

Major Changes to Door-to-Door Home Services Contracts Effective March, 2018



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Major amendments to the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sched. A., Ontario Regulation 8/18, "Requirements for Direct Agreements Subject to Section 43.1 [of the *Consumer Protection Act*]" and O. Reg 17/05 (collectively, the "Act"), took effect on March 1, 2018.

The amendments to the Act form part of the Ontario government's efforts to regulate improvident door-to-door service contracts and enhance consumer protection measures as part of Bill 59, *Putting Consumers First Act*. The changes will have an impact on how home services agreements are entered into and enforced with respect to furnace, HVAC, water and duct-cleaning services.

Some of the more important changes for businesses operating in Ontario are as follows:

1. Home Services Agreements That Are Affected

Under section 43.1(1) of the Act, suppliers of specific goods and services will be prohibited from

soliciting customers or entering into agreements for the supply of these goods and services at the consumer's residence unless the consumer initiated the contact with the supplier and specifically requested that the supplier attend at the residence for the purpose of entering into the agreement.

The affected "goods and services" include furnaces, air conditioners, air cleaners, air purifiers, water heaters, water treatment devices, water purifiers, water filters, water softeners, duct cleaning services, and any goods or services that "are a combination of or that perform the functions" above. Consumer Protection Ontario has identified HVAC systems as constituting an affected good or service.

2. Exemptions from The Prohibition Against Solicitation at a Consumer's Residence

The prohibition against soliciting consumers or entering into agreements at the consumer's residence does not apply where the

supplier simply leaves marketing material at a residence.

Moreover, there are exceptions to the prohibition where the supplier already has an existing agreement with the consumer. The prohibition does not apply where the supplier has initiated contact with the consumer, other than contact in person at the consumer's residence, and the consumer has invited the supplier to attend the consumer's residence. The supplier is required to ask the consumer during their communication if the supplier can, while at the dwelling, solicit the consumer to enter into a direct agreement for the supply of the goods and services listed above. If the consumer agrees, the prohibition against non-solicitation at the consumer's dwelling does not apply.

Consumer Protection Ontario, in its recent bulletin, *Rules for Businesses Entering Into Contracts At a Consumer's Home*, has warned suppliers:

If [the supplier] conducted repairs or maintenance at a consumer's home, [the supplier] cannot enter into a new agreement...during [the] visit, unless [there is] an existing contract with the consumer, [the consumer is asked] in advance if [the supplier] could offer a new contract...and the consumer agreed...

3. Suppliers Must Keep Records of the Agreements For Three (3) Years

Where a supplier and consumer enter into a contract for one of the above goods or services, the supplier is required to create and maintain a record of the agreement for three (3)

years from the date of the agreement.

The supplier is required to verify in the record that the consumer initiated the communication to enter into the agreement or that the requirements for any of the exemptions to the prohibition against solicitation at the consumer's residence apply. Consumer Protection Ontario states that it is up to the supplier "to determine how best to develop and maintain these records".

4. The Content of the Mandatory Disclosure Statement

O. Reg. 8/18 sets out the requirements for the content of the home services agreements entered into with consumers. These requirements include, amongst other things, that a "disclosure statement" entitled "Important: What You Need to Know About Your Legal Rights" appears as the first page of any agreement entered into between the supplier and the consumer (the "Disclosure Statement").

The Disclosure Statement expressly cautions the consumer that:

You may cancel this contract within 10 days after receiving a written copy of it. You do not need a reason to cancel, but cancel it in writing so you have proof.

The Disclosure Statement further advises consumers that if the supplier requires the consumer to register a security interest (or lien) against the good or service, this could have legal or financial implications. It is recommended that the consumer seek legal advice.

The Disclosure Statement further advises the consumer that if the consumer did not invite the salesperson to their residence for the purpose of buying or leasing the goods or services, the contract "may be void and [the consumer] may be able to keep the goods or services without any obligations".

5. Warning About Potential Penalties Against Suppliers

A failure to comply with the requirements above could have serious implications for your business. Under the *Consumer Protection Act*, a business could be subject to, amongst other things, compliance orders and prosecution for failing to meet or enforce the obligations under the Act and Regulations.

Accordingly, it would be wise for suppliers to seek and obtain legal advice with respect to their new obligations under the Act.

Conclusion

The amendments to the Act will have a major impact in the way businesses solicit and enter into home services agreements. The government has placed consumer protection at the centre of these Legislative changes. It has also imposed substantive requirements for suppliers and serious consequences for a failure to abide by the new rules. From March 1, 2018 onward, Ontario home services suppliers should have proper compliance mechanisms in place to ensure that the agreements they enter into with consumers are valid and enforceable.