

## Real Estate and Construction Update August 2017

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### **Five Things to Know When Buying Real Estate "Out-of-State"**

By: Derek P. Dissinger

Related Practice Area: Real Estate

As businesses and real estate developers grow and seek out new opportunities, they often venture into neighboring states from their home office. As clients find out when they branch out into new states, the laws, customs, taxes, title insurance, financing documents and costs tend to vary from state-to-state. Those differences can make or break the financial viability of a potential deal.

Here are five things to consider when venturing into new territory for a real estate transaction:

- 1. Transfer taxes.** The amount of transfer taxes and how they are customarily paid varies greatly from state-to-state. In Pennsylvania the 2 percent transfer tax is customarily split. In New York the seller generally pays transfer tax of less than 0.5 percent. Beware of using your "form" without checking into transfer taxes.
- 2. Bulk sales.** Many states have "bulk sales" laws, which can result in a buyer being responsible for a seller's debts. When these laws apply, to avoid liability on the part of the buyer, some states require an escrow amount to be held at closing, other states will issue clearance before closing, while others issue post-closing clearance.
- 3. Title insurance.** The cost of title insurance varies from state to state, as does what is able to be insured, types of endorsements and who can issue insurance. Unlike Pennsylvania, New York, New Jersey and Maryland surveys are customarily obtained by buyers and certified to the bank and title company. In many states, like Maryland and New Jersey, zoning endorsements are available and it is customary for a buyer/borrower to request and obtain a zoning compliance letter from the municipality, which needs to be requested weeks before closing. In Pennsylvania, title insurance companies charge an "all-inclusive" rate, but many neighboring states charge title review fees, escrow fees, settlement fees and document preparation fees.
- 4. Mortgages and mortgage taxes.** Certain states like New York charge a mortgage tax, and Maryland

charges a stamp tax on deeds of trust. In New York, buyers and their lenders will regularly coordinate with the seller's bank to obtain an assignment of the seller's existing loan to reduce this liability. Since this can be a time-consuming process, it is a good idea to include cooperate language in the agreement of sale and start the process early.

**5. Escrow closings and settlement charges.** Agreements of sale generally address how certain charges are split between the parties, and often the parties agree to split fees based on "local custom". Parties should explore what this means when venturing into a new state and who is preparing certain documents and what these charges are. For example, some states require pre-closing inspections and require any local building code deficiencies to be remedied.

If you have any questions on buying real estate in a different state, [please contact me](#) or any of the attorneys in [Barley Snyder's Real Estate Practice Group](#).

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## **Making Sense of Pennsylvania's HICPA Regulations**

By: Matthew M. Hennesy

Related Practice Area: Real Estate

Related Industry: Construction

When scam artists flooded the construction industry in the early 2000s, Pennsylvania fought back in 2009 and established its [Home Improvement Consumer Protection Act](#).

Under HICPA, the state requires registration of contractors doing any work over \$500 on a private residence and is far-reaching in its scope of contractors, subcontractors and independent contractors that must register.

Even though the act has only been on the books since 2009, it already has been amended twice, the latest coming in 2014. It likely will see more changes in the future. Though there are a multitude of specific instructions and conditions contained within the HICPA regulations, keep these five things in mind when working to comply with HICPA in Pennsylvania:

1. All contractors are required to register and must provide a multitude of information. That information includes: A complete description of the type of the contracting  
Disclosure of criminal convictions for fraud, theft, and crimes of deception, bankruptcy filings, and civil judgments in the past decade related to home improvement transactions  
Whether the contractor has ever previously been suspended by a government or disqualified from public funded contracting  
Proof of liability insurance
2. With the act came a new criminal offense - home improvement fraud. A contractor could face the charge if there is proof of false representations of an agreement for home improvement services, taking advance payment but failing to provide the services or materials and misrepresenting an item as special order material or misrepresenting the cost of special order material.
3. The validity of all contracts is largely dependent on whether the contract satisfies certain requirements, which include that all contracts be legible, signed by both parties, contain all contractor contact information, give an

approximate start and completion date, a total sales price due, the names of all subcontractors with contact information, along with other requirements.

