Chapter Ag 110

HOME IMPROVEMENT TRADE PRACTICES

Ag 110.01 Definitions
Ag 110.02 Prohibited trade practices
Ag 110.03 Building permits
Ag 110.04 Guarantees or warranties
Ag 110.05 Home improvement contract requirements
Ag 110.06 Preservation of buyer's claims and defenses

History: Ch. Ag 110 as it existed on May 31, 1974 was repealed and a new Ch. Ag 110 was created, Register, May, 1974, No. 221, effective June 1, 1974.

Ag 110.01 Definitions. (1) "Home improvement" means the remodeling, altering, repairing, painting, or modernizing of residential or non-commercial property, or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, garages, basements and basement waterproofing, fire protection devices, heating and air-conditioning equipment, water softeners, heaters and purifiers, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs or improvements made in or on, attached to or forming a part of the residential or non-commercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or non-commercial property.

(2) "Residential or non-commercial property" means a structure used, in whole or in part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures. The term extends to all other existing non-commercial structures and the immediate premises on which they are situated even though they are not used for residential purposes.

(3) "Home improvement contract" means an oral or written agreement between a seller and an owner or a seller and a tenant or lessee of residential or non-commercial property, or a seller and a tenant or lessee if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the seller is to perform labor or render services for home improvements, or furnish materials in connection therewith.

(4) "Seller" means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations and any other form of business organization or entity, and their officers, representatives, agents and employees.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.02 Prohibited trade practices. No seller shall engage in the following unfair methods of competition or unfair trade practices:

(1) MODEL HOME REPRESENTATIONS. Misrepresent or falsely state to a prospective buyer that the buyer's residential or non-commercial property is to serve as a "model" or "advertising job", or use any

other prospective buyer lure to mislead the buyer into believing that a price reduction or other compensation will be received by reason of such representations.

(2) PRODUCT AND MATERIAL REPRESENTATIONS. Misrepresent directly or by implication that products or materials to be used in the home improvement:

(a) Need no periodic repainting, finishing, maintenance or other service.

(b) Are of a specific or well-known brand name, or are produced by a specific manufacturer or exclusively distributed by the seller.

(c) Are of a specific size, weight, grade or quality, or possess any other distinguishing characteristics or features.

(d) Perform certain functions or substitute for, or are equal in performance to, other products or materials.

(e) Meet or exceed municipal, state, federal, or other applicable standards or requirements.

(f) Are approved or recommended by any governmental agency, person, firm or organization, or that they are the users of such products or materials.

(g) Are of sufficient size, capacity, character or nature to do the job expected or represented.

(h) Are or will be custom-built or specially designed for the needs of the buyer.

(i) May be serviced or repaired within the buyer's immediate trade area, or be maintained with replacement and repair parts which are readily available.

(3) BAIT SELLING. (a) Offer or represent specific products or materials as being for sale, where the purpose or effect of the offer or representation is not to sell as represented but to bait or entice the buyer into the purchase of other or higher priced substitute products or materials.

(b) Disparage, degrade or otherwise discourage the purchase of products or materials offered or represented by the seller as being for sale, by statements or representations in conflict with other claims or representations made with respect to such products and materials, to induce the buyer to purchase other or higher priced substitute products or materials.

(c) Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale.

(d) Substitute products or materials for those specified in the home improvement contract, or otherwise represented or sold for use in the making of home improvements by sample, illustration or model, without the knowledge or consent of the buyer.

(e) Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands.

(f) Misrepresent that certain products or materials are unavailable or that there will be a long delay in their manufacture, delivery, service or installation in order to induce a buyer to purchase other or higher priced substitute products or materials from the seller.

(4) IDENTITY OF SELLER. (a) Deceptively gain entry into the prospective buyer's home or onto the buyer's property under the guise of any governmental or public utility inspection, or otherwise misrepresent that the seller has any official right, duty or authority to conduct an inspection.

(b) Misrepresent that the seller is an employe, officer or representative of a manufacturer, importer or any other person, firm or organization, or that such person, firm or organization will assume some obligation in fulfilling the terms of the contract.

(c) Misrepresent the status, authority or position of the sales representative in the organization he represents.

(5) GIFT OFFERS. Offer or advertise any gift, free item or bonus without fully disclosing the terms or conditions of the offer, including expiration date of the offer and when the gift, free item or bonus will be given, or fail to comply with the terms of such offer.

