



The Ontario HVAC Scam

Dennis G. Crawford

It is heartbreaking to watch a vulnerable homeowner sit across the table from you, with tears in their eyes, and tell you that they paid \$20,000.00 for a water softener which doesn't work.

So, who are these door-to-door salesmen—and it is always men, by the way—who are getting homeowners to sign expensive contracts for plumbing, electrical, or HVAC equipment of dubious quality, and how do they do it?

We call it the Ontario HVAC Scam, and it exploits loopholes in the laws regarding consumer protection, civil litigation, and the real property registration system. And it costs unsuspecting Ontario homeowners millions of dollars.

The scam is a three-step process: The Pitch, The Lien, and The Squeeze.

The Pitch

The Pitch is the easiest part of the Ontario HVAC Scam. The salesmen go door-to-door in mature residential neighbourhoods, where the homeowners are likely to be older. When they get the homeowner at the door, they hook them in with deceptive and high-pressure marketing techniques. They often wear high-vis vests and carry laminated ID badges to give the impression that they represent a government agency or a utility.

They may start by telling the homeowner that the current equipment they are using (be it a hot water heater, water softener, or air conditioner), is about to be phased out by the gov-

ernment and a replacement will be required. And, of course, this door-to-door salesman will present both the problem and the solution: an equipment rental from their company, with delivery and installation free of charge. In many cases, an elderly and confused homeowner will sign the salesman's paperwork because they have been convinced that they need to in order to comply with the law.

The stick is the threat of non-compliance with government regulation, but these salesmen use the carrot as well. They promise the homeowner that they will see savings on their utility bills which will exceed the amount it costs to rent the equipment. This is completely false, because even the most efficient hot water heater in the world is not going to reduce someone's home heating bill by more than a few dollars each month. It doesn't matter to the salesman whether these promises are true or not: the important thing is getting that piece of equipment installed.

Once the equipment has been installed, the die is cast. The homeowner does not know it yet, but they are about to enter a Twilight Zone of legal and procedural chicanery.

The Lien

The beating heart of this scam is the Lien or, as it is known by its formal legal name, the Notice of Security Interest.

Property law in Ontario allows the owner of rented equipment to register a Notice of Security Interest against the property where the rented equipment is located. Incredibly, the homeowner does not have to sign off on the registration of this Lien on title to their house. Not only can the HVAC Company register the Lien without the homeowner's express authorisation, but the HVAC Company can also set the value of the Lien in whatever amount they decide. When the homeowner finds out later on that there is a Lien on their property, they will be floored to discover that the rented air conditioner (retail value: \$1,500.00) is the basis for a Lien against their property in the amount of \$8,000.00, or \$9,000.00, or more. In one case we saw, the HVAC Company registered a Lien declaring that the air conditioner was worth a whopping \$18,900.00.

Another loophole exploited by these companies is the fact that the law does not require a lienholder to notify

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the homeowner that a lien has been placed on their property. As such, the homeowner does not learn about the Lien at the time it is registered. They typically will not discover the existence of the Lien until they go to sell their house, at which point it is too late to do anything about it. That's when the Ontario HVAC Scam enters its final phase: the Squeeze.

The Squeeze

With the urgency of complying with a binding contract to sell their house hanging over the homeowner, the scammers can execute the Squeeze.

The homeowner will retain a real estate lawyer to sell their house. Prior to the closing date for the sale of the house the lawyer will conduct a title

search on the property, at which point they will discover the Lien. Hearing about it from their lawyer will be the first time that the homeowner has ever heard of this Lien. With the sale of the house scheduled to close in just a few days, the scammers know that the homeowner does not have enough time to have this matter dealt with by the courts under consumer protection legislation.

The homeowner has only two choices: delay the sale of the house so they can go to court for an order deleting the Lien from title or pay out the Lien to the HVAC scammers in full in exchange for having the Lien discharged.

However, taking action at court is not really an option for the homeowner. If they delay or cancel the sale of the house so they can deal with the Lien at court, the would-be buyer of the house will almost certainly sue them for breaching the sale contract. In that case, the homeowner's potential liability to the buyer of their house would greatly exceed the already-significant amount demanded by the scammers to pay out the Lien. The scammers are keenly aware of the leverage they have in this situation, and they use all of their leverage to squeeze the homeowner for thousands of dollars. When the scammers send their payout statement to the homeowner's lawyer demanding payment of \$10,000.00 (or more) to discharge the Lien, the homeowner will virtually always pay it. The alternative is to sue the scammers in court and get dragged into lengthy litigation, while simultaneously being sued by the putative purchaser for failing to sell the house as agreed. By the time the court cases are over, even if the homeowner has won, they will probably have spent more money on legal fees than they saved by not having to pay out the Lien.

When the homeowner is squeezed from all sides like this, they really have no other option but to pay out

the Lien. And that is how the scammers manage to swindle vulnerable Ontario homeowners out of thousands of dollars each, to the tune of millions of dollars a year across the province.

The Ontario Ban on Door-to-Door Selling of HVAC Equipment

One of the last measures taken by the previous Liberal Government in Ontario was to ban door-to-door selling of most HVAC equipment, including furnaces, air conditioners, hot water heaters, and water softeners. The government was clear that this ban was designed specifically to target the Ontario HVAC Scam. This law came into effect on 1 March 2018 and, so far, all indications are that it is making hardly a dent in the prevalence of this scam. In the absence of serious enforcement measures, the ban on door-to-door selling of HVAC equipment has proved to be mostly toothless.

So far, the government has done nothing to make it harder for HVAC Com-

panies to register a Lien against real property. These companies can still register these liens without the homeowner's signature, and they can still set the liens in whatever amount they want. Critically, the government still has done nothing to make it easier for homeowners to delete improperly registered Liens. Banning door-to-door sales of HVAC equipment is a small victory for vulnerable homeowners, but it does not begin to go far enough to shut down this predatory business model.

The current provincial government has acknowledged that the HVAC Scam remains a problem. In a consultation paper issued in December 2020, the Ministry of Government and Consumer Services requested comment on proposals to change the Consumer Protection Act, 2002 to make it clearer to rental companies that they must discharge the registered notices of security interest from title when the underlying contract is cancelled by the homeowner (such as during the ten-day cooling off period, for example).

Should these proposed changes make it into the CPA or its regulations, it will represent another good but too-small step toward protecting vulnerable homeowners from this scam.

For all the stories of heartbreak which have surfaced so far, the Ontario HVAC Scam has far from run its course. There are likely thousands of homes in Ontario with these Liens. As these elderly homeowners move out of their houses and into long-term care, they and their children are going to be in for an unpleasant surprise when they try to sell the house. They will discover the Lien, the HVAC Company will exercise the Squeeze, and the homeowners will wonder how so much of the equity in their house was eaten up by a rented water softener. ■

Dennis G. Crawford is one of the founding lawyers of OntarioHVACscam.com, which offers a cost-effective retainer to eligible homeowners to have "HVAC liens" deleted from their property.

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