



Professional Ethics Committee

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INFORMAL OPINION 15-02

Signing Unenforceable Home Improvement Contract

You are an attorney who intends to put an addition on your home. The home improvement contractor of your choice presented you with a contract that you know is not in compliance with the Connecticut Home Improvement Act C.G.S. §§20-418 et. Seq. (hereinafter HIA). You are aware that the HIA provides that a contract not in compliance with the Act is “invalid and unenforceable against an owner.” C.G.S. §20-429(a). See also *Liljendahl Bros. v. Grigsby*, 215 Conn. 345 (1990). Since you are aware of the non-compliance of the proposed contract at the outset any later attempt by you to invalidate the contract for failure to comply with the HIA would be in bad faith and unsuccessful, assuming the contractor could prove your prior knowledge, under the “bad faith” exception recognized in *Habetz v. Condon*, 224 Conn. 501, 505 (1992). You have requested an opinion on whether you can ethically sign such a contract.

The Preamble to the Rules of Professional Conduct provides that “A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs.” Preamble: A Lawyer’s Responsibilities. Rule 8.4(3) provides that “[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Every contract includes an implied covenant of

good faith and fair dealing, and signing carries an implication that the signer intends to enter into a binding agreement with the other party. Signing a contract that you know to be invalid and unenforceable under the HIA involves some element of deceit and/or misrepresentation if you intend to preserve that defense for use in the event of a contractual dispute in the future. If, however, there is no intent to deceive or to use the knowledge of non conformity to take unfair advantage, and you, in fact, intend to waive any such defense as the HIA offers if circumstances change, then signing such a contract would not involve “dishonesty, fraud, deceit or misrepresentation” within the meaning of Rule 8.4(3).

It is therefore the Committee’s opinion that signing a home improvement contract with knowledge that the contract fails to conform to the HIA is not permissible unless you have no intent to claim that the failure to conform renders the contract unenforceable in the event of any contractual disputes in the future. While not ethically required, you might consider approaching your contractor to point out that the contract is inconsistent with the HIA’s requirements.

THE COMMITTEE ON PROFESSIONAL ETHICS

BY 
Marcy Tench Stovall, Chair