

TRAPS FOR CONTRACTORS UNDER THE HOME IMPROVEMENT CODE

From time to time we have clients who face claims made under Wisconsin's "Home Improvement Trade Practices Code." Many contractors are not aware that Wisconsin's Department of Agriculture, Trade & Consumer Protection has a set of rules called the "Home Improvement Trade Practices Code," which applies to contractors who perform home improvement work for residential or non-commercial properties. The Code is set forth in Wisconsin Administrative Code, chapter ATCP 110.

The Home Improvement code applies to nearly all "home improvements" but does not apply to new home construction. "Home improvement" includes remodeling, altering, repairing, modernizing and the construction of additions to any residential or non-commercial structure. It applies to any contractor (including an electrical contractor) who contracts with the owner or tenant of the residential or non-commercial structure.

A home improvement contract (and all changes to that contract), must be in writing if any of the following apply:

- The customer is required to make any payment before the contractor completes the work.
- The contractor initiates the contract by any of the following means:
 - ▶ Face-to-face solicitation away from the contractor's regular place of business.
 - ▶ Mail or telephone solicitation.
 - ▶ A handbill or circular left at a place of residence.

If a written contract is required, or if the contractor otherwise requests that the customer sign a written contract, it must contain all of the following information:

- The contractor's name and address, and the name and address of the contractor's sales representative or agent.
- A description of the work to be done and the principal materials to be used. If the contractor promises to install specific products or materials, the contract must clearly describe those products or materials.
- The total price, including finance charges. If the contract is for time and materials, it must clearly disclose the hourly labor charge.
- The dates by which, or the time period within which, the contractor will begin and complete the work.
- A description of any mortgage or security interest created in connection with the sale or financing of the home improvement.

- All warranties that the contractor makes for labor, services, products or materials furnished in connection with the home improvement.
- A description of every document incorporated in the home improvement contract.
- Insurance coverage included in the home improvement contract, if any.

In some cases, there is a three-day “Right to Cancel” Period. Under ATCP 110 and Wisconsin Statutes chapter 423, a customer may cancel a home improvement contract within a 3-day “cooling off” period if all the following apply:

- The contractor initiates the contract by face-to-face solicitation away from the contractor’s regular place of business, or by a mail or telephone solicitation directed to the customer.
- The parties enter into the contract, or the contractor receives the contract, away from the contractor’s regular place of business.
- The contract involves an extension of credit, or a cash payment of more than \$25.

If the 3-day right to cancel period applies, the contractor must give the buyer two copies of the following notice in at least 12-point bold-face type:

CUSTOMER’S RIGHT TO CANCEL

You may cancel this agreement by mailing a written notice to (insert name and mailing address of contractor) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing “I hereby cancel” and adding your name and address. A duplicate of this page is provided by the seller for your records.

The 3-day right to cancel period does not start to run until the contractor gives the above cancellation notice to the buyer. A contractor who uses a language other than English in the ordinary course of business must give the cancellation notice in English and in that other language.

The Home Improvement Trade Practices Code also has various provisions prohibiting deceptive sales tactics and provides remedies to the property owner for the failure of the contractor to complete its work, contract cancellation and refund provisions, and requirements relating to warranties and lien waivers.

Any electrical contractor who performs services for residential or non-commercial property should review the Home Improvement code requirements, to make sure its procedures and contract documents are in compliance. If the contractor fails to comply with the requirements, it will be at risk for various damages and penalty provisions set forth in the code.

If the relationship between a contractor and its customer breaks down, the customer will often attempt to invoke the enhanced remedies, penalties and damages provisions set forth in the Home Improvement Practices code.

If you would like to receive a copy of Wisconsin's Home Improvement code please call our office (608) 833-0077, or send an e-mail to me at randersen@kayandandersen.com.