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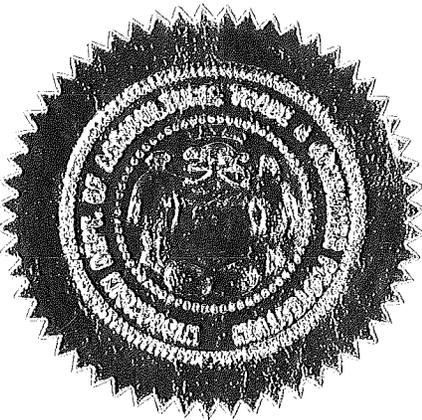
STATE OF WISCONSIN)
)
DEPARTMENT OF AGRICULTURE,) SS.
TRADE & CONSUMER PROTECTION)

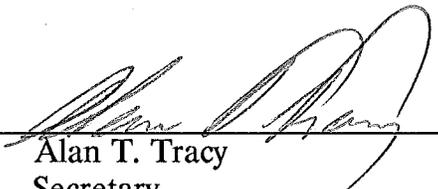
CERTIFICATION:

I, Alan T. Tracy, Secretary of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, do hereby certify that the annexed rules relating to home improvement trade practices were duly adopted by the department on the 6th day of August, 1993.

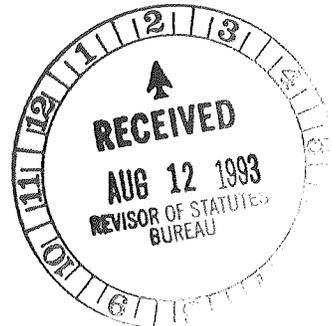
I further certify that this copy has been compared by me with the original on file in the department and that it is a true and complete copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 10th day of August, 1993.





Alan T. Tracy
Secretary



ORDER OF THE STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following order to repeal ATCP 110.05(9); to renumber ATCP 110.01(1) to (4); to amend ATCP 110.02(3)(d), 110.02(6)(g), 110.02(6)(h), 110.02(7)(c), 110.03(1), 110.05(2)(intro.), 110.05(3) and 110.05(6); to repeal and recreate ATCP 110.02(7)(b) and ATCP 110.04; and to create ATCP 110.01(1) and (6), 110.02(6)(n), 110.02(6)(o), 110.02(11), 110.07 and 110.08; relating to home improvement trade practices.

Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: s. 100.20(2), Stats.
Statutes interpreted: s. 100.20, Stats.

Under s. 100.20, Stats., the department of agriculture, trade and consumer protection (DATCP) is authorized to adopt rules (general orders) prohibiting unfair trade practices and methods of competition in business, and prescribing fair practices. Under that authority, DATCP has adopted consumer protection rules regulating home improvement trade practices (ch. ATCP 110, Wis. Adm. Code). This rule modifies DATCP's current home improvement rules in response to a decision by the Wisconsin Court of Appeals. This rule also adds new protection for consumers.

DATCP's home improvement rules were originally adopted in 1941 to address unfair and deceptive practices in the roofing and siding business. The rules were completely recreated in 1963 to cover home improvements of all kinds. They were amended again in 1974 and 1976. The current rules prohibit various deceptive practices related to home improvement contracts, and require contractors to comply with certain fair business practices.

Under the current rules, if a home improvement contract is solicited away from the seller's regular place of business, or if the buyer is required to make payments before the home improvement is completed, the contract must be in writing and must include specified terms and conditions. The current rules

also regulate home improvement warranties, and they preserve a buyer's claims and defenses against subsequent assignees of a home improvement contract.

One of the primary abuses addressed by the current rules is a seller's (contractor's) failure to perform home improvement work after the buyer (homeowner) has paid for that work. This continues to be a major statewide problem, and is one of the most common consumer complaints received by DATCP. In order to address this problem, the current rules require sellers to comply with all home improvement contract terms, and to complete home improvement work on a timely basis. Violations are subject to potential criminal penalties.