4. Document all change orders - both from the contractor and from the consumer. Make sure both parties agree on and understand the ramifications of the change order. To comply with the state's contract requirements, both parties must sign any change order.

5. Consumers aren't the only ones protected under the act. State courts have held that if a construction contract is voided, invalid or unenforceable, contractors can pursue a claim for the "reasonable value of the services."

If all of this doesn't convince you to comply with contract requirements, consider that staying within the bounds of the act will help you avoid civil enforcement by the attorney general, will allow for recovery of full contract damages, and will make collection easier. If the contract is invalid, unenforceable, or voided, so are any supplemental provisions. Because HICPA makes violation of any of its provisions a violation of the Unfair Trade Practices and Consumer Protection Law, plaintiffs could seek damages and attorney fees for a breach of HICPA.

All home improvement contractors should simply stay within the confines of HICPA. Be sure you register your company. Use compliant contracts and clear, detailed plans, as many disagreements with consumers involve a misunderstanding about what is being done. Stick to those plans, and use written change orders when appropriate. If the owner requests a change, document it with a written change order including price adjustment signed by all parties.

If you have questions on the HICPA regulations, [please contact me](#) or any of the attorneys in [Barley Snyder's Construction Industry Group](#).

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## **Keeping Construction Risks Less Risky**

By: John J. Sylvanus

Related Practice Area: Real Estate

Related Industry: Construction

Major construction is full of risk and reward. Owners, architects, engineers, contractors and subcontractors - all are bound to each other by a web of agreements, common schedules and desired outcomes. Everyone on a project is dependent on everyone else and subject to events beyond their control. Your ability to complete work timely and on budget depends on others.

Controlling risk requires recognition of events with risk potential and taking appropriate steps to limit its potential impact. Risk events will occur, and when they do, you need to be prepared to act promptly and appropriately.

It is critical to remember that the process of determining the appropriate response to such an event requires looking at it not only from your viewpoint and determining how best to respond based on your potential costs and losses, but also considering how others may react and the risk of that reaction to you.

When foreseeable but unanticipated problems occur, you can incur losses by having your schedule disrupted or pushed back, your work interfered with or problems caused for others. Although delays and additional costs you may incur are easy to determine, the biggest risks might be those that don't affect you directly.

Follow these rules to minimize risk factors:

## **Rule 1: Know your Contract**

Most owner/contractor agreements limit the owner's liability for delays caused by others that lead to a time extension. Additional cost-change orders will be denied leaving you with the choice of accepting the additional costs or going through time-consuming and expensive litigation.

Your agreement may also require you to warrant equipment you supply. Take seriously your responsibility to review submittals to make certain they are correct and don't rely on the owner's architect or engineer to do it. Make sure your purchase orders require suppliers to indemnify you in the event a claim is made against you.

## **Rule 2: Aggressively deal with potential risks**

Don't ignore potential risks under the assumption owners and design professionals know what has occurred, who is responsible and what you are doing to deal with the risk. Never assume a problem will be resolved without you handling it yourself.

## **Rule 3: Prepare for litigation**

Avoid litigation at all costs -- it seldom benefits anyone involved. Just as military preparedness is the best way to avoid war, handling every risk situation as if it were going to a lawsuit is the best way to avoid one.

Be sure you have documented every step in the process of dealing with a risk event and be sure everyone knows what you have done to respond to it. The greater awareness everyone has of your preparedness and your ability to defend any claim against you, the less likelihood there is of your being dragged into litigation.

## **Rule 4: Consult experienced and knowledgeable counsel**

Keep your attorney in the loop on problems arising during construction. Responding to them is far cheaper than having to defend or prosecute a lawsuit if that problem goes unresolved.

If you have any questions on risk management in construction, [please contact me](#) or any of the attorneys in [Barley Snyder's Construction Industry Group](#).

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