

# Know The Rules And Play It By The Book - New Jersey Consumer Fraud Act

---

August 2, 2016 | by Andrew Berns

According to the New Jersey Division of Consumer Affairs website, issues with Home Improvement Contractors top the consumer complaint categories year after year.

So, what exactly does that mean for you? It means that if you feel you may have been cheated or scammed by a business, you do have options. In addition, there are also a number of things you can and should do to protect yourself as a consumer.

The New Jersey Consumer Fraud Act is one of the country's most far-reaching and comprehensive consumer protections laws. It was drafted to punish wrongdoers and does not take into consideration the good faith of business owners or merchants. The Consumer Fraud Act casts a wide net and it is necessary for all consumers and business owners to be aware of its breadth.

What is the Consumer Fraud Act?

The Consumer Fraud Act prohibits unconscionable commercial practices, deception, fraud, false promises, misrepresentation or concealment which may mislead, deceive or damage a consumer in connection with the advertisement or sale of any merchandise or real estate. Some examples include misrepresentation of a product, price, durability, repair or one-sided transactions.

How is a Consumer Defined?

The Consumer Fraud Act does not define the term consumer but has been interpreted to include individuals and merchants. If a business is engaged in a transaction as a consumer, the business can bring a claim against a merchant.

## Who can a Consumer Bring a Claim Against?

Consumers can only bring a claim for damages under the Consumer Fraud Act against a merchant. Generally, a merchant is a professional seller of goods, even if only on a part-time basis. Examples of merchants include banks, residential and commercial landlords, businesses, franchisors/franchisees.

## Does the Consumer Fraud Act Apply to Licensed Professionals?

Generally, if the professional is acting in furtherance of their professional capacity, the professional is not subject to liability under the Consumer Fraud Act.

## Does the Consumer Fraud Act Apply to Contractors?

The Consumer Fraud Act applies to any contractors engaged in the business of making or selling home improvements. The Home Improvement Practices Act requires that all contractors engaged in home improvement to be licensed with the State of New Jersey. All home improvement contracts in excess of \$500 and change orders must be in writing and signed by the parties. Failure to provide a written contract is a per se violation of the Consumer Fraud Act. All home improvement contracts must include a detailed description of the work to be performed, materials used, a start and end date, the total cost, the terms of any warranty and shall include a certificate of liability insurance of the contractor.

## What Damages can a Claimant Recover under the Consumer Fraud Act?

To recover under the Consumer Fraud Act a claimant must show that they suffered an ascertainable loss of money that was proximately caused by a violation of the Consumer Fraud Act. Ascertainable loss is generally the amount of money to make a claimant whole. The Consumer Fraud Act limits damages to those that are economic in nature, excluding damages for emotional distress and pain and suffering. A successful claimant is entitled what is called treble (three times), which is punitive in nature. An award of treble damages is mandatory for successful claimants. In addition to treble damages (three times), a successful claimant is entitled to reasonable counsel fees.

Whether you are a consumer or merchant in New Jersey, it is important to be aware of the implications of the Consumer Fraud Act. Whether you think you have been the victim of unscrupulous business practices or whether a claim has been made against you or your business, you need an attorney with experience to evaluate the claim.