In 1990, the Wisconsin Court of Appeals, District III, held that current rules related to contract performance were unconstitutional as drafted, because they created a condition of involuntary servitude. According to the court, the state cannot force a contractor, under threat of criminal penalty, to perform work under a labor contract (home improvement contract), unless the contract breach also involves some fraud or misrepresentation. (Although the state cannot criminalize the seller's breach of a labor contract, the buyer is still free to sue the seller for damages resulting from the breach.)

This rule repeals the provisions affected by the court's ruling. However, this rule adds new provisions to ensure adequate protection for buyers:

- The rule prohibits a seller from making any false, deceptive or misleading representation in order to induce a buyer to enter into a home improvement contract, in order to obtain or keep any payment under a home improvement contract, or in order to delay performance under a home improvement contract. It also prohibits a seller from soliciting or accepting advance payment for services which the seller does not intend to perform according to the contract, or which the seller has reason to believe will not be performed according to the contract.
- Under this rule, if a buyer makes any payment prior to the completion of a home improvement, the seller may not use the prepaid funds for any purpose other than the home improvement.
- Under this rule, changes in written contract deadlines are not effective unless the buyer agrees to the changes in writing. (The buyer's mere failure to object to a performance delay does not automatically extend the written contract deadline, nor does it automatically deprive the buyer of any remedy which the buyer may have for the seller's failure to meet the original deadline.)

- Under this rule, if a buyer pays for materials or services before the seller provides those materials or services, the buyer may do all of the following if the seller fails to provide those materials or services on a timely basis:
 - Give written notice canceling the contract.
 - Demand return of all payments which the seller has not yet expended on the home improvement. (The seller must return all payments to which the buyer is entitled within 15 days after the buyer's written demand is served on the seller.)
 - Demand delivery of all materials which the seller has purchased with the buyer's payments, if those materials have not yet been used in the home improvement or delivered to the job site. (The seller must deliver the materials within 15 days after the buyer's written demand is served on the seller, or within 5 days after the seller receives the materials from the seller's supplier, whichever is later.)
 - Demand a written accounting for all moneys paid by the buyer to the seller. (The seller must provide a written accounting within 30 days after the buyer's written demand is served on the seller.)
- This rule prohibits the seller from soliciting or accepting payment for home improvement materials or services which the seller does not intend to provide or which the seller has reason to believe will not be provided.
- This rule prohibits a seller from misrepresenting that the seller is licensed, bonded or insured. If the seller represents that the seller is licensed, bonded or insured, the seller must provide the buyer with a written statement describing the type of license, bond or insurance which the seller possesses. The rule also prohibits the seller from misrepresenting that the seller is the only person who can provide financing for the home improvement contract.
- This rule requires a seller to inform a buyer, before the buyer enters into a home improvement contract, of all building or construction permits which are required for the home improvement. The seller may not start work at the home improvement job site until all required state and local permits have been issued.
- This rule requires a seller to disclose to a buyer, before the buyer enters into a home improvement contract, all charges, costs or fees which the buyer is required to pay under the home improvement contract. The seller must also

disclose that the buyer is entitled to receive lien waivers from the contractor and subcontractors before the buyer pays for work provided by those persons under the home improvement contract.

- This rule clarifies current rules related to home improvement warranties. Under this rule, if a seller warrants any labor, services, products or materials provided in connection with a home improvement, the warranty must be documented in writing, and a copy must be provided to the buyer. The warranty must clearly specify the terms and conditions of the warranty, including any exclusions or limitations. A seller's warranty must also specify the time period within which the seller will perform the seller's warranty obligations after the buyer makes a valid warranty claim. A seller may not give any warranty which the seller does not intend to honor in full, or which the seller has reason to believe will not be honored in full.
- Under this rule, before a buyer enters into a written home improvement contract prepared or offered by a seller, the seller must determine whether the buyer can read and understand the contract.
- Under this rule, home improvement contracts which constitute "consumer approval transactions" under the Wisconsin consumer act must comply with applicable provisions of the Wisconsin consumer act (ch. 423, Stats.), including provisions giving consumers a 3-day right to cancel.

