HOME IMPROVEMENT CONTRACTORS

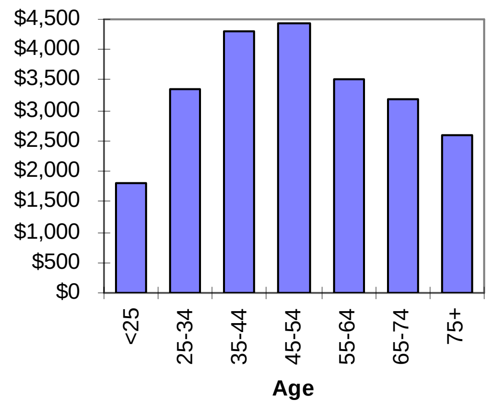
Introduction

Home improvement is important for preserving both the safety and value of a homeowner's property.[1] Improvements can increase a home's value and allow owners to adapt their home to meet their changing needs and age in place. Home improvement is also big business. In 1997, Americans spent more than $115 billion on contracted home improvement projects and do-it-yourself home repairs.[2]

According to the most recent American Housing Survey[3] (AHS, 1995), approximately half of all homeowners age 65 and older had repairs or maintenance work performed on their homes during a two-year period. Common home improvements needed by older homeowners included replacing doors and windows, roof repairs, and repairs to driveways.[4]

1995 AHS data on consumer spending for six common home improvements show that average home repair costs over a two-year period ranged from $1,813 for homeowners under age 25 to $4,435 for homeowners between the ages of 45 and 54 (Figure 1). After age 54, the amount spent on annual home repairs declined consistently.

Figure 1. Home Repair Costs*



Source: AHS, 1995

While most contracted home repairs are completed professionally and satisfactorily, tens of thousands of homeowners annually receive inadequate, unprofessional, or fraudulent home repair work. The National Association of Consumer Agency Administrators (NACAA) and the Consumer Federation of America (CFA) report that nationally, in 1997, complaints about home improvement contractors ranked number two, second only to complaints regarding auto sales.[5]

Older Homeowners

Older homeowners have a greater need for hiring home improvement contractors than younger homeowners

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[1] "Home improvement" is defined here to include all repairs and improvements made to existing structures. New construction activities are excluded.

[2] Joint Center for Housing Studies of Harvard University. *The State of the Nation's Housing,* 1998, p. 24. More than $85 million was spent on improvements to owner-occupied housing and $33 million on improvements to renter-occupied housing.

[3] U.S. Department of Commerce. Bureau of the Census. *American Housing Survey for the United States in 1995.*

[4] *Progress in the Housing of Older Persons.* Washington, DC: AARP, (forthcoming).

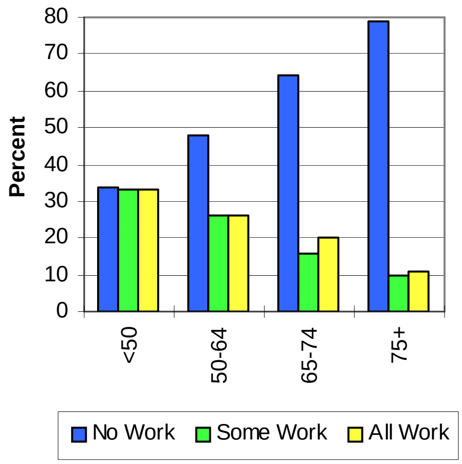
[*] 1995 AHS data on average repair costs for owners who made at least one repair of any type in the two-year period prior to the survey interviews, which were conducted between August 1995 and February 1996.

[5] *Seventh Annual NACAA/CFA Consumer Complaint Survey Report.* Washington, DC: NACAA/CFA, November 24, 1998, p. 1.

for two reasons. First, persons 65 and older have higher rates of homeownership, and they tend to own older homes more likely to need repair.[6]

Second, as homeowners age, they are less likely to undertake home repairs themselves (Figure 2). According to 1995 AHS data, of homeowners 75 and older reporting home repair work over a two-year period, eight in ten (79%) did none of the repairs themselves.

Figure 2. 'Do-It-Yourself' Home Repair Projects by Age[*]



Source: AHS, 1995

Older homeowners are often more vulnerable than younger homeowners because they are more likely to:[7]

- be home during the day when fraud perpetrators tend to operate; be females living alone; be too trusting of door-to-door salespersons; and be owners with more physical and mental limitations;
- have relatively large amounts of cash on hand or readily accessible in a checking account; and
- be less likely than other homeowners to take action against fraudulent home improvement contractors. Older homeowners tend to be less knowledgeable about their rights as consumers, less suspecting of deceptive sales practices, and more susceptible to fears they will be deemed incompetent to remain in their homes and manage their own affairs should they complain.

Home Improvement Predatory Practices

Predatory techniques can take the form of high pressure sales or softer approaches, such as persuasion or manipulation. Often they are a combination of both.[8]

Among the common fraudulent home improvement practices are: charging high prices for low quality materials; misrepresenting the need for repairs, the work to be performed, or the materials to be used; and using deceptive pricing.