(6) PRICE AND FINANCING. (a) Misrepresent to a prospective buyer that an introductory, confidential, close-out, going out of business, factory, wholesale, or any other special price or discount is being given, or that any other concession is made because of materials left over from another job, a market survey or test, or any other reason.

(b) Misrepresent that any person, firm or organization, whether or not connected with the seller, is especially interested in seeing that the prospective buyer gets a bargain, special price, discount or any other benefit or concession.

(c) Misrepresent or mislead the prospective buyer into believing that insurance or some other form of protection will be furnished to relieve the buyer from obligations under the contract if the buyer becomes ill, dies, or is unable to make payments.

(d) Misrepresent or mislead the buyer into believing that no obligation will be incurred because of the signing of any document, or that the buyer will be relieved of some or all obligations under the contract by the signing of any document.

(e) Request the buyer to sign a completion slip or certificate, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract.

(f) Fail to disclose that the offered or contract price does not include delivery or installation, or that other requirements must be fulfilled by the buyer as a condition to the performance of labor, services, or the furnishing of products or materials at the offered or contract price.

(g) Mislead the prospective buyer into believing that the down payment or any other sum constitutes the full amount the buyer will be obligated to pay.

(h) Misrepresent or fail to disclose all financing charges, interest service charges, credit investigation costs, building or installation

permit fees, or other obligations, charges, cost or fees to be paid by the buyer.

(i) Fail to disclose that the home improvement contract, promissory note or other evidence of indebtedness may be assigned or sold to a financial institution or any other third party.

(j) Advise or induce the buyer to inflate the value of the buyer's property or assets, or to misrepresent or falsify the buyer's true financial position in order to obtain credit.

(k) Increase or falsify the contract price, or induce the buyer by any means to misrepresent or falsify the contract price or value of the home improvement for financing purposes or to obtain additional credit.

(l) Fail to give or furnish to the buyer lien waivers in writing from all contractors, subcontractors, and materialmen at or prior to the time final payment is made on the home improvement contract.

(m) Where partial payments are required at various stages in the performance of the contract, fail to give or furnish to the buyer lien waivers in writing from all contractors, subcontractors and materialmen for the proportionate value of all labor, services and products or materials furnished or delivered as of the time partial payment is made.

(7) PERFORMANCE. (a) Deliver materials, begin work, or use any other tactic to pressure the buyer into a home improvement contract, or make any claim or assertion that a binding contract has been agreed upon where no final agreement or understanding exists.

(b) Fail to begin or complete work on the dates or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor stoppage, unavailability of supplies or materials, unavoidable casualties, or any other cause beyond the seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing.

(c) Fail to give timely notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

(8) INTERFERENCE WITH COMPETITORS. (a) Make false derogatory statements concerning any competitor, the competitor's equipment, products or materials, workmanship, performance, reputation or responsibility, or attempt to or induce the breach of any existing home improvement contract between a prospective buyer and a competitor, or interfere with or obstruct the performance of any home improvement contract by a competitor.

(b) Misrepresent that the work of a competitor was performed by the seller.

(c) Misrepresent that the seller's products, materials or workmanship are equal to or better than those of a competitor.

(d) Use or imitate the trade-marks, trade names, labels or other distinctive marks of a competitor.

(9) SALES REPRESENTATIONS. (a) Misrepresent or mislead the buyer into believing that a purchase will aid or help some public, charitable, religious, welfare or veteran's organization, or any other person, group or organization, or misrepresent the extent of such aid or assistance.

(b) Fail to make any statement of fact, qualification or explanation if the omission of such statement, qualification or explanation causes an advertisement, announcement, statement or representation to be false, deceptive or misleading.

(c) Misrepresent that the customer's present equipment, material, product, home or a part thereof is dangerous or defective, or in need of repair or replacement.

History: Cr. Register. May, 1974, No. 221, eff. 6-1-74. am. (7) (b) and cr. (9) (c), Register, March, 1976, No. 243, eff. 4-1-76.

Ag 110.03 Building permits. (1) No seller contracting for the making of home improvements shall commence work until all applicable state or local building and construction permits have been issued as required under state laws or local ordinances.

