

DEPARTMENT OF AGRICULTURE

335

Chapter Ag 110

*N. H. Neal  
May Reg.  
No. 221  
eff 6-1-*

**BUILDING AND HOME IMPROVEMENT  
TRADE PRACTICES**

Ag 110.01	Prohibited trade practices	Ag 110.03	Claims and defenses of buyers
Ag 110.02	Contract requirements		

**Ag 110.01 Prohibited trade practices.** All persons, firms and corporations, their officers, representatives, agents and employes, in selling, installing or servicing roofing, siding, windows, doors, awnings, heating and air conditioning equipment, water softeners and purifiers, fall-out and other protective shelters, fire protection devices or any other permanent installation or improvement attached or to be attached, whether by buyer or seller, to an already existing home, non-commercial structure or building shall cease and desist from engaging in any unfair methods of competition or trade practices, and particularly the following:

(1) **MODEL HOME REPRESENTATIONS.** To use any false or deceptive inducements or to misrepresent or falsely state to a prospective customer that his dwelling or building is to serve as a "prospective buyer" lure, or "model home" or "advertising job" and that he will be paid a commission or other compensation for any other sales the seller may make in the vicinity or within a specified distance from the customer's location, and in that way lead the customer to believe that the cost of the improvement or installation will be fully paid or greatly reduced by reason thereof.

(2) **PRODUCT MISREPRESENTATIONS.** To falsely state that:

(a) The product needs no periodic repainting, finishing, maintenance or any other service.

(b) The product is of a specific or well-known brand name or manufacturer, or that the seller is the exclusive distributor of the product.

(c) The product is of a specific size, weight, grade or any other identifiable character.

(d) The product possesses certain qualities or performs certain functions or substitutes for other products with equal performance.

(e) The product meets or exceeds minimum municipal, state, federal, or other applicable standards or requirements.

(f) The product is approved or recommended by any government agency, or other person, firm or organization, or that they are the users of said product.

(g) The product is of sufficient size, capacity, quantity, character or nature to do the job expected or represented.

(h) The product is or will be custom-built or specially designed for the needs of the customer.

(i) The buyer need not obtain any permit, authorization or approval from any municipal, state or federal government agency to apply or

install the product, or that the seller has or will obtain such permission or approval.

(j) Maintenance, service or repairs and replacement parts will be readily available within the customer's immediate trade area.

(k) The customer's present equipment, material or product is dangerous or defective, or in need of repair or replacement.

(3) **BAIT SELLING.** (a) To offer, advertise or represent a product for sale, or to mislead the prospective customer into believing that the product is for sale, when in effect the offer, advertisement or representation is used primarily to sell other or higher priced products of the seller, or to enter into a contract for the sale or installation of a product with the intent to sell a different or higher priced product in its stead.

(b) To misrepresent that some product or part is unavailable or that there will be a long delay in manufacture, delivery or service, in order to induce or force a customer to buy a product from the seller or to buy other or higher priced products of the seller.

(c) To disparage, degrade or otherwise discourage the purchase of any of the seller's own products or materials, by any representation which is in conflict with previous advertising claims or representations, to induce the customer to buy other or higher priced products or materials from the seller.

(d) To substitute any product or material or to deliver or install or apply a product different from that represented by any sample, illustration or model.

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

(4) **IDENTITY OF SELLER.** (a) To deceptively gain entry or access into the prospective customer's home or onto his property under the guise of any governmental or public utility inspection, right or duty, or to misrepresent that the seller has such authority.

(b) To 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.

(5) **GIFT OFFERS.** (a) To misrepresent or mislead the customer into believing that his purchase will aid or help some charitable, church, welfare, veteran's or other organization, or any person or group in need of help.

(b) To offer or advertise any gift without fully disclosing the condition of the offer and its expiration date, or to fail to comply with the terms of such offer.

(6) **PRICE AND FINANCING.** (a) To misrepresent to a prospective customer that he is being given an introductory, confidential, close-out, going out of business, factory or wholesale price or discount or any other concession, or that a concession is made due to "materials left over from a nearby job" or a test of the local market or a market survey.

(b) To misrepresent that anyone, whether connected with the seller or not, is especially interested in seeing that the prospective customer gets a "bargain", special price, discount or any other concession.

(c) To misrepresent or mislead the prospective customer into believing that insurance or some other form of protection will be given if the customer in any way is unable to make the payments agreed upon.

(d) To misrepresent or mislead the customer into believing that the signing of any "completion slip", "financial statement", "advertising agreement", "contract", "bond", or "promissory note" or other negotiable instrument, either before or after completion of the job, will impose no obligation upon the customer, or that such signing will relieve or end some or all of the obligations to the seller.

(e) To ask or require the customer to sign a completion slip, promissory note, or other negotiable instrument, either for financing or collection purposes or otherwise, before the installation or job is completed in accordance with the terms of the contract.

(f) To fail to disclose that the advertised price or offer does not include delivery or installation.

(g) To mislead the prospective customer into believing that the down payment or some other figure constitutes the full amount the customer will be obligated to pay, or to omit or exclude any other obligations, fees, charges or costs to the customer.

(h) To fail to disclose all financing arrangements, interest, service charges, fees, credit investigation costs, building or installation permit fees, or that the contract, promissory note or other negotiable instrument will be assigned or sold to a financial institution.