Impact of the Problem

The financial and psychological outcomes of home improvement fraud can be severe, painful, and irrevocable. Older persons may pay out of their life savings for shoddy home repairs or work that is never finished, sometimes leaving them with no money and no legal recourse.

Figure 3 shows that losses associated with home improvement fraud against older persons (persons 65 and over) typically range from $1,000 to $5,000,

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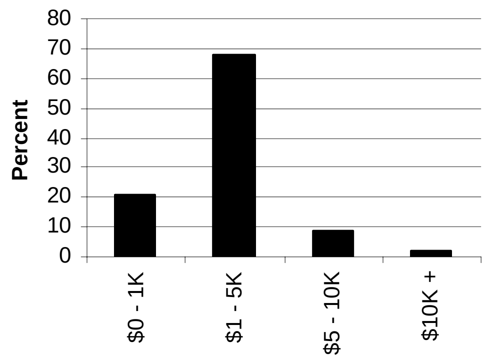
[6] AARP analyses of 1995 AHS data.
[*] See note for Figure 1.
[7] Friedman, M. Confidence Swindles of Older Consumers, *The Journal of Consumer Affairs*, Vol. 26, No. 1, 1992, pp. 23-41.

[8] Ibid.

though some older homeowners have been defrauded of more than $10,000.

Figure 3. Financial Losses of Older Homeowners Resulting from Home Improvement Fraud Cases



Source: Friedman, 1992

Additionally, losses may occur when homeowners "sign paperwork" unwittingly authorizing fraudulent contractors to obtain mortgages or assign liens against their property. In these cases, the dollar value of the loss is typically higher than losses due to actual home improvement fraud. Some older homeowners face the risk of foreclosure because they cannot meet their new mortgage payments.

State Oversight of Home Improvement Contractors[9]

States have taken a variety of approaches to regulating home improvement contractors.[10] Some states regulate home improvement contractors under general contracting statutes, while others have enacted statutes specific to home improvement contractors. Seven states do not regulate contractors at all. Two states leave regulation to counties or municipalities.

The consumer protections included in many state statutes have provisions for contractor conduct, consumer recovery, and criminal and civil penalties.

Contractor Conduct

States can regulate two aspects of contractor conduct: 1) contractor requirements, such as obtaining licensure, and 2) contract content offered by contractors.

Contractor Requirements

Twenty states require contractor licensure, and 11 states require contractor registration. Fifteen states require prior experience of contractors, and 18 states require examinations. Other contractor requirements include proof of financial responsibility and disclosure of convictions related to home improvement fraud.

Contract Content

<u>Required contract provisions.</u> Some states regulate the content of home improvement contracts, including disclosing information such as the contractor's name, address, and license number; price; work description; and materials. Some states require information regarding the organization or entity to contact for filing complaints.

<u>Prohibited contract provisions.</u> In some states, the contract may not waive the owner's right to a jury trial or any provision of a relevant statute.

<u>Prohibited acts.</u> Thirty-six states prohibit certain kinds of acts. These may include, but are not limited to: 1) abandoning a project; 2) failing to

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[9] *Home Improvement Contractors: 1998 Survey of State Laws.* Washington, DC: AARP, D16822/LEGS5621 (1098), 1998.

[10] *Home Improvement Contractors: A Model State Statute.* Washington, DC: AARP, (forthcoming).

perform as promised; 3) misrepresenting material facts; and 4) demanding or receiving payment before the contract is signed. Many home improvement state statutes apply state Unfair and Deceptive Acts and Practices (UDAP) statutes to protect consumers. These statutes generally provide victims with remedies, encourage merchants to resolve disputes fairly, and deter seller misconduct.[11]

Consumer Recovery

States may choose to establish recovery funds and/or require contractor insurance or bonding as mechanisms for providing consumer recovery in the case of fraud.

Recovery Funds

A recovery fund makes resources available to consumers for the costs of completing a job or repairing work performed by an incompetent or fraudulent contractor. The fund may reimburse for certain actions of both licensed and unlicensed contractors.

Insurance and Bonding

Requiring a bond and insurance provides some, though not compete, relief from losses resulting from contractor abuse.

Penalties and Remedies

Thirty states have criminal penalties ranging from fines to jail time that can be pursued in cases of home contractor fraud. Twenty-eight states have civil remedies, which may include restitution (i.e., repaying the victim for damages); injunctive relief (preventing or requiring the contractor to perform an act); or private right of action (allowing the victim to sue the contractor directly). Twenty-one states have both criminal penalties and civil remedies.

Policy Options for Improved Consumer Protection

Current state laws are generally inadequate to provide sufficient protection to vulnerable consumers. Among the options states have are to:

- enact contractor requirements, including licensing, experience, examinations, and disclosing financial solvency and any previous fraud convictions;
- specify prohibited acts, such as deception, misrepresentation, and failing to perform;
- create monetary reserves or resources such as recovery/guaranty funds to compensate aggrieved consumers;
- establish criminal penalties and civil remedies; and
- create a private right of action for consumers.

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[11] *Unfair and Deceptive Acts and Practices.* Washington, DC: AARP, D16027/ SL5368 (1295), 1995.