

The Home Improvement Practices Act – Contractor-Friendly Revisions Made by DATCP

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Practice Area: Construction Law and Litigation

Last year, the Department of Agriculture, Trade, and Consumer Protection (DATCP) promised revisions to the Home Improvement Practices Act, codified at ATCP 110 (the "Act"). The Act, originally effective in 1974, governs home improvement and remodeling contractors and provides protections for home owners who contract for those services.

DATCP received comments from construction industry groups, including various chapters of the National Association for the Remodeling Industry (NARI) throughout the State as well as the Wisconsin Builders Association. Most of the comments focused on amending the burdensome requirements for contractors that provided limited consumer protection.

The proposed revisions to ATCP 110 passed through the Legislature, were published in the March 31, 2014 edition of the Administrative Register, and will apply to all remodeling contracts executed on or after June 1, 2014. This *Update* provides a summary of these revisions.

Revisions To The Act

- **Scope of the Act** – "Major renovation[s] of an existing structure" are now excluded from the purview of the Act. Previously only new home construction was exempted. Going forward, the "major renovation" exclusion applies if the total price of the contract is more than the assessed value of the existing structure at the time the contract is signed. Note that the value of the structure is the assessed value and excludes the land value.
- **Lien Waivers** – Previously, the Act required contractors to provide lien waivers, both partial and final, in exchange for owner payments. The Act now eliminates this requirement unless such waivers are requested by the owner. To take advantage of this new provision, contractors must include a new lien notice in their contracts, which advises owners that they have a right to request lien waivers from the contractor.
- **Material Substitutions** – The Act previously required written owner approval of any product or material substitutions. The rule now specifically confirms that electronic communications can satisfy the written approval requirement. Additionally, if the substitution does not represent any additional cost or a decrease in the value of the finished product, and the contractor maintains documentation verifying the owner's approval, verbal authorization is allowed.
- **Notice of Impending Delay** – A contractor has always been required to give an owner notice of an impending delay under the Act, if the work would not be completed by the deadline stated in the contract. However, the revised rule clarifies that notice can be given electronically and that contractors are not responsible for delays caused by action or inaction of the owner, destructive acts of nature, or disruptive civil disorder.
- **Permits** – Currently, all building permits must be issued prior to the start of work. Additionally, the Act requires that the contractor provide copies of all building inspection reports to the owner. Under the revised rule, if a home improvement project consists of multiple subprojects, contractors will now be able to start work on the overall project before obtaining all building permits. However, work on specific subprojects (for example, plumbing or electrical) may not begin before that scope permit is issued. Also, under the revised rule, in lieu of providing inspection reports, the contractor can provide the owner with a summary of the inspections.
- **Warranties** – Contractors are still required to provide copies of all warranties under the Act, but now the timing has changed. Previously, manufacturer's warranties were to be provided at the time the equipment or product was installed. Contractors can now provide written manufacturer's warranties at the completion of the project, so long as the owner is given notice of this practice in the contract.
- **Proof of Insurance** – If a contractor is providing insurance, the contractor must identify the terms, conditions, limitations, and name of insurer. The revised rule states that a contractor can provide a declarations page or some other evidence of the insurance policy rather than the entire policy.
- **Liquidated Damages** – The new rule maintains the 10% limit on a contractor's liquidated damages claim against an owner, but eliminates the \$100 maximum recovery.

Implications Of Revisions

The revisions bring welcome change to the world of home improvement construction and remodeling – unifying, at least to some extent, common practices of the contractors operating in this industry. The time is ripe for contractors to reevaluate their standard contracts and terms and conditions to take full advantage of the revisions to the Act. Among other important tasks, contractors should promptly complete the following due diligence:

- Establish procedures for determining if the Act applies to each and every construction project a contractor accepts by obtaining the assessed value of the existing structure prior to the beginning of construction.
- Establish procedures for capturing and documenting electronic authorization (*e.g.*, if owner confirms change in a text, send confirming e-mail later)
- Establish procedures for documenting the date that written warranties are provided.
- Update contract and internal company procedures for the handling of lien waivers.
- Establish procedures for delivering evidence of insurance.
- Establish procedures to ensure that permits are obtained prior to the start of any subproject, and advise subcontractors and employees of the importance of verifying that a permit was obtained.
- Draft a standard form to communicate delays in construction. At the time of any delay, request that the owner sign off on the reason for the delay, even if the contractor is not directly responsible for the delay.

These changes to the Act will help protect contractors and allow construction projects to run more smoothly. That being said, contractors must still be aware of the ramifications of failing to abide by the requirements of the Act. If there is a violation, the owner may still:

- Cancel the contract.
- Demand return of all payments that the seller has not yet used.
- Demand delivery to the home improvement site of materials that have not yet been used.
- Demand a written accounting for all payments that the owner made to the contractor.
- Bring suit and, if successful in court, recover double damages, together with costs, including reasonable attorneys' fees.

Caution must be taken in drafting contracts and in performing home improvement or remodeling projects—doing otherwise, could create significant liability – both corporate and personal.

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