

CON'S AND DAVE'S EXTRAVAGANT ADVENTURE THROUGH THE LAWS APPLICABLE TO RESIDENTIAL CONSTRUCTION

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Laws Applicable to Residential Construction

- Home Repair Fraud Act [815 ILCS 515/1 et seq.];
- Home Repair and Remodeling Act [815 ILCS 513/1 et seq.];
- Consumer Fraud and Deceptive Practices Act [815 ILCS 505/1 et seq.];
- Illinois Residential Building Code Act [815 ILCS 670/1 et seq.];
- Illinois Plumbing License Law [225 ILCS 320/1 et seq];
- Illinois Plumbing Code [77 Ill. Admin. Code Part 890];
- Local Building Codes;
- Local Permitting Ordinances;
- Restrictions/Conditions/Limitations in Recorded Documents

Home Repair Fraud Act

815 ILCS 515/1 *et seq.*

What is Home Repair Fraud?

Section 3 of the Act provides that a person knowingly enters into an agreement or contract, written or oral, for home repair, and he

- knowingly misrepresents:
 - a material fact relating to the terms of the contract or agreement or
 - the preexisting or existing condition of any portion of the property involved,
 - creates or confirms another's impression which is false and which he does not believe to be true
 - promises performance which he does not intend to perform or knows will not be performed;
- uses or employs any deception, false pretense or false promises in order to induce, encourage or solicit such person to enter into any contract or agreement; or
- enters into an unconscionable agreement or contract requiring payment to the contractor of at least \$4,000
- fails to comply with the provisions of the Assumed Name Act and misrepresents or conceals either his real name, the name of his business, or his business address.

Home Repair Fraud Act Definitions

“Unconscionable Contract” is defined as one in which the difference between the value of the services, materials and work to be performed and the amount charged is unreasonable (four times the fair market value for the services, materials and work)

“Home Repair” means the fixing, replacing, altering, converting, modernizing, improving of or the making of an addition to any real property primarily designed or used as a residence.

- includes the construction, installation, replacement or improvement to structures within the residence or upon the land adjacent thereto.
- does not include the sale, installation, cleaning or repair of carpets; the sale of goods or materials by a merchant who does not directly or through a subsidiary perform any work or labor in connection with the installation or application of the goods or materials; the repair, installation, replacement or connection of any home appliance; or landscaping.

“Residence” means a single or multiple family dwelling, including but not limited to a single family home, apartment building, condominium, duplex or townhouse which is used or intended to be used by its occupants as their dwelling place.

Home Repair Fraud Act Penalties

Violation of paragraphs (1) or (2) of subsection (a) of Section 3

- Class A misdemeanor when the amount of the contract or agreement is \$1,000 or less
- Class 4 felony when the amount of the contract or agreement is more than \$1,000 or for the second or subsequent offense when the amount of the contract or agreement is \$1,000 or less or 2 or more contracts or agreements for home repair exceed an aggregate amount of \$1,000 or more and such contracts or agreements are entered into with the same victim by one or more of the defendants as part of or in furtherance of a common fraudulent scheme, design or intention,

Violation of paragraph (3) of subsection (a) of Section 3

- Class 3 felony when the amount of the contract or agreement is more than \$10,000
- Class 4 felony when the amount of the contract or agreement is \$10,000 or less.

Home Repair Fraud Act Penalties

Violation of paragraph (4) of subsection (a) of Section 3

- Class A misdemeanor when the amount of the contract or agreement is \$1,000 or less
- Class 4 felony when the amount of the contract or agreement is more than \$1,000 for a second or subsequent offense when the amount of the contract or agreement is \$1,000 or less.
- If 2 or more contracts or agreements for home repair exceed an aggregate amount of \$1,000 or more and such contracts or agreements are entered into with the same victim by one or more of the defendants as part of or in furtherance of a common fraudulent scheme, design or intention, the violation shall be a Class 4 felony.

Violation of paragraphs (1) or (2) of subsection (b) of Section 3

- Class 4 felony.

Home Repair Fraud Act

Aggravated Home Repair Fraud

Under Section 5 of the Act, a person commits the offense of aggravated home repair fraud when he commits home repair fraud:

(i) against an elderly person or a person with a disability as defined in Section 17-56 of the Criminal Code of 2012; or

(ii) in connection with a home repair project intended to assist a person with a disability.

➤ A defense to aggravated home repair fraud does not exist merely because the accused reasonably believed the victim to be a person less than 60 years of age.

➤ Penalties for aggravated violations of the Act are increased and range from Class 2 felony to a Class 4 felony.

