



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Senate Committee on Economic Development, Housing and General Affairs

From: David P. Hall, Legislative Counsel

Date: January 29, 2015

Subject: Consumer Protection; Home Improvement Projects; Current Law

This memorandum addresses the law governing consumer protection and home improvement projects.

In General

- Vermont law does not require a written contract for a home improvement project. Accordingly, a homeowner and a contractor can have an oral or written “contract,” or a combination of both, regarding the scope and nature of the work, cost estimate, timeframe, etc. The terms of this “contract” could be negotiated by the parties orally, through a series of e-mails or other correspondence, and could change over the course of the project.
- Vermont law does not prohibit a contractor from exceeding an estimate for the cost of a home improvement project, and unless otherwise provided in a contract, does not require the contractor to inform or seek prior approval from the homeowner for an increase beyond the estimated cost.
- Unless one of the statutes below is applicable, resolution of a contract dispute between a homeowner and a contractor is governed by the common law, including claims and defenses under the law of contracts (e.g., breach of contract, conversion, defective workmanship, fraud, unjust enrichment)

Vermont Consumer Protection Act – Right to Cancel a “Home Solicitation Sale”

In certain circumstances The Vermont Consumer Protection Act (9 V.S.A. Chapter 63) may apply to a home improvement transaction. If a transaction meets the definition of “home solicitation sale” (9 V.S.A. § 2451a(d)) and none of the statutory exceptions apply, then a seller of goods or services is required to provide oral and written notice of the consumer’s right to cancel the contract within three days. The three-day cancellation period does not begin until the seller provides the notices required. See Appendix A.

15 U.S.C. § 1635 – Right of Rescission - Federal Truth in Lending Act

Under federal consumer protection law, a home improvement project contract could be rescinded if it is part of a “consumer credit transaction” in which a security interest is retained against the principal dwelling of the homeowner.

In this case the homeowner would have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required, together with a statement containing the material disclosures required, by notifying the creditor, in accordance with regulations of the Consumer Financial Protection Bureau, of his intention to do so.

The creditor must clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section.

The creditor must also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

9 V.S.A. Chapter 102: Construction Contracts (the “Prompt Payment Act”)

Vermont’s “Prompt Payment Act” does not afford specific protections to a consumer in a dispute with a contractor. Rather, this chapter governs the relative rights and responsibilities of homeowners, contractors, and subcontractors, including an owner’s payment obligations to the contractor (§4002); payment obligations from one contractor to another (§4003); payment of funds retained or held in trust and contingent on a contractor’s performance (§4005-§4005a); and disputes between parties (§4007).

13 V.S.A. § 2029: Home Improvement Fraud

In certain circumstances a contractor’s bad action may arise to the level of statutory crime of “home improvement fraud,” codified at 13 V.S.A. § 2029. This section defines four circumstances in which a contractor knowingly commits fraud (subs. (b)-(c)); requires a person convicted of the crime to notify the Attorney General and be registered on a home improvement fraud registry (subs. (d)); imposes an escalating scale of fines and possible imprisonment (subs. (e)); and limits the ability of the contractor to engage in future home improvement activities for compensation (subs. (f)). See Appendix B.

Possible Legislative Approaches

- Require a signed, written contract for a home improvement project; specify elements of contract that must be included, e.g., scope of work, timeframe, cost estimate or total price, payment schedule, materials, change orders, etc.
- Require a contractor to inform a home owner, or seek prior approval, if the project will exceed the estimated cost

Appendix A

9 V.S.A. Chapter 63: Vermont Consumer Protection Act Provisions;
Home Solicitation Sale

§ 2451A. DEFINITIONS

As used in this chapter:

(a) "Consumer" means any person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for his or her use or benefit or the use or benefit of a member of his or her household, or in connection with the operation of his or her household or a farm whether or not the farm is conducted as a trade or business, or a person who purchases, leases, contracts for, or otherwise agrees to pay consideration for goods or services not for resale in the ordinary course of his or her trade or business but for the use or benefit of his or her business or in connection with the operation of his or her business.

(b) "Goods" or "services" shall include any objects, wares, goods, commodities, work, labor, intangibles, courses of instruction or training, securities, bonds, debentures, stocks, real estate, or other property or services of any kind. The term also includes bottled liquified petroleum (LP or propane) gas.

(c) "Seller" means a person regularly and principally engaged in a business of selling goods or services to consumers.

