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Important Protections for Homeowners

By Stephen J. Galati, Esquire



Everyone knows a horror story about a home repair gone bad; where a trusting homeowner believes he has been taken advantage of by an unscrupulous contractor. To protect homeowners in such cases the Pennsylvania legislature enacted The Home Improvement Consumer Protection Act. This Act, which came into full force on July 1, 2009, requires that contractors who offer or perform home improvement in Pennsylvania register with the Office of the

the Attorney General. The Act also sets minimum insurance requirements, establishes required terms for home improvement contracts, prohibits unfair business practices, and creates a criminal penalty for home improvement fraud.

The Act applies only to home improvements to private residences, not to new construction. Home improvements covered by the Act include repair, replacement, remodeling demolition, and installation of items in the home as well as work on driveways, swimming pools, porches, garages, fences, and sheds; as long as the total cash price is more than \$500. Landscaping services such as placement of retaining walls, fountains or drainage systems, fencing and lighting systems are included within the act as well.

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Pennsylvania's Mandatory Boating Education Laws

As the 2009 boating season kicks off, it is important that every person who intends to operate watercraft be familiar with the current rules and regulations for safe boating and personal watercraft operation. These include compliance with Pennsylvania's mandatory boating education requirement, and possessing a Boating Safety Education Certificate ("Certificate") where required by the Pennsylvania Fish and Boat Commission ("Commission"). Although there is no boating "license" in Pennsylvania, operators of certain watercraft in the Commonwealth must obtain and possess a Boating Safety Education Certificate. This Certificate is required: for any person born on or after January 1, 1982, to operate boats powered by motors greater than

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The Act provides several safeguards. It requires that all contracts for home improvements of more than \$500 must be in writing and signed by the consumer and the contractor, and that the consumer be given a copy of the contract. The contract must include important provisions such as a description of the work to be performed, approximate start and completion dates, the total price of the contract, identification of all known subcontractors, and notice of the consumer's right to cancel the contract. The contract will be voidable by the consumer if the contract contains certain clauses such as a hold harmless clause, a waiver of safety or building code requirements, a confession of judgment clause, a waiver of any right to a jury trial, a provision by which the owner agrees not to assert any claim or defense arising out of the contract, or a provision that the contractor will be awarded attorney's fees and costs. The consumer is permitted to rescind the contract, without penalty, within three business days of the date of signing. The Act requires that each contractor have liability insurance covering personal injury and property damage in an amount not less than \$50,000. It also prohibits unfair business practices such as abandoning a home improvement project or otherwise failing to complete the work.

The Act requires anyone who owns or operates a home improvement business to register with the Office of the Attorney General unless they perform less than \$5,000 of work in a year or is a large retailer with a net worth of more than \$50 million. Retail businesses are not required to register unless the retailer also offers or performs home improvements. The registration application requires the contractor to provide personal information as well as information about his business. Among the information the contractor must provide is whether he has ever been convicted of a criminal offense related to a home improvement transaction, fraud, theft, a crime of deception or a crime involving fraudulent business practices, as well as information about whether the applicant has ever filed for bankruptcy or within the last ten years received a final civil judgment entered against him that was related to a home improvement transaction. The contractor also must disclose whether he has ever had a license revoked or suspended. The Attorney General will keep some contractor information such as social security number, driver's license number and the contractor's home address confidential.

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Beginning July 1, 2009, by calling 1-888-520-6680, consumers will be able to learn whether a contractor is registered. Contractors who are not registered by July 1, 2009, will be prohibited from offering or performing home improvements until they become registered. A contractor does not need to show the consumer a copy of his registration but must include his registration number in all contracts, estimates and advertisements used after July 1, 2009. If a contractor advertises his business on his vehicle, the registration number must be on the vehicle.

This article addresses a limited issue concerning some of the protections provided by The Home Improvement Consumer Protection Act. The facts and circumstances of each situation differ and the outcome of each case may be different. Anyone with questions regarding the Act should contact an appropriate professional for advice.

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25 horsepower; and, for any person regardless of age, to operate a personal watercraft ("PWC") in Pennsylvania. According to the *Pennsylvania Boating Handbook*, a PWC is defined as "vessels less than 16 feet in length that use an inboard engine powering a water jet pump as their primary source of propulsion, designed to be operated by a person sitting, kneeling, or standing on other than the conventional manner of boat operation." PWCs are boats and are governed by the same laws and regulations as other boaters. This includes, for example, a "WaveRunner", "Jet Ski", or "Sea-Doo".

Boating Education Certificates are issued by the Pennsylvania Fish and Boat Commission. The Certificate can only be obtained by completing a boating course that has been approved by the Commission. Both classroom and distance learning courses are available from the Commission, United States Coast Guard Auxiliary, United States Power Squadrons and other organizations. Once a Certificate is issued, it does not need renewal, and does not get revoked for operational violations. Although individuals may lose their boating privileges for violations of the Pennsylvania Fish and Boat Code, ("Code") that individual's Certificate remains valid.

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Pennsylvania's Mandatory Boating Education Laws

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The Commission recognizes other boating safety education certificates so that a non-resident who has a certificate issued by another state, province or other organizations approved by the Commission's Executive Director and the National Association of State Boating Law Administrators (NASBLA), may operate a PWC in Pennsylvania

There are also age restrictions for the operation of watercraft in Pennsylvania. Specifically, persons 11 years of age or younger may not operate a PWC. Persons between 12 and 15 years of age may not operate a PWC with any passengers on board that are 15 years old or younger, and may not rent a PWC. There are no age restrictions for the operation of a motor boat between 0-25 horsepower. However, persons 11 years old or younger may not operate a motorboat with a motor greater than 25 horsepower.