This rule also makes non-substantive drafting changes designed to clarify and modernize the language of the current rules.

1 SECTION 1. ATCP 110.01(1) to (4) are renumbered (2) to (5).

2 SECTION 2. ATCP 110.01(1) is created to read:

3 ATCP 110.01(1) "Buyer" means either of the following
4 persons who is a party or prospective party to a home improvement
5 contract:

6 (a) The owner of residential or noncommercial property to
7 which the home improvement contract pertains.

8 (b) The tenant or lessee of residential or noncommercial
9 property to which the home improvement contract pertains if the

1 tenant or lessee is or will be obligated to make a payment under
2 the home improvement contract.

3 SECTION 3. ATCP 110.01(6) is created to read:

4 ATCP 110.01(6) "Warranty" means any warranty or guarantee
5 made with respect to labor, services, products or materials
6 provided under a home improvement contract. "Warranty" includes
7 a seller's warranty and a manufacturer's product warranty.

8 SECTION 4. ATCP 110.02(3)(d) is amended to read:

9 ATCP 110.02(3)(d) Substitute products or materials for
10 those specified in the home improvement contract, or otherwise
11 ~~represented or sold for use in the making of home improvements by~~
12 ~~sample, illustration or model~~ for those which the seller
13 represented would be used in the home improvement, without the
14 prior knowledge or consent of the buyer. If a written home
15 improvement contract is required under s. ATCP 110.05(1) or the
16 seller uses a pre-printed home improvement contract form, the
17 buyer's consent under this paragraph shall also be in writing.

18 SECTION 5. ATCP 110.02(4)(d) is created to read:

19 ATCP 110.02(4)(d) Misrepresent that the seller is licensed,
20 bonded or insured. If the seller represents that the seller is
21 licensed, bonded or insured, the seller shall provide the buyer
22 with a written statement specifically describing the type of
23 license, bond or insurance that the seller possesses.

24 SECTION 6. ATCP 110.02(6)(g) and (h) are amended to read:

25 ATCP 110.02(6)(g) ~~Mislead the prospective buyer into~~
26 believing Misrepresent that the down payment ~~of~~ or any other sum

1 ~~constitues~~ constitutes the full amount the buyer will be
2 obligated to pay.

3 (h) Misrepresent or fail to disclose all to a buyer, before
4 the buyer enters into a home improvement contract, the existence
5 or amount of any financing charges, interest service charges,
6 credit investigation costs, building or installation permit fees,
7 or other obligations, charges, costs or fees charges to be paid
8 by the buyer.

9 SECTION 7. ATCP 110.02(6)(n) and (o) are created to read:

10 ATCP 110.02(6)(n) Fail to disclose to a buyer, before the
11 buyer enters into a home improvement contract, that the buyer is
12 entitled to receive written lien waivers according to pars. (l)
13 and (m).

14 (o) Misrepresent that the seller is the only person who can
15 provide financing for the home improvement contract.

16 SECTION 8. ATCP 110.02(7)(b) is repealed and recreated to
17 read:

18 ATCP 110.02(7)(b) Solicit or accept any payment for home
19 improvement materials or services which the seller does not
20 intend to provide according to the terms of the home improvement
21 contract, or which the seller has reason to believe will not be
22 provided according to the terms of the contract.

23 SECTION 9. ATCP 110.02(7)(c) is amended to read:

24 ATCP 110.02(7)(c) Fail to give the buyer timely notice ~~to~~
25 ~~the buyer~~ of any impending delay in contract performance, if
26 performance will be delayed beyond a deadline specified in the

1 contract. The notice shall specify the reasons beyond the
2 seller's control for any the delay in performance, and when the
3 work will begin or be completed, and shall specify new proposed
4 deadlines by which the seller will begin and complete the work.
5 If a written home improvement contract is required under s. ATCP
6 110.05(1) or the seller uses a pre-printed home improvement
7 contract form, no change in performance deadlines is effective
8 unless the buyer agrees in writing to the change.