(d) "Home solicitation sale" means the sale or lease, or the offer for sale or lease, of goods or services with a purchase price of \$5.00 or more, whether under single or multiple contracts, where the sale, lease, or offer thereof is either personally solicited or consummated by a seller at the residence or place of business or employment of the

consumer, or at a seller's transient quarters, or solicited or consummated by a seller wholly or in part by telephone with a consumer at the residence or place of business or employment of the consumer. Transient quarters includes hotel or motel rooms, or any other place utilized as a temporary business location. The term "home solicitation sale" does not include a transaction:

(1) made pursuant to prior negotiations in the course of a visit by the consumer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) in which the consumer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the consumer's personal property. If in the course of such a visit, the seller sells the consumer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion;

(3) conducted and consummated entirely by mail; and without any other contact between the consumer and the seller prior to delivery of the goods or performance of the services;

(4) with a purchase price of under \$25.00 where the consumer is not required to sign any contract, receipt, sales ticket, evidence of indebtedness or other writing; and the goods, services, or merchandise purchased are capable of delivery or performance at one time;

(5) pertaining to the sale or rental of real property, to the sale of insurance, to the sale of securities by a broker dealer registered with the Securities and Exchange

Commission, or to the sale of commodities by and any person registered with the Commodity Futures Trading Commission;

(6) where, in the case of goods, the buyer may at any time:

(A)(i) cancel the order prior to delivery of the goods and receive a full refund for any monies paid; or

(ii) refuse to accept the goods when delivered, without incurring any obligation to pay for them and receive a full refund for any monies paid; or

(iii) return the goods to the seller and receive a full refund for any monies paid; and

(B) the buyer's right to cancel the order or return the goods without obligation or charge at any time and receive a full refund for any monies paid is clearly and unmistakably set forth on the face or reverse side of the sales ticket; and

(C) the goods or merchandise purchased under an agreement meeting the requirements specified in subdivisions (A) and (B) of this subdivision are capable of delivery at one time;

(7) solicited or consummated wholly or in part by telephone where the seller offers a full refund and right of cancellation for at least ten days after receipt of the goods or services, and a full refund within 30 days of return of the goods or cancellation of the services or under terms no more restrictive than those set forth in subsections 2454(a), (c), and (d) of this chapter, and the right of refund and cancellation is conspicuously disclosed with the goods or services;

(8) solicited or consummated wholly or in part by a federally insured depository institution or its subsidiary, affiliate, or parent organizations, or by a public utility

regulated by the Federal Communications Commission or the Vermont Public Service Board;

(9) in response to an order placed by a farmer for farm-related goods or services, whether in person, by telephone, or otherwise, and the farmer has a preexisting open end credit plan with the seller.

* * *

§ 2454. PURCHASE CONTRACTS; RESCISSION

(a) Consumer's or other obligor's right to cancel

(1) Except as provided in subdivision (5) of this subsection, in addition to any right otherwise to revoke an offer, the consumer or any other person obligated for any part of the purchase price may cancel a home solicitation sale until midnight of the third business day after the day on which the consumer has signed an agreement or offer to purchase relating to such sale, or has otherwise agreed to buy consumer goods or services from the seller.

(2) Cancellation occurs when notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the consumer not to be bound.

(5) A home solicitation sale may not be cancelled if the consumer has requested the seller to provide goods or services without delay because of an emergency, and

(A) the seller in good faith has begun substantial performance of the contract before the notice of cancellation has been given, and

(B) in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the consumer, and

(C) the consumer's request is both handwritten and signed by the consumer.

(b) Disclosure obligations

(1) In every home solicitation sale, the seller shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale at the time the consumer signs an agreement or offer to purchase relating to such sale, or otherwise agrees to buy consumer goods or services from the seller. Such receipt or contract copy shall show the date of the transaction and shall contain the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation for an explanation of this right.

(2) In a home solicitation sale, unless a consumer requests the seller to provide goods or services without delay in an emergency, the seller shall furnish a notice of cancellation to the consumer at the time he or she signs an agreement or offer to purchase relating to such sale or otherwise agrees to buy consumer goods or services from the seller, which notice shall be attached to the contract or receipt and easily detachable.

(A) The notice of cancellation shall contain the following information and statements, printed in not less than 10 point boldface type:

NOTICE OF CANCELLATION

(enter date of transaction)

.....

(date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

..... at

(name of seller)

(address of seller's place of business)

not later than midnight of

(date)

I hereby cancel this transaction.

.....

(date)

.....

(buyer's signature)

(B) Before furnishing copies of the "Notice of Cancellation" to the buyer, the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(C) The seller shall leave the "Notice of Cancellation" with the consumer.

(D) In addition to the written notice of cancellation the seller shall orally inform the buyer of his or her right to cancel at the time of the transaction.

(3) Until the seller has complied with this subsection, the consumer or any other person obligated for any part of the purchase price may cancel the home solicitation sale by notifying the seller in any manner and by any means of his or her intention to cancel. The cancellation period of three business days shall begin to run from the time the seller complies with this subsection.

(c) Restoration of payments

(1) Within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller shall tender to the consumer any payments made by the consumer and any note or other evidence of indebtedness, and take any action necessary or appropriate to terminate promptly any security interest in the transaction, except as provided in subdivision (3) of this subsection.

(2) If payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this subsection, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) Until the seller has complied with this subsection the consumer may retain possession of goods delivered to him or her by the seller and shall have a lien on the goods in his or her possession or control for any recovery to which he or she may be entitled.

(d) Duties of seller and consumer

(1) Within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked, the seller shall either demand possession of any goods delivered by the seller pursuant to the sale or instruct the consumer regarding the return shipment of the goods at the seller's expense and risk.

(2) If the seller does not give instructions regarding the return shipment of the goods, or if the consumer does not comply with any such instructions given, the seller must pick up such goods within 20 days after a home solicitation sale has been cancelled.

