

## FLIPPING HOUSES / LEGAL QUESTION:

**Q:** I hate the term, but I am what some people call a “house flipper.” I buy properties, sometimes at foreclosure, and fix them up. I keep some of them as rentals, and I sell the rest after making any necessary structural or cosmetic repairs. My accountant says I need to be a licensed contractor to fix up these properties and sell them. What do you think?

### ANSWER:

During this 2007 legislative session, lots of hearings were held on issues related to contractors and home improvement. House Bill 1843 contained significant revisions to RCW 18.27, which is the statute which defines contractors and their obligations.

Although this bill also revised and clarified the obligations that contractors have toward their customers, it also substantially re-defined the circumstances under which a contractor’s license is required and also narrowed the statutory exemptions. These changes make it much more likely that your CPA is correct. If so, you may well need to either change your business mode or become a licensed contractor.

The revised definition of contractor is contained in RCW 18.27.010(1), which states:

“Contractor” includes any person, firm, corporation or other entity who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, develop, move, wreck or demolish, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith, the installation or repair of roofing or siding, performing tree removal services, or cabinet or similar installations; or, who, to do similar work upon his or her own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided in this chapter. “Contractor” also includes any person, firm, corporation, or other entity covering by this subsection, whether or not registered as required under this chapter or who are otherwise required to be registered or licensed by law, who offer to see their property without occupying or using the structures, projects, developments or improvements for more than one year from the date the structure, project, development, or improvement was substantially completed or abandoned.

The former version of this definition said that a contractor was someone who did this sort of work “for another” (i.e., one who is hired by a third party). This clause was deleted by the legislature, making it clear that at least some persons doing work on their own properties are required to be licensed as contractors. Also, the last sentence of RCW 18.27.010(1) was added, creating a one year window where a contractor’s license is required when you

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## FTC Will Grant Six-Month Delay of Enforcement of 'Red Flags' Rule Requiring Creditors and Financial Institutions to Have Identity Theft Prevention Programs

The Federal Trade Commission will suspend enforcement of the new “Red Flags Rule” until May 1, 2009, to give creditors and financial institutions additional time in which to develop and implement written identity theft prevention programs. Today’s announcement and the release of an Enforcement Policy Statement do not affect other federal agencies’ enforcement of the original November 1, 2008 deadline for institutions subject to their oversight to be in compliance.

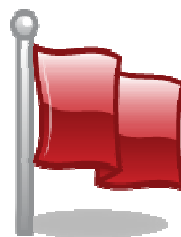
The Red Flags Rule was developed pursuant to the Fair and Accurate Credit Transactions (FACT) Act of 2003. Under the Rule, financial institutions and creditors with covered accounts must have identity theft prevention programs to identify, detect, and respond to patterns, practices, or specific activities that could indicate identity theft.

The Rule applies to creditors and financial institutions. Federal law defines a creditor to be: any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Accepting credit cards as a form of payment does not, in and of itself, make an entity a creditor. Some examples of creditors are finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies, and non-profit and government entities that defer payment for goods or services. Financial institutions include entities that offer accounts that enable consumers to write checks or to make payments to third parties through other means, such as other negotiable instruments or telephone transfers.

The Commission staff launched outreach efforts last year to explain the Rule to the many different types of entities that are covered by the Rule. The agency published a general alert on what the Rule requires, and, in particular, an explanation of what types of entities are covered by the Rule – <http://www.ftc.gov/bcp/edu/pubs/business/alerts/alt050.shtm>. During the course of these efforts, Commission staff learned that some

industries and entities within the FTC’s jurisdiction were uncertain about their coverage under the Rule. These entities indicated that they were not aware that they were engaged in activities that would cause them to fall under the FACT Act’s definition of creditor or financial institution.

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do not occupy the property yourself for one year before it is sold.

The legislature also edited the exemptions under which contractor registration is not required of certain classes of persons otherwise required to register. For property investors, three of these exemptions might apply, depending on the circumstances.

RCW 18.27.090(11) exempts "an owner who contracts for a project with a registered contractor," but then goes on to state, "[this exemption] does not apply to a person who performs the activities of a contractor for the purpose of leasing or selling improved property he or she has owned for less than twelve months."

RCW 18.27.090(12) exempts "any person working on his or her own property, but, again, the exemption does not apply to a person who does the work "for the purpose of selling, demolishing or leasing the property."

Finally, RCW 18.27.090(13) exempts "an owner who performs maintenance, repair, and alteration work in or upon his or her own properties, or who uses his or her own employees to do such work."

Since these revised provisions were only recently adopted, there is no legal precedent to guide one in determining whether a contractor's license is required other than the language of the statute itself. To see the full law as amended, go to <http://apps.leg.wa.gov/billinfo/> and type "1843" in the box under where it says "search by bill number."

Looking at your situation, depending on the time period you are holding your properties, whether you are engaging licensed contractors to do the rehab work for you, and other factors, it certainly may be the case that you are now required to obtain a contractor's license.

*Christopher T. Benis an attorney with Harrison, Benis, and Spence, LLP, with offices in Seattle. This information contained herein is not legal advice. You are encouraged to consult with your attorney before relying on anything contained herein.*

## In honor of the Christmas Season

Our office will be closed:

3:00 pm, December 24th,

all day on December  
25th,

3:00pm December  
31st and

all day, January 1st



Many entities also noted that, because they generally are not required to comply with FTC rules in other contexts, they had not followed or even been aware of the rulemaking, and therefore learned of the Rule's requirements too late to be able to come into compliance by November 1, 2008. The Commission's delay of enforcement will enable these entities sufficient time to establish and implement appropriate identity theft prevention programs, in compliance with the Rule.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,500 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

**For classes on the "Red Flag Rules", contact Rebekah @ extension #103 or email: [rebekahn@orcainfo-com.com](mailto:rebekahn@orcainfo-com.com)**

### My Christmas Gift, Already Given

What do I want for Christmas this year? The best gift I can think of I have already received. What is that gift? **YOU!** Each of you are the gift I have always wanted, especially this year. **YOU** have given everyone here at Orca a chance to make a difference in this world... for the better (at least that is the plan). **YOU** have allowed us to serve you in some way, big or small. **YOU** have allowed us to earn a living so we can take care of our families and loved ones and give back to the community. **YOU** have given us the motivation to succeed, to push forward to get up in the morning and head out the door. **YOU** are the gift I want for Christmas. I want another year of sharing, laughing with, and working for **YOU!**

May untold blessings pour over you, your family, your community, our Nation and the world.

John and I thank you for another **GREAT YEAR.**  
Rebekah Near  
CEO

### 24th Annual TRENDS Rental Housing Management Conference and Trade Show

Washington State Convention Center, Seattle, Washington  
Phone: (425) 869-1444

**December 11, 2008**  
**We'll see you there!**