

The Home  
Repair and  
Remodeling  
Act: How it  
Affects  
Builders and  
Remodelers

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An extensive report on The Home Repair and Remodeling Act that went into effect January 1, 2000. The intent of this article is to correlate the importance of this recent Act and its requirements for remodelers and repairpersons conducting business in Illinois.

**Home Builders  
Association of  
Illinois**

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# The Home Repair and Remodeling Act: How it Affects Builders and Remodelers

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The Home Builders Association of Illinois has successfully lobbied for years that registration and/or licensure of builders and remodelers would do little in the fight against consumer fraud. Illinois allows units of local government to regulate our industry and only legitimate contractors would abide by state law. However, throughout the mid to late 1990's home remodeling and repair fraud was the number one complaint registered at the Consumer Fraud Division of the Illinois Attorney General's office. The Home Builders Association of Illinois cooperatively illustrated the importance of this fraudulent behavior by working with the General Assembly and passing legislation to preemptively and proactively correct home repair and remodeling fraud while at the same time protecting Illinois' home builders and remodelers. As of January 1, 2000, The Home Repair and Remodeling Act has been effective in creating improved communications and accurate representations between contractors and remodelers and consumers. The Home Repair and Remodeling Act has increased consumer confidence, reduced disputes, and promoted fair and honest business practices in Illinois.

## **Who does The Home Repair and Remodeling Act apply to?**

- The Home Repair and Remodeling Act applies to any person, individual, partnership, corporation, business, trust or other legal entity that engages in the business of home repair and/or remodeling to residences –single-family or multi-family home or dwellings containing 6 or fewer apartments, condominiums, town houses, or dwelling units used or intended to be used by occupants as living places.
- The law states that any entity “fixing, replacing, altering, converting, modernizing, improving, or making of an addition” to any real property used as a residence other than maintenance, service, or repairs under \$500 are to abide by the Act.
  - This includes: “construction, installation, replacement, or improvement of driveways, swimming pools, porches, kitchens, bathrooms, basements, chimneys, chimney liners, garages, fences, fallout shelters, central air conditioning, central heating, boilers, furnaces, electrical wiring, sewers, plumbing fixtures, storm doors, windows, roofs, awnings, landscaping, and other improvements” to structures within the residence or upon the land adjacent to the residence.

## **When am I exempt from this law as a contractor or remodeler?**

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- The law however does not include the “sale, installation, cleaning, or repair of carpets; the repair, installation, replacement, or connection of any home appliance including, but not limited to, disposals, refrigerators, ranges, garage door openers, televisions, or television antennas, washing machines, telephones, hot water heaters, satellite dishes, or other appliances” when the persons replacing, installing, repairing, or connecting the home appliance are employees or agents of the merchant that sold the home appliance or sold new products of the same type.
- The Act also does not apply to original construction of residences
- The Act also does not apply to repairs to dwelling containing more than 6 apartments or family units.

**As of January 1, 2000 homebuilders and remodelers in Illinois must have the following prior to initiating home repair or remodeling work:**

- When home repair or remodeling work totals over \$1,000, the business conducting the home repair or remodeling shall furnish a written contract or work order that states the total cost, including parts and materials needed. The contract or work order shall state the business name and address of the person engaged in the business of home repair and remodeling. If the business person uses a post office box or mail receiving service or agent to receive business correspondence, the contract also shall state the residence address of the home repair and remodeling business. A signature by the consumer is required.
- For any contract over \$1,000, a home repair or remodeling business also must provide a copy of the “Home Repair: Know Your Consumer Rights” pamphlet prior to the execution of any home repair and remodeling contract. The consumer must sign and date an acknowledgment form-- located in the pamphlet--that states that they understand their rights as consumers. The original acknowledgment form shall be

## Contract Requirements: Repair or Remodeling Over \$1,000

- Written Contract or Work Order with Business Name, Address and signature of Consumer
- Provide “Home Repair: Know Your Consumer Rights pamphlet with the acknowledgment **forms** signed and dated by both parties (There will be two copies—one for the contractor and one for the consumer).