(2) Where midpoint or final inspections are required under state laws or local ordinances, copies of inspection certificates shall be furnished to the buyer when construction is completed and before final payment is due or the signing of a completion slip is requested of the buyer.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.04 Guarantees or warranties. (1) The seller shall furnish the buyer a written copy of all guarantees or warranties made with respect to labor, services, products or materials furnished in connection with home improvements. Such guarantees or warranties shall be specific, clear and definite and shall include any exclusions or limitations as to their scope or duration. Copies of all guarantees or warranties shall be furnished to the buyer at the time of execution of the contract, except that separate guarantees or warranties of the manufacturer of products or materials may be furnished at the time such products or materials are installed.

(2) The seller shall comply with the terms of any guarantee or warranty the seller agreed or promised to perform.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.05 Home improvement contract requirements. (1) The following home improvements contracts and all changes in the terms and conditions thereof, shall be in writing:

(a) Contracts requiring any payment of money or other consideration by the buyer prior to completion of the seller's obligation under the contract.

(b) Contracts which are initiated by the seller through face-to-face solicitation away from the regular place of business of the seller, mail or telephone solicitation away from the regular place of business of the seller, mail or telephone solicitation, or handbills or circulars delivered or left at places of residence.

(2) Home improvement contracts and all changes in the terms and conditions thereof, required under this section to be in writing, shall

be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, and particularly the following:

(a) The name and address of the seller, including the name and address of the sales representative or agent who solicited or negotiated the contract for the seller.

(b) A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction materials to be used. Where specific representations are made that certain types of products or materials will be used, or the buyer has specified that certain types of products or materials are to be used, a description of such products or materials shall be clearly set forth in the contract.

(c) The total price or other consideration to be paid by the buyer, including all finance charges. If the contract is one for time and materials the hourly rate for labor and all other terms and conditions of the contract affecting price shall be clearly stated.

(d) The dates or time period on or within which the work is to begin and be completed by the seller.

(e) A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement.

(f) A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller or which are required to be furnished to the buyer under section Ag 110.04 (1), Wis. Adm. Code.

(g) A description or identification of any other document which is to be incorporated in or form part of the contract.

(3) A copy of all contracts required to be in writing shall be furnished to the buyer before any work is begun or any payment is due.

(4) Where a representation is made that insurance or some other form of protection will be provided, the contract shall clearly state the terms, conditions and limitations thereof, as well as the name and address of the insurer or the person who is to furnish such protection, if different from the seller. A copy of the insuring or protection agreement shall be furnished to the buyer before final payment is due under the contract.

(5) If a person other than the seller is to act as the general contractor or assume responsibility for performance of the contract, the name and address of such person shall be disclosed in the oral or written contract, except as otherwise agreed, and the contract shall not be sold or assigned without the written consent of the buyer.

(6) If the buyer is unable to read or write or is blind, written contracts shall be read to the buyer by a third party designated by the buyer, and having no connection with the seller. If a language other

than English is primarily used in contract negotiations, written contracts must be both in English and the language principally used.

(7) Liquidated damages for breach of contract by the buyer if made a part of the contract shall not exceed 10% of the contract price and in no event more than $100.

(8) If the buyer is required to sign a note, the amount and terms of the note shall correspond exactly with those stated in the oral or written contract.

(9) The seller shall comply with the terms and conditions of oral or written contracts entered into by the seller.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.

Ag 110.06 Preservation of buyer's claims and defenses. (1) Every assignee of a home improvement contract takes subject to all claims and defenses of the buyer or his successors in interest.

(2) No seller shall enter into any home improvement contract wherein the buyer waives the right to assert against the seller or any assignee any claim or defense the buyer may have against the seller under the contract.

(3) No seller shall use any promissory note or instrument, other than a check, in connection to a home improvement contract unless it bears the following statement in contrasting bold-face type: "This is a home improvement instrument and is non-negotiable. Every holder takes subject to claims and defenses of the maker or obligor."

(4) Every holder or transferee of a negotiable instrument executed in violation of this section, who knew or should have known at the time the document was acquired that it was made to evidence an obligation for home improvements, or who knew or should have known that the payee or transferor was engaged in the home improvement business, takes subject to all claims and defenses of the maker or obligor.

(5) Claims and defenses of any buyer against an assignee or transferee under the contract shall be limited to the total amount for which the buyer was obligated at the time of entering into the contract.

History: Cr. Register, May, 1974, No. 221, eff. 6-1-74.