Home Repair and Remodeling Act

815 ILCS 513/1 *et seq.*

Section 5 – Policy

- the business of home repair and remodeling is a matter affecting the public interest
- improved communications and accurate representations between persons engaged in the business of making home repairs or remodeling and their consumers will increase consumer confidence, reduce the likelihood of disputes, and promote fair and honest practices in that the home repair business.

Section 10 – Definitions

- “Home repair and remodeling” means the fixing, replacing, altering, converting, modernizing, improving, or making of an addition to any real property primarily designed or used as a residence other than maintenance, service, or repairs under \$500.
- “Residence” means a single-family home or dwelling or a multiple-family home or dwelling containing 6 or fewer apartments, condominiums, town houses, or dwelling units, used or intended to be used by occupants as dwelling places.

Does not apply to original construction.

Home Repair and Remodeling Act

Section 5 – Written Contract

- For work costing more than \$1,000 the home repair contractor must furnish to the customer a written contract or work order that states the total cost, including parts and materials listed with reasonable particularity and any charge for an estimate. In addition, the contract shall state the business name and address of the person engaged in the business of home repair or remodeling

Section 15.5 – Notice of Arbitration of Jury Trial Waiver Provisions

- Contractor must advise customer that the proposed contract contains an arbitration provision or jury trial waiver
- Customer must write “Accept” or “Reject” next to each provision and sign.
- Rejection is considered a counteroffer and contractor can reject contract.
- Failure to advise the binding arbitration clause or the jury trial waiver clause or to secure the necessary acceptance, rejection or consumer signature renders each clause that has not been accepted or rejected and signed by the consumer null and void.

Home Repair and Remodeling Act

Section 25 – Insurance

If net worth of contractor is less than \$1 million, home repair contractor must maintain liability insurance

- \$100,000 per person and \$300,000 per occurrence of bodily injury and \$50,000 per occurrence for property damage
- \$10,000 per occurrence for home repair or remodeling not in conformance with applicable State, county, or municipal codes
- No requirement that proof of insurance must be furnished to customer.

Home Repair and Remodeling Act

Section 20 – Consumer Rights Brochure

- For any contract over \$1,000, any person engaging in the business of home repair and remodeling shall provide to its customers a copy of the “Home Repair: Know Your Consumer Rights” pamphlet prior to the execution of any home repair and remodeling contract
 - must be signed, dated and acknowledged by the consumer and contractor
 - Consumer Rights Acknowledgment Form specified by the Act
- If contract is for less than \$1,000, brochure must be furnished to consumer, but acknowledgement is not required.

Section 22 – Senior Citizen Right of Cancellation

- A person 65 years or older may cancel contract with 15 business days of the date signed if contract is with an uninvited solicitor and was made at the home of the purchaser.

Home Repair and Remodeling Act

Section 30 – Action for Damages

- Any person who suffers actual damage as a result of a violation of this Act may bring an action pursuant to Section 10a of the Consumer Fraud and Deceptive Business Practices Act.

Section 35 – Enforcement

- HRRA may be enforced by Attorney General or State's Attorney to restrain and prevent any pattern or practice violation of this Act
- AG or SA may accept an assurance of voluntary compliance but failure to perform the terms of any such assurance constitutes prima facie evidence of a violation of the HRRA
- AG or SA may enforce through Consumer Fraud Act.

Home Repair and Remodeling Act

Section 8 – Repairs Following Damaging Weather

- A contractor shall not offer to pay or rebate any insurance deductible.
- Contract to be paid from the proceeds of a property or casualty insurance policy, may be cancelled within 5 business days after receipt of notice from the insurer that any part of the claim is not covered or 13 business days after receipt of a properly executed proof of loss by the insurer from the insured and the contract must include a notice advising the homeowner of the right to cancel.
- If contract is cancelled under this section, contractor must refund all payments received. However, if the contractor has provided any goods or services related to a catastrophe and the insured has acknowledged in writing that the services provided are necessary to prevent damage to the premises, then the contractor is entitled to the reasonable value of the goods and services provided.

Consumer Fraud and Deceptive Practices Act

815 ILCS 505/1 et seq.

Section 2 – Unlawful Practices

- Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

Section 2Q - Home Improvement or Repair Businesses

- Person in the business of home repair must operate under his own name or under an assumed corporate name in compliance with the Business Corporation Act or an assumed name under the Assumed Name Act (no reference to LLC or LLP)
- In addition to being a violation of the CFDPA, can be either a Class A Misdemeanor or Class 4 Felony
- Home Repair Contractor must notify the consumer in writing of any change in his or its business name or address occurring prior to the agreed dates for commencement or completion of home repair. The notice shall be given within 10 days after the change of business name or address.
- Contractor who fails to start or complete work must return any payment made by the consumer or its agents within 10 days after a written demand is made by certified mail.

Consumer Fraud and Deceptive Practices Act

Section 2Z – Violations of Other Laws

- Any person who **knowingly** violates the HRRRA commits an unlawful practice within the meaning of the CFDPA.

Section 10a – Action for Actual Damages

- The CFDPA allows for private rights of action by any person who suffers actual damages resulting from violations of the Act.
- The court may, in its discretion, award any relief it deems proper including
 - compensatory damages
 - punitive damages
 - attorneys' fees to the prevailing party

Illinois Residential Building Code Act

815 ILCS 670/1 *et seq.*

Section 5 – Purpose

- To provide minimum requirements for safety and to safeguard property and the public welfare by regulating and controlling the design, construction, installation, and quality of materials of new residential construction as regulated by this Act.

Section 10 – Definitions

- “New residential construction” means any original construction of a single-family home or a dwelling containing 2 or fewer apartments, condominiums, or townhouses.
- “Non-building code jurisdiction” means any area of the State in a municipality or county having jurisdiction that: (i) has not adopted a residential building code; or (ii) is required to but has not identified its adopted residential building code to the Board under Section 10.18 of the Capital Development Board Act.
- Home builder means any individual or business that constructs a fixed building or structure for sale or use by another as a residence or that, for a price, commission, fee, wage, or other compensation, undertakes or offers to undertake the construction of any building or structure to be used by another as a residence, if the individual, or business reasonably expects to earn a financial profit from that activity.

Illinois Residential Building Code Act

- Section 15 – Adoption of Residential Building Code

- A contract to build new residential construction in any non-building code jurisdiction must adopt as part of the construction contract the applicability of a residential building code that is agreed to by the home builder and the home purchaser.
- The home builder and the home purchaser may agree to adopt the International Residential Code or any municipal residential building code or county residential building code that is in effect on the first day of construction in any county or municipality that is within 100 miles of the location of the new home.
- If the home builder and the home purchaser fail to agree to a residential building code or if no residential building code is stated in the contract, the code adopted under Section 15 of the Energy Efficient Building Act, the plumbing code promulgated by the Illinois Department of Public Health under Section 35 of the Illinois Plumbing License Law, and the current edition of the International Residential Code shall, by law, be adopted as part of the construction contract.
- Under Section 20 If a builder constructs a home for resale, the builder must certify to the buyer that the builder has constructed the home in compliance with a code authorized under Section 15 and must identify that code.

Illinois Plumbing License Law

225 ILCS 320/1 et seq.

Section 3 – Licensed Plumbers

- All planning and designing of plumbing systems and all plumbing shall be performed only by plumbers licensed under the provisions of this Act hereinafter called “licensed plumbers” and “licensed apprentice plumbers”.
- The employees of a firm, association, partnership or corporation who engage in plumbing shall be licensed plumbers or licensed apprentice plumbers. At least one member of every firm, association or partnership engaged in plumbing work, and at least one corporate officer of every corporation engaged in plumbing work, as the case may be, shall be a licensed plumber.
- “Plumber” means any licensed person authorized to perform plumbing, but does not include retired plumbers. (Section 2)
- “Plumbing contractor” means any person who performs plumbing, as defined in this Act, for another person. “Plumbing contractor” shall not include licensed plumbers and licensed apprentice plumbers who either are employed by persons engaged in the plumbing business or are employed by another person for the performance of plumbing solely for that other person, including, but not limited to, a hospital, university, or business maintenance staff. (Section 2)

Illinois Plumbing License Law

- Sections 7 and 8 - The Director of the Illinois Department of Public Health with the assistance of a State Board of Plumbing Examiners administers the Law.
- Section 11 – A plumber is licensed after successfully passing an examination and paying license fee.
- Section 14 – License is renewed annually on May 1st upon payment of renewal fee and providing evidence on completion of required continuing education.
- Sections 16 and 18 – Municipalities of over 500,000 in population may self-regulate the Law subject to review by the IDPH.
- Section 20 – Contains the grounds for revocation or suspension of a plumber's license.
- Section 29 – Violations of the Law – violation is a Class B misdemeanor and a fine of \$500 for the first offense; and a second or subsequent violation of this Act shall be guilty of a Class A misdemeanor with a fine of \$1,000. Each day the violation continues is a separate offense.
- Section 35 – Authorizes the adoption of a statewide plumbing code.

