Home Improvement Contracts Act (the "Act") was enacted to protect consumers from unscrupulous contractors. As one court notes, the Act holds contractors to a strict standard because few consumers are knowledgeable about the home improvement industry. The Act provides specific requirements for the content, form, and modification of a home improvement contract. Contractors who violate the Act may suffer severe penalties, including payment of three times actual damages, the consumer's attorney fees, injunctive relief, rescission or voiding the contract, fines, costs associated with an investigation by the Attorney General, and court appointment of a Receiver to operate the contractor's business. This article provides home improvement contractors with an overview of the requirements of the Act and guidance to limit exposure for violation of the Act.

## ***When does the Act apply?***

The Act applies to any agreement for the alteration, repair, or other modification ("Home Improvement"), for which the contract price exceeds \$150.00, between a Home Improvement Supplier ("Supplier") and an individual who owns, leases, or rents *residential* property. The term "Residential Property" is defined by the Act as any real property used as a dwelling by the owner or a tenant and includes all fixtures, structures, and improvements to the property. In other words, the Act applies whenever the primary use of the property subject to the contract is residential use, even if the Supplier deals directly with someone not living at the premises (e.g. a landlord). Accordingly, because a relatively low contract price triggers the Act and the definition of "Residential Property" is broad, any person or entity that provides services to improve a dwelling is likely subject to the Act's provisions.

### ***Specific content and form requirements***

The Act requires Suppliers to provide the customer with a *written* Home Improvement contract in a form that each consumer can reasonably read and understand. The written contract must contain, at a minimum, the following provisions:

1. Name of the consumer;
2. Address of the residential property subject to the Home Improvement;
3. Name and address of the Supplier;
4. Name and telephone number of the Supplier's agent to whom consumer's may direct complaints and inquiries;
5. The date the contract was submitted to the consumer;
6. The date the offer will expire if the consumer fails to accept;
7. A reasonably detailed description of the Home Improvement *including* specifications (i.e. plans, detailed drawings, a list of materials, or other methods to describe the work, workmanship, materials, and quality of materials for each improvement);
8. Approximate start date *and* completion date;
9. A statement of contingencies that may change the approximate completion date;
10. The contract price; and
11. Signature lines for the consumer(s) and the Supplier including a legible printed or typed version of each person's name placed directly below the signature and the date each party signed the contract.

### ***Exceptions when the contract covers repairs arising from damage or loss and a third party pays for the improvement***

If a Home Improvement contract is entered into as a result of damage or loss that is covered, in whole or part, by an insurance policy, or for which a third party is liable, the Act provides the following exceptions to the form and content requirements discussed above:

1. The "reasonably detailed description," "approximate start date," "approximate completion date," and "statement of contingencies" must be included only to the extent the damage and loss is reasonably known to the Supplier when the contract is formed;
2. The provision requiring a "reasonably detailed description" of the Home Improvement may be satisfied by a statement that the property will be restored to the same or comparable condition existing before the loss or damage occurred;
3. The "approximate start date" and "completion date" may provide that the Home Improvement will commence within a specified number of days after the consumer obtains approval from its insurance carrier;
4. The "contract price" provision may be satisfied by stating the amount the consumer is obligated to pay above the amount of any insurance proceeds; and
5. A consumer may authorize, in writing, the commencement of a Home Improvement *before* receiving specifications. However, consumers electing to do so are obligated for the improvements specified and agreed to by the insurer.

### ***Special considerations for negotiating and executing home improvement contracts***

In addition to the specific content and form requirements discussed above, the Act requires that Suppliers follow certain guidelines when negotiating and executing Home Improvement contracts. Prior to obtaining the consumer's signature on the contract, Suppliers must expressly agree to the contract terms by signing the agreement. Additionally, a Supplier may not obtain a down payment from the consumer before the consumer signs the contract. Immediately after both parties sign the contract, Suppliers are required to give a complete copy of the contract to the consumer for his or her personal records.

If the Home Improvement requires a special license or permit, the Act requires that the contract be subject to obtaining the necessary licenses or permits. Additionally, all modifications to the contract must be in writing and signed by the consumer. The same rules regarding "negotiation and execution" apply to modifications to Home Improvement contracts. Prior to obtaining the consumer's signature on a contract modification, the Supplier must agree to the

terms contained in the modification by signing it and must immediately provide the consumer with a complete copy after both parties sign any modifications.

### ***Penalties for violating the Act***

A Supplier who violates the Act commits a deceptive act under the Indiana Deceptive Sales Act, and is subject to severe penalties, including: three times actual damages, payment of the consumer's attorney fees, injunctive relief, rescission or voiding the contract, fines, payment of costs associated with an investigation and prosecution by the Attorney General, and court appointment of a Receiver to operate the contractor's business.

### ***Who may commence an action for violations of the Act?***

Any party to a Home Improvement contract or the Attorney General may commence an action for violations of the Act. However, prior to commencing a lawsuit, consumers must comply with strict time lines and specific requirements designed to provide the Supplier with adequate notice and an opportunity to cure alleged *unintentional* violations of the Act. The notice prerequisite does not apply to actions brought by consumers for violations where the Supplier *intended* to defraud or mislead the consumer or for actions commenced by the Attorney General. Nonetheless, the Act prohibits the commencement of an action more than two years after the occurrence of the alleged violation.

### ***Protecting Yourself***

Suppliers can adequately protect themselves by taking a few precautionary measures. First, anyone who provides services to alter, repair, or modify residential property should evaluate its contract for compliance with the content and form requirements of the Act. Contractors should consult an attorney with questions related to complying with the content and form requirements or for assistance in drafting and revising form residential property contracts to

comply with the Act. Second, a Supplier should educate its agents on the Act's requirements and ensure that its form residential property contracts are properly completed before signing. Third, the Supplier should ensure that its agents sign all contracts prior to requesting the consumer's signature or deposit and provide the customer with a completed signed copy. Lastly, promptly contact an attorney if a consumer provides you with written notice of an alleged violation of the Act because you may be able to timely cure the violation without the need for costly and protracted litigation.

#### Disclaimer

This article is designed to provide a basic understanding of concepts of the law. The law, however, is very much subject to change and to interpretation by different courts. Additionally, the applicable law varies from situation to situation. Accordingly, this article should be viewed as educational in nature, and not to be considered as either legal advice or a substitute for competent advice from a qualified attorney. The author of this material encourages that you seek independent legal counsel to address any questions pertaining to particular issues or situations which you may encounter.