## Contract Requirements: Repair and Remodeling \$1,000 and Under

- Written Contract or Work Order with Business Name, Address and signature of Consumer
- Provide “Home Repair: Know Your Consumer Rights pamphlet, **however no written acknowledgement of either parties is required.**

retained by the contractor and the duplicate copy shall be retained within the pamphlet by the consumer (The pamphlet, "Home Repair: Know Your Consumer Rights", can be downloaded and printed from the Illinois Attorney General's homepage ([www.ag.state.il.us/consumers/homerep0505c.pdf](http://www.ag.state.il.us/consumers/homerep0505c.pdf))

while the Home Builders Association also provides printed copies of the brochure to all local associations).

- For any contract for \$1,000 or under, home builders and remodelers must still present the pamphlet, however no

written acknowledgment of receipt of the pamphlet is required.

- Home Builders and remodelers shall obtain and maintain public liability and property damage insurance in the amount of \$100,000 per person and \$300,000 per occurrence of bodily injury, \$50,000 per occurrence for property damage, and \$10,000 per occurrence for improper home repair or remodeling not in conformance with applicable State, county, or municipal building codes. Businesses with \$1 million or more of net worth are exempt from this requirement based on the most recent financial statement, prepared within 13 months. New construction is also exempted from this Act and current law provides for a waiver of these provisions in an emergency situation such as wind or fire damage to a home.

## Insurance Requirements (Unless Net Worth is over 1 million): Repair and Remodeling

### **Public Liability and Property Damage**

- Per Person: \$100,000
- Per Occurrence for Injury: \$300,000
- Per Occurrence for Property Damage: \$50,000
- Per Occurrence for improper repair or remodeling: \$10,000

It is considered unlawful by Illinois law for any home builder or remodeler to conduct business in home repairs or remodeling before abiding by the previous requirements set forth by The Home Repair and Remodeling Act as of January 1, 2000. The Attorney General or the State's Attorney of a county in Illinois may bring action in the name of the people of this State against any person who does not follow these requirements. In the enforcement of this Act, the Attorney General or the States' Attorney may accept an assurance of voluntary compliance from anyone engaged in any conduct, act, or practice deemed in violation of this Act. All remedies, penalties, and authority granted to the Attorney General or State's Attorney of any county of Illinois by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for enforcement of this Act, and any violation of this Act shall constitute a violation of the Consumer Fraud and Deceptive Business Practices Act. **The Consumer Fraud and Deceptive Business Practices Act imposes significant penalties for violations. The Illinois Attorney General can sue vendors, seek fines of up to \$50,000 (or \$60,000 if the victim is age 65**

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or over), and in the most egregious cases, seek to shut down a business. The Act also allows anyone who has suffered actual harm to recover their actual damages, punitive damages in egregious cases, plus attorney's fees.

The Home Repair and Remodeling Act was recently reinforced by an Illinois Appellate court decision. The case pitted remodeler, Dan R. Smith, of Smith Building Services versus Cory Bogard and Angela Bogard. The Bogards hired Smith in 2003 to construct a 26'x20' living room addition totaling \$25,515.85. Smith completed the project in October 2004; however the Bogards refused to pay a remaining balance of \$10,515.85 due to their claim that Smith abandoned the project. Smith filed a complaint against the Bogards for a breach of contract seeking \$10,515.85 plus interest. In November 2006, Smith filed an amended complaint, adding two additional counts—one for unjust enrichment (the initial payment was made, yet it was not the correct amount of \$25,515.85) and one for quantum meruit (receiving payment for what he deserved). The Bogards filed a motion to dismiss the complaint, claiming Smith violated the Act by not securing a written contract prior to initiating construction and by **failing to provide them with the consumer-rights pamphlet**. They claim these violations preclude Smith's recovery for compensation. Smith argued, claiming the Act does not apply to him because he acted as the Bogards' subcontractor—as it stands, based on Supreme Court ruling MD Electrical Contractors vs. Abrams, **the Home Repair and Remodeling Act does not apply to subcontractors that are not directly in contract with homeowners**. In addition, the court found that this Act does apply to Smith based on the fact that Smith was in direct contact with the Bogards. In January 2007, the court granted the motion in its entirety, finding that because Smith had **failed to comply with The Home Repair and Remodeling Act by not providing a written contract or work order prior to initiating work on the project, and Smith failed to give the Bogards the consumer-rights pamphlet**.