ILLINOIS PLUMBING CODE

77 Ill. Adm. Code Part 890

Section 110 – Applicability

- Governs the design and installation of new plumbing or plumbing systems and the alteration of plumbing systems. They apply to all new construction and any remodeling or renovation that alters, renovates or replaces existing plumbing or plumbing systems.
- Does not apply to existing buildings unless the plumbing or plumbing system is being altered, the building use is being changed or the existing plumbing creates a health or safety hazard.
- If an existing building is changed from one use to another or from one classification to another, it shall be treated as a new building and shall comply with the requirements of this Part for its new use or occupancy.
- Regardless of the age of the building, where a health or safety hazard exists because of an existing plumbing installation or lack thereof, the owner or his or her agent shall install additional plumbing or make corrections as may be necessary to abate the hazard or violation of this Part.

ILLINOIS PLUMBING CODE

- Section 140 – Compliance

- Existing Buildings. In existing buildings, including historic buildings, or premises in which plumbing installations are to be altered, renovated or replaced, materials and methods shall meet or exceed the provisions of this Part.
- Variances may be granted when the Department finds that compliance with all requirements of this Part would result in an undue hardship due to excessive structural or mechanical difficulty, or impracticability, a variance may be granted. The request for a variance shall be submitted in writing to the Department for approval prior to installation.
- The Department will consider variances when the applicant has provided documentation citing the particular portion for which a variance is sought and has provided justification sufficient to demonstrate that the variance will not create a condition less protective than that portion addressed in the variance request. Variance authorizations may be conditioned as determined by the Department and are not precedential
- Health and Safety. When a health or safety hazard exists because of an existing plumbing installation or lack of a plumbing installation, the owner or his or her agent shall install additional plumbing or make corrections as necessary to abate the hazard or violation.

ILLINOIS PLUMBING CODE

OUTLINE OF PART 890: ILLINOIS PLUMBING CODE

- SUBPART A: DEFINITIONS AND GENERAL PROVISIONS
- SUBPART B. PLUMBING MATERIALS
- SUBPART C. JOINTS AND CONNECTIONS
- SUBPART D: TRAPS AND CLEANOUTS
- SUBPART E. INTERCEPTORS - SEPARATORS AND BACKWATER VALVES
- SUBPART F. PLUMBING FIXTURES
- SUBPART G. HANGERS, ANCHORS AND SUPPORTS
- SUBPART H: INDIRECT WASTE PIPING, SPECIAL WASTE
- SUBPART I. WATER SUPPLY AND DISTRIBUTION
- SUBPART J. DRAINAGE SYSTEM
- SUBPART K. VENTS AND VENTING
- SUBPART L. PLUMBING SYSTEMS/CORRECTIONAL FACILITIES
- SUBPART M. INSPECTIONS, TESTS, MAINTENANCE AND ADMINISTRATION

LOCAL BUILDING CODES

- Each municipality with home rule authority can, and probably has enacted its own building codes.
- Many municipalities have adopted the international codes including, but not limited to:
 - International Building Code
 - Residential Code For One and Two Family Dwellings
 - International mechanical codes
 - National electrical codes
 - Illinois State Plumbing Code
 - Appearance Code

LOCAL BUILDING CODES

- Other Local Code Categories
 - Residential Land Grades
 - Elevators and Escalators
 - Accessory Structures
 - Fences
 - Driveways and Parking Facilities
 - Private Residential Swimming Pools
 - Tree Preservation on Private Property
 - Residential Structure Location

Permitting Ordinances

- Local Municipalities Have Permitting Requirements Before Construction may Occur in its Jurisdictional Boundaries
- Requirements May Include, But Are Not Limited To:
 - Permit Application
 - Permit Fee
 - Architectural Drawings
- Permit Applications Are Reviewed By The Local:
 - Building Department
 - Fire Department
 - Police Department

Permitting Ordinances

- Electrical Inspector
- Plumbing Inspector
- Anyone Else the Municipality Wants to be Involved

Restrictions/Conditions/Limitations In Recorded Documents

- Recorded Documents Against a Residential Parcel May Include
 - Plat of Subdivision
 - Plat of Condominium
 - Easements
- Each May Contain Restrictions on the Use and Enjoyment of a Parcel
- Such Restrictions May Include, but are not Limited to:
 - Setback Requirements
 - Utility Easements
 - Parks and Public Spaces
 - Water Retention