9 SECTION 10. ATCP 110.02(10) and (11) are created to read:

10 ATCP 110.02(10) MISAPPROPRIATION OF BUYER'S PREPAYMENTS.

11 Use any home improvement contract payment, received from a buyer
12 prior to the completion of a home improvement, for any purpose
13 other than to provide materials or services for the home
14 improvement.

15 (11) MISREPRESENTATIONS; GENERAL. Make any false,
16 deceptive or misleading representation in order to induce any
17 person to enter into a home improvement contract, to obtain or
18 keep any payment under a home improvement contract, or to delay
19 performance under a home improvement contract.

20 SECTION 11. ATCP 110.03(1) is amended to read:

21 ATCP 110.03(1) Before a buyer enters into a home
22 improvement contract, the seller shall inform the buyer of all
23 building or construction permits that are required for the home
24 improvement. No seller ~~contracting for the making of home~~
25 ~~improvements shall commence work~~ may start work under a home
26 improvement contract until all applicable required state or and

1 local ~~building and construction~~ permits have been issued as
2 ~~required under state laws or local ordinances.~~

3 SECTION 12. ATCP 110.04 is repealed and recreated to read:

4 ATCP 110.04 WARRANTIES. (1) A seller shall give a buyer a
5 copy of every written warranty made with respect to labor,
6 services, products or materials furnished in connection with a
7 home improvement. If a seller makes any oral warranty, the
8 seller shall document that warranty in writing and give a copy to
9 the buyer. The seller shall provide all warranty documents to
10 the buyer at the time the buyer enters into a home improvement
11 contract, except that a manufacturer's product warranty may be
12 provided when that product is installed.

13 (2) If a seller warrants any labor, service, product or
14 material furnished in connection with a home improvement, the
15 warranty shall be clear and specific and shall clearly specify
16 all of the following:

17 (a) Any warranty conditions or exclusions.

18 (b) Any limitations on the scope or duration of the
19 warranty.

20 (c) The time period within which the seller will perform
21 the seller's warranty obligations after the buyer makes a valid
22 warranty claim.

23 (3) No seller may give any warranty which the seller does
24 not intend to honor in full, or which the seller has reason to
25 believe will not be honored in full.

26

1 SECTION 13. ATCP 110.05(2)(intro.), (3), and (6) are
2 amended to read:

3 ATCP 110.05(2)(intro.) ~~Home improvement contracts and all~~
4 ~~changes in the terms and conditions thereof, required under this~~
5 ~~section to be in writing, If a written home improvement contract~~
6 ~~is required under sub. (1), or if a written home improvement~~
7 ~~contract is prepared using the seller's pre-printed contract~~
8 ~~form, the written contract shall be signed by all parties~~
9 ~~thereto, and shall clearly and accurately and legibly set forth~~
10 ~~in legible form all terms and conditions of the contract, and~~
11 ~~particularly the following including:~~

12 (3) ~~A copy of all contracts required to be in writing shall~~
13 ~~be furnished to the buyer before any work is begun or any payment~~
14 ~~is due Before the seller begins work or receives any payment~~
15 ~~under a written home improvement contract, the seller shall~~
16 ~~provide the buyer with a copy of the contract.~~

17 (6) Before a buyer enters into a written home improvement
18 contract prepared or offered by the seller, the seller shall
19 determine if the buyer is able to read and understand the
20 contract. ~~If the buyer is unable to read or write or is blind,~~
21 ~~written contracts shall~~ or unable to read the contract, the
22 written contract shall be read and explained to the buyer by a
23 third party designated by the buyer and having no connection with
24 the seller. If a language other than English is primarily used
25 in contract negotiations, the written contracts must contract
26 shall be both in English and in the language principally used to

1 negotiate the contract.