(i) To advise or request the customer to inflate or increase falsely the value of any property, income or any other asset, or to omit any obligations, mortgages, loans or payments, or otherwise in any way induce the customer to misrepresent or falsify his true financial position in order to receive favorable consideration by any bank, loan agency or financial institution.

(j) To induce the customer, through an offer of cash, gifts, refund, payment of down payment or prepayment of any time payments, or any other way, to falsify, misrepresent or increase the price or amount of purchase or the value of such purchase from the seller, in order to obtain a larger loan.

(7) **GUARANTEE.** To give any guarantee that is not specific, clear and definite or which the seller is unable to comply with, or to misrepresent that the manufacturer or anyone else is the guarantor of the product, or to fail to furnish the purchaser with a written copy of such guarantee.

(8) **PERFORMANCE.** (a) To start installation or to apply a small portion of the product with the misrepresentation that it is a "try-out" or "test", or any other reason, when in fact it is done so the seller can claim partial performance or that work has actually begun on the job and induce or force the purchaser into the terms of the contract.

(b) To misrepresent the date work is to be completed by the seller.

(9) **INTERFERENCE WITH COMPETITORS.** (a) To make false derogatory statements of or concerning any competitor, his equipment, materials, workmanship, reputation or responsibility, or to attempt to or induce the breach of any existing contract or contracts between the prospective customer and a competitor or competitors; or wilfully interfere with or obstruct the performance of any contract by a competitor.

(b) To represent in any way that the work or installation of a competitor was performed by the seller making such representation.

(c) To advertise, show or display a brand of product not sold by the advertiser.

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

**History:** 1-2-56; r. cr. Register, July, 1963, No. 91, eff. 8-1-63.

**Ag 110.02 Contract requirements.** All contracts and agreements in writing subscribed by the buyer for the sale or installation of any product or materials, as provided in section Ag<sup>v</sup>110.01, which obligate the buyer for the payment of money, shall clearly set forth all representations made by the seller and particularly the following:

(1) 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 of the insurance or other form of protection, as well as the name and address of the insurer, if different from the seller, or a copy of the insuring agreement shall be furnished to the buyer.

(2) Where a representation is made that service, maintenance, repairs or replacement parts will be readily available, the contract shall clearly specify the location and name of the person or firm which will perform or supply such services, repairs or replacement parts if not to be performed by the seller.

(3) Where a representation is made that any product or materials will be installed, applied or in any way repaired, serviced or maintained, the contract shall fully state the terms, conditions and limitations of such a provision.

(4) The contract shall clearly and separately spell out and state, wherever applicable, the size, model, capacity and year of the product, and type, weight, grade, quantity and quality of materials, including the brand name if so represented, as well as all the services and functions the product or material was represented to perform.

(5) The contract shall clearly and separately state all the terms and conditions of any financing plan or agreement, specifically and separately stating the net price of the product and completed installation; all interest, carrying, time price differential or other charges, and the total gross price to be paid by the purchaser; provided that where the price to be paid by the purchaser has not been finally fixed when the contract is entered into, the terms and conditions on which the price is to be determined shall be fully set forth in the contract. The contract shall specifically state whether or not it may be assigned, or that a note based on the contract may be sold or transferred. A true and correct copy of such contract shall be furnished to the purchaser at the time the contract is executed by the buyer. In the event that the purchaser is required to sign a note, the amount and terms shall correspond exactly with those stated in the contract.

(6) If the customer is unable to read or see, all documents signed by him shall be read to him by some third person designated by him, and having no connection with the seller.

(7) The contract shall clearly and separately state and define any warranty or guarantee of the product or material, including the time limit, any exclusions and limitations, as well as any exclusions and limitations as to cost of repairs and replacement parts, services or

labor charges, or a copy of such guarantee shall be furnished to the buyer. If the product is to be guaranteed by the manufacturer or anyone else, that fact shall be fully stated in the contract.

(8) Where a representation is made that the buyer's home or building will be used as a model home or advertising job and that he will be paid a commission or be otherwise compensated for any other sales that the seller may make, all the terms and conditions of such offer shall be fully set forth in the contract.

(9) Contract provisions for liquidated damages for breach thereof by the buyer shall be reasonable.

(10) The contract shall disclose the name of the general contractor and person who is responsible for performance of the contract if different from the seller. The contract shall not be sold or assigned without the written consent of the buyer.

**History:** 1-2-56; r. cr. Register, July, 1963, No. 91, eff 8-1-63.

**Ag 110.03 Claims and defenses of buyers.** (1) Every assignee of a home improvement contract under this chapter takes subject to all claims and defenses of the buyer or his successors in interest arising under the contract.

(2) No seller shall enter into any contract subject to this chapter wherein the buyer waives the right to assert against the seller or any assignee any claim or defense he may have against the seller arising under the contract. Any provision in a contract subject to this chapter wherein the buyer agrees to such waiver is void.

(3) No seller shall use any promissory note or instrument, other than a check, subject to this chapter 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 all other claims and defenses of the maker or obligor."

(4) Every holder or transferee of a negotiable instrument, executed in violation of this chapter, who knew or should have known at the time he acquired the instrument that it was made for home improvements or that the transferor or payee 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, who has not assumed the obligations of the assignor under the contract, or a transferee under this section shall be limited to amounts paid or owing on the contract, promissory note or other instrument to the assignee or transferee.

**History:** Cr. Register, September, 1970, No. 177, eff. 10-1-70.