

Duty of Real Estate Licensee to Verify License Status of Home Improvement Contractors and Other Building Trade Persons

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In the past six months, the Maryland Real Estate Commission has issued two written advisories on the standard of care of a real estate licensee to verify the license status of a home improvement contractor and other building trade persons when referring such individuals to a client or consumer.

In the Fall, 2011 issue of *The Commission Check* (the official publication of the Maryland Real Estate Commission), the Commission states:

“Exercise Caution When Referring Home Improvement Contractors

How often are you asked by clients to recommend a good contractor to call for home improvements? As a real estate professional, you probably have the names and numbers of a lot of plumbers, electricians, painters, and other building tradespersons. Also, you want to help your clients find solutions quickly and efficiently. But when you are posed with the question of how to handle a request for a contractor’s name, it pays to think about how you will frame your response.

Are you absolutely certain that the contractor you have in mind has kept his or her license current? If you aren’t sure, you may be putting your client at risk. In Maryland, it’s a crime to do home improvement work without a valid MHIC license. If your client contracts with an unlicensed contractor, it could end up being a very costly mistake for them and for you.

The Maryland Home Improvement Commission handles about 1,500 complaints per year, with issues ranging from failure to perform on contracts to dangerous home improvement scams. The Home Improvement Commission maintains a Guaranty Fund to award monetary damages to complainants, but *only* for work done by *licensed contractors*. If the contractor you recommend is not

currently licensed, your client will not be protected by the Guaranty Fund.

Help protect your clients by passing on the link to the Maryland Home Improvement Commission's Public Query page on their website, and urge them to look up the license status of any person they are considering for hire. The Home Improvement Commission can also be reached by calling 1-888-218-5925 (toll-free) or 410-230-6231 (Baltimore area). If you are unsure about which types of improvements require a Home Improvement Contractor's License, please refer to the list posted on the website.

Searchable licensing information is maintained for other industries involving work inside the home, as well. Electricians, plumbers, home inspectors and other occupational professions are regulated by the State. Please take a moment to refer to each regulatory website before recommending anyone to your clients."

In the Spring, 2012 issue of *The Commission Check*, the Commission clarified further its position on this matter and states:

"Referrals To Contractors Part II: Further Clarification Of What You Need To Know

In the last issue of *The Commission Check*, we urged licensees to ensure that any referrals they made to clients for home-related contractors were only for licensed individuals. We provided links to the list of services that require a valid MHIC license to be performed, and for the licensing boards of other building tradespersons.

We would like to further clarify the importance of actively searching for the status of a contractor's license **before** making any type of referral to a consumer or your client. If the person or business you recommend turns out to be unlicensed, it can cause serious problems for both your client **and for you**. As we explained, if the job were to go wrong, your client would not have access to monetary relief from the Home Improvement Commission's Guaranty Fund. That fund is maintained only for licensed home improvement contractors. Additionally, the Commission has always

held the position that if you recommend a person who does not have a valid, current license, then you have not met your duty of care to your client. Failing to adhere to the standards set forth in §17-532 of the Maryland Real Estate Brokers Act is a civil offense, and the Commission is authorized to suspend or revoke your license, and can assess a civil penalty up to \$5000 for each violation.”

Originally, in its first advisory, the Maryland Real Estate Commission indicated that the licensee should provide the client or consumer with information to enable the client or consumer to verify on the internet the license status of a home improvement contractor or other persons.

However, in its follow up advisory in the Spring, 2012 issue of *The Commission Check*, the Commission now makes it very clear that it is the duty of a real estate licensee to personally verify the contractor’s license status before making any type of referral to a client or consumer. The failure to do so could constitute a violation of the Maryland Real Estate Brokers Act.

So, what exactly is a home improvement? Attached to this Memorandum you will find some examples of home improvement work for which a home improvement license is required. As you can see from the attached list, it is quite extensive and applies to virtually any and all types of work, both interior and exterior, performed by an individual on behalf of a home owner. Obviously, a home owner is not required to have a license to perform the same work, except as otherwise required by law.

Although the Commission focuses upon home improvement contractors, in both of written advisories, the Commission also refers to the licensing of individuals who provide services other than home improvement contractors. These would include electricians, plumbers, home inspectors, heating, ventilation, air conditioning, refrigeration contractors and structural engineers.

Accordingly, a real estate licensee who refers a home improvement contractor, electrician, plumber, home inspector or other building trade person who is required to be licensed must personally verify the licensing status of such individual **before the real estate licensee refers such individual to the client or consumer**. It would appear that merely inquiring of the individual contractor as to their license status is not sufficient to satisfy the standard of care as established by the Maryland Real Estate Commission. Instead, you must actually

verify online the license status of such individuals **before** you make such referral to a client or consumer.

In light of the above, as a risk reduction strategy, it is imperative that you download from the internet any verification of the license status of an individual whom you refer to a client or consumer so that you can demonstrate to the Maryland Real Estate Commission that you personally verified the license status of the individual before you made such referral.