In a prior court case, Illinois Electrical Services, L.L.C. v. Slepian, was referenced in order to justifiably make a court decision. In the Slepian case, the plaintiff, Central Illinois Electrical Services, entered into an oral contract with the homeowners to provide electrical work as a part of a remodeling project. The Slepian's refused to pay the last installment claimed due for the work performed. The electrical company sued to foreclose a mechanic's lien on their property and, in addition, alleged claims for compensation for deserved payment. The Slepian's once again alleged that the electrical company had **violated The Home Repair and Remodeling Act by failing to provide a written contract**. The trial court ruled in the electrical company's favor with respect to the mechanic's lien, dismissed the electrical company's additional counts, and denied all of the Slepian's claims. On appeal, Slepian's argued the clear language of The Home Repair and Remodeling Act, and the Act's consequences if a contractor fails to provide a written contract or work order. The electrical company argued that because another electrical contractor was initially hired to do the work, then they were not required by the Act to provide a written contract as it did not "initiate" the remodeling

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work. **The court rejected the electrical company's claim and found that the plain and ordinary language of the Act "clearly and unambiguously requires anyone engaged in the business of home repair and remodeling to obtain a signed contract before initiating work that will exceed \$1,000 in cost." The court held that the provisions of the Act applied to the electrical company as a successor electrical contractor. The court reversed the trial court's judgment and remanded the case with directions for the trial court to proceed in accordance with the Act.**

In another recent Illinois Appellate Court decision, MD Electrical Contractors, Inc., filed suit against defendants Fred and Carol Abrams to recover compensations for \$14,984 worth of services that they rendered as a subcontractor's home improvement project. Du Page County circuit court initially dismissed the case, alleging that the electrical company failed to comply with the Home Repair and Remodeling Act. The case was then appealed by the electrical company and moved to the appellate court. The plaintiff argued that the Act does not apply towards them because they acted as subcontractors and where not in direct contract with the Abrams. The appellate court agreed with the electrical company's argument and reversed and remanded the trial court's decision, saying that the Home Repair and Remodeling Act does not apply to subcontractors. Illinois Supreme Court supported the appellate court's decision, and illustrated that the Home Repair and Remodeling Act applies only to those who directly contract with a homeowner. Their decision was based on the reasoning that forcing subcontractors to comply with the Act would increase the burden on homeowners that the Act was meant to protect. A homeowner in this case would have to read and examine each and every subcontractor's agreement, ensuring that the costs in the subcontracts match the costs in the contract of the general contractor. It would better fit homeowners, and eliminate an unnecessary burden, if only the general contractor abided by the Home Repair and Remodeling Act's requirements and there was only one written contract.

**Based on the previous Slepian court case, Smith was determined to have also failed to comply with the Act and was precluded from recovery on count I (the breach-of-contract claim). Smith therefore not only had to forgo the remaining balance of \$10,515.85, Smith also had to return the initial payment of \$15,000. The Bogards therefore received a \$25, 515.85 living room addition for free and Smith did not receive any compensation for his work.**

It is apparent by these court cases that The Home Repair and Remodeling Act must be obeyed in order to protect home builders and remodelers, as well as consumers' rights. The Home Builders Association strongly urges our members and local associations continue to keep The Home Repair and Remodeling Act in mind as they conduct business in the state of Illinois, now and in the future.