The rules and regulations regarding operation of watercraft in Pennsylvania are set forth in the Code. However, the rules for each waterway and region of Pennsylvania may vary by county. Operators are advised to review the local rules and regulations prior to engaging in any boating, fishing or PWC activity. Information regarding special regulation areas by county, the current and proposed regulations and legislation, and information on the Boating Safety Education Certificate, as well as other watercraft operation information, is available through the Pennsylvania Fish and Boat Commission or by accessing the Commission's web site at <http://www.fish.state.pa.us>. The "Pennsylvania Boating Handbook" may also be requested from: Publications, Pennsylvania Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000. This handbook is also available online.

This article is a short summary of some of the laws governing the operation of watercraft in Pennsylvania. It is not a comprehensive review of the law and any particular questions must be addressed to an attorney or other professional or the Pennsylvania Fish and Boat Commission. Please remember, it is the responsibility of the watercraft operator to obey all State, local and regional laws when operating watercraft in the Commonwealth.

Landlords: Beware of Dog!

By Lauren Reap, Esquire

A recent Pennsylvania Superior Court decision reaffirmed that a Landlord may be held liable for injuries resulting from a tenant's pet. In *Underwood v. Wind*, the trial court found against a tenant and her landlord, when the tenant's two Pit Bulls escaped from the rented property and attacked a minor child. Tenant rented a property ("Property") from a landlord ("Landlord") who did not live on the Property (i.e., an "out of possession" landlord). The lease governing the tenancy specifically prohibited animals on the Property without express written permission. This provision was necessitated by damage caused by Tenant's two Pit Bulls to a property previously rented to Tenant. Landlord testified that she specifically told Tenant that her two Pit Bulls could not live in the Property; that she gave Tenant one week, upon moving in, to find new home for the dogs, and that Landlord had no knowledge of the dogs' presence on the Property thereafter. However, Tenant had never found new homes for the dogs, and never told Landlord the dogs still lived there.

Tenant's two Pit Bulls escaped from the Property through a broken latch in the front door. The dogs had previously escaped through the same means. On this occasion, they attacked a minor child who was walking down the street. Two good Samaritans stopped to help the child and were attacked as well. Landlord and Tenant were subsequently sued by all three victims. The Trial Court entered a judgment in the amount of \$260,870.40 against both Tenant and Landlord, who appealed. Landlord appealed on multiple grounds, one of which was that the trial court erred in instructing the jury on the law in regard to Landlord's liability. Specifically Landlord argued that the jury was incorrectly instructed: 1) that Pennsylvania's Dog Law ("Dog Law") was applicable to Landlord when the Landlord did not own the dogs; and 2) that Landlord could be held liable if she "should have known" of the violent propensity of the dogs and their presence at the Property.

On appeal, the Superior Court agreed with Landlord and found that the jury was incorrectly charged, specifically noting that the trial court blurred the distinction between Tenant and Landlord obligations under the Dog Law. See *Underwood*, 954 A.2d 1199 (Pa. Super 2008). The Dog Law, 3 P.S. §459-101, et seq., provides that an owner or keeper of a dog is strictly liable for a violent offence by that dog, even if it is the dog's first offence. The Dog Law defines "owner" to include (1) every person having a right of property in such dog; (2) who keeps or harbors such dog or has it in his care, or (3) who permits such dog to remain on or about any premises occupied by him. 3 P.S. § 459-102. Citing this definition, the Superior Court found that the law was misstated by the trial court and that Landlord was

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not an “owner” as defined in the law. 954 A.2d at 1208-09.

The Superior Court also relied on *Palermo v. Nails*, in finding that the trial court’s instruction regarding Landlord’s knowledge of the presence of the dogs and their violent propensity was in error. 954 A.2d at 1208-09 (citing 483 A.2d 871 (Pa. Super. 1984)). *Palermo* held that an out of possession Landlord could only be found liable for injuries caused by a tenant’s pet where it is proven the landlord knew of the presence of the pets and their violent propensities. 954 A.2d at 1208-09 (citing *Palermo* at 873).

Based on the forgoing, the Superior Court held that the jury was incorrectly instructed that Landlord could be held liable merely if she should have known the Tenant’s Pit Bulls were living on the Property but lacked actual knowledge. Thus, the Superior Court vacated the judgment below against Landlord, concluding that the jury instruction was erroneous in that Landlord was not an “Owner” under the Dog Law, and the standard for Landlord’s liability was actual, not constructive, knowledge.

In conclusion, landlords should be very cautious about what animals they permit a tenant to keep on their rental property. Strict rules should also be in place with regard to animal supervision and security, to avoid potential escape. Such provisions can easily be written directly into a lease, but even with such provisions it behooves a landlord to make sure that known dangerous animals are not being kept by tenants.

This article addresses a limited issue concerning landlord liability. The facts and circumstances of each situation differ and the outcome of each case may be different. Anyone with questions regarding landlord and/or tenant liability should contact an appropriate professional for advice



Firm News and Updates

Regina Parker, Esq. became a member of the Women in the Profession Committee and the Minority Bar Committee of the **Pennsylvania Bar Association** for the 2009-2010 year.

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