

Implications on Home Improvement Contracts: Practical Considerations When COVID-19 Causes Delayed Performance or Cancellation of Your Home Improvement Contract

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For remodelers, the COVID-19 pandemic raises unique questions: Has a homeowner contacted you to delay the commencement of a home improvement project? Tried to cancel the home improvement contract? Is the building inspection department closed and unable to issue a building permit or conduct an inspection? Is a subcontractor short of labor because of health issues and unable to complete their work by the deadline required?

There are numerous legal issues members of the remodeling industry are facing because of the current global health situation. It is not possible to address all of the ways in which the industry is being affected in one update. This *Legal Update* addresses contract performance issues being faced by remodelers under the Home Improvement Practices Act (the "Act") codified at Wisconsin Administrative Code ATCP 110.

The Act governs trade practices in the home improvement industry including a mandate that home improvement contracts and any changes to those contracts be in writing. The Act further contains specific requirements on what terms must be addressed in the written contracts. For example, the Act requires that each contract include the "dates or time period on or within which the work is to begin and be completed". To satisfy this requirement, home improvement contractors normally either (a) include specific start and end dates in the contract or (b) provide that the work will commence within X days and be completed within Y days thereafter. Any changes to these dates must be set forth in writing under the Act.

Projects are now being delayed for a variety of reasons arising from the COVID-19 pandemic. Determining a party's right to delay (or even cancel) performance, and how to document the change or termination, is fact intensive. Each situation needs to be analyzed on its merits. If the home improvement contractor must delay the project, then the Act requires that the contractor give the homeowner notice of the delay, including specific reasons for the delay and new proposed deadlines. In the current environment, it will be very difficult to propose new deadlines. Further, the Act provides that these new proposed deadlines will not be effective unless the homeowner agrees in writing. What if the homeowner won't agree to the new dates? The Act provides that the contractor will not be responsible for delays if the delay was caused by tornado, flood, fire, or "disruptive civil disorder" such as strike, hostile action or war. Does a pandemic qualify as disruptive civil disorder? It is not clear.

On the other hand, what happens if the homeowner wants to delay the contract or even cancel? The terms of the contract must be carefully analyzed to determine each party's right to cancel or delay. There are numerous provisions of a contract that could provide guidance, including the contract's force majeure clause. The contract could also provide guidance on adjusting the performance deadlines or price if there is a substantial delay. The Act does provide that the contractor shall not be responsible for delays in performance if the delay is caused by the actions or inactions of the homeowner. However, that does not determine whether either party can delay performance, cancel the contract, or make adjustments to the terms.

The parties to home improvement contracts are in a difficult position because of the fluidity of the COVID-19 pandemic. Navigating their options for addressing performance of the contract will require a careful analysis of their contract and consideration of numerous legal and practical issues.

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