(3) If the seller does not act within the time periods established in subdivisions (1) and (2) of this subsection, the goods shall become the property of the consumer without obligation to pay for them.

(4) Upon demand, the consumer shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his or her residence.

(5) If the consumer agrees to return the goods to the seller and fails to do so, then he or she shall remain liable for performance of all obligations under the contract.

(6) The consumer shall take reasonable care of the goods in his or her possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(7) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller shall be entitled to no compensation therefor.

(e) If the home solicitation sale is principally negotiated in a language other than English, then all of the disclosures required by this section shall be given in that language.

(f) If the consumer is unable to write in his or her own handwriting, then any of the statements required to be written by him or her under this section shall be handwritten by a member of the consumer's household at the request of the consumer. If there is no other member of the consumer's household, then such statements must be written by the seller, at the request of the consumer, and the effect of such statements shall be orally explained to the consumer by the seller.

(g) Use of the cancellation provision provided for in this section shall not prevent any other action being taken under this chapter or otherwise against such seller.

(h) A violation of any of the provisions of this section shall be considered an unfair act in commerce within the meaning of subsection 2453(a) of this title.

Appendix B13 V.S.A. § 2029 – Home Improvement Fraud

§ 2029. HOME IMPROVEMENT FRAUD

(a) As used in this section, "home improvement" includes the fixing, replacing, remodeling, removing, renovation, alteration, conversion, improvement, demolition, or rehabilitation of or addition to any building or land, or any portion thereof, which is used or designed to be used as a residence or dwelling unit. Home improvement shall include the construction, replacement, installation, paving, or improvement of driveways, roofs, and sidewalks, and the limbing, pruning, and removal of trees or shrubbery and other improvements to structures or upon land that is adjacent to a dwelling house.

(b) A person commits the offense of home improvement fraud when he or she knowingly enters into a contract or agreement, written or oral, for \$500.00 or more, with an owner for home improvement, or into several contracts or agreements for \$2,500.00 or more in the aggregate, with more than one owner for home improvement, and he or she knowingly:

(1) promises performance that he or she does not intend to perform or knows will not be performed, in whole or in part;

(2) misrepresents a material fact relating to the terms of the contract or agreement or to the condition of any portion of the property involved;

(3) uses or employs any unfair or deceptive act or practice in order to induce, encourage, or solicit such person to enter into any contract or agreement or to modify the terms of the original contract or agreement; or

(4) when there is a declared state of emergency, charges for goods or services related to the emergency a price that exceeds two times the average price for the goods or services and the increase is not attributable to the additional costs incurred in connection with providing those goods or services.

(c) It shall be a permissive inference that the person acted knowingly under subdivision (b)(1) of this section if the person fails to perform the contract or agreement and, when the owner requests performance of the contract or agreement or a refund of payments made, the person fails to:

(1) return the payments or deliver the materials or make and comply with a reasonable written repayment plan for the return of the payments; or

(2) make and comply with a reasonable written plan for completion of the contract or agreement.

(d) Whenever a person is convicted of home improvement fraud or of fraudulent acts related to home improvement:

(1) the person shall notify the office of attorney general;

(2) the court shall notify the office of the attorney general; and

(3) the office of attorney general shall place the person's name on the home improvement fraud registry.

(e)(1) A person who violates subsection (b) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both, if the loss to a single consumer is less than \$1,000.00.

(2) A person who is convicted of a second or subsequent violation of subdivision (1) of this subsection shall be imprisoned not more than three years or fined not more than \$5,000.00, or both.

(3) A person who violates subsection (b) of this section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both, if:

(A) the loss to a single consumer is \$1,000.00 or more; or

(B) the loss to more than one consumer is \$2,500.00 or more in the aggregate.

(4) A person who is convicted of a second or subsequent violation of subdivision (3) of this subsection shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.

(5) A person who violates subsection (d) or (f) of this section shall be imprisoned for not more than two years or fined not more than \$1,000.00, or both.

(f) A person who is sentenced pursuant to subdivision (e)(2), (3), or (4) of this section may engage in home improvement activities for compensation only if:

(1) the work is for a company or individual engaged in home improvement activities, and the person first notifies the company or individual of the conviction and notifies the office of attorney general of the person's current address and telephone number; the name, address, and telephone number of the company or individual for whom the person is going to work; and the date on which the person will start working for the company or individual; or

(2) the person notifies the office of attorney general of the intent to engage in home improvement activities, and that the person has filed a surety bond or an irrevocable letter

of credit with the office in an amount of not less than \$50,000.00, and pays on a regular basis all fees associated with maintaining such bond or letter of credit.

(g) The office of attorney general shall release the letter of credit at such time when:

(1) any claims against the person relating to home improvement fraud have been paid;

(2) there are no pending actions or claims against the person for home improvement fraud; and

(3) the person has not been engaged in home improvement activities for at least six years and has signed an affidavit so attesting.

(h) A person who is convicted of fraudulent acts related to home improvement shall be required to comply with subsections (d) and (f) of this section.