2 SECTION 14. ATCP 110.05(9) is repealed.

3 SECTION 15. ATCP 110.07 is created to read:

4 ATCP 110.07 CONTRACT CANCELLATION; RETURN OF PAYMENTS. (1)

5 CONDITIONS WARRANTING EXERCISE OF BUYER'S REMEDIES. If, under a
6 home improvement contract, a buyer pays a seller for any home
7 improvement materials or services before the seller provides
8 those materials or services to the buyer, the buyer may proceed
9 under sub. (2) if any of the following occurs:

10 (a) The seller fails to provide the materials or services
11 by a deadline specified in the home improvement contract.

12 (b) The seller fails to give buyer notice of an impending
13 delay as required under s. ATCP 110.02(7)(c), or fails to obtain
14 the buyer's agreement to a new performance deadline.

15 (c) The buyer believes that the seller has failed to
16 provide the materials or services in a timely manner, and the
17 home improvement contract specifies no deadline for the seller to
18 provide the materials or services.

19 (2) BUYER'S REMEDIES. If the conditions under sub. (1) are
20 met, the buyer may do all of the following:

21 (a) Cancel the contract.

22 (b) Demand return of all payments which the seller has not
23 yet expended on the home improvement.

24 (c) If the seller has used any of the buyer's payments to
25 purchase materials for the home improvement, demand delivery to
26 the home improvement site of those materials which have not yet

1 been used for the home improvement or delivered to the site.

2 (d) Demand a written accounting for all payments that the
3 buyer made to the seller. The written accounting shall detail
4 how all payments were used by the seller.

5 (3) BUYER'S EXERCISE OF REMEDIES; PROCEDURE. In order to
6 exercise any remedy under sub. (2), the buyer shall deliver
7 written notice to the seller, or to the seller's officer,
8 director or agent. Notice shall be delivered in person, by
9 certified mail to the seller's last known address, or by regular
10 mail with evidence of mailing to the seller's last known address.
11 If notice is mailed to the seller, the date on which the post
12 office receives the notice for delivery is considered the date of
13 service for purposes of sub. (4). Compliance with this
14 subsection is not a prerequisite to the buyer's exercise of other
15 remedies other than those specified under sub. (2).

16 (4) COMPLIANCE BY SELLER. (a) If the buyer demands the
17 return of payments to which the buyer is entitled under sub.
18 (2)(b), the seller shall return those payments to the buyer
19 within 15 calendar days after the buyer's demand is served on the
20 seller under sub. (3).

21 (b) If the buyer demands delivery of materials to which the
22 buyer is entitled under sub. (2)(c), the seller shall deliver
23 those materials to the home improvement site within 15 calendar
24 days after the buyer's demand is served on the seller under sub.
25 (3), or within 5 calendar days after the seller receives the
26 materials from the seller's supplier, whichever occurs later.

1 (c) If the buyer demands an accounting to which the buyer
2 is entitled under sub. (2)(d), the seller shall provide the buyer
3 with the written accounting within 30 calendar days after the
4 buyer's demand is served on the seller under sub. (3).

5 (5) REMEDIES NOT EXCLUSIVE. A buyer's remedies under this
6 section are in addition to any other legal remedies available to
7 the buyer. They are not a prerequisite to the exercise of any
8 other remedies, nor do they limit any other remedies.

9 SECTION 16. ATCP 110.08 is created to read:

10 ATCP 110.08 CONTRACT COMPLIANCE. A home improvement
11 contract which constitutes a "consumer approval transaction" as
12 defined in s. 423.201, Stats., shall comply with ch. 423, Stats.

13 SECTION 17. The rules contained in this order shall take
14 effect on the first day of the month following publication in the
15 Wisconsin administrative register as provided under s. 227.22(2),
16 Stats.

Dated this 6th day of August, 1993.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary

