

Chapter ATCP 111

BASEMENT WATERPROOFING UNFAIR TRADE PRACTICES

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Note: Chapter Ag 133 was renumbered chapter ATCP 111 under s. 13.93 (2m) (b) 1, Stats., Register, April, 1993, No. 448.

Note: This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

ATCP 111.01 Declaration of policy. Basement water problems and particularly those arising from poor drainage or high water tables are often difficult to correct without a thorough analysis of causative factors and the performance of extensive and costly waterproofing services. The effectiveness of such services, unlike many other services, cannot readily be determined until heavy rains or other conditions responsible for basement water problems occur. In the performance of basement waterproofing services certain methods or processes have been used at substantial cost to the consumer which are ineffective, inadequate or unsuitable for the correction of basement water problems. Guarantees, if given, may often be vague, ambiguous or unenforceable against the seller, or otherwise made without reasonable expectancy of performance on the part of the seller to the detriment of the buyer. These and other abuses in the sale of basement waterproofing services are contrary to the public interest and are unfair trade practices and unfair methods of competition prohibited under s. 100.20, Stats.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75.

ATCP 111.02 Definitions. (1) "Advertising" means any oral, written, printed or graphic statement or representation made in connection with the solicitation or sale of basement waterproofing services.

(2) "Basement waterproofing" means the use or application of materials or processes for the prevention or control of water leakage or flow through the basement walls or flooring into the interior portion of a basement.

(3) "Engineer's analysis" means a written report from a professional engineer registered in the state of Wisconsin containing an analysis of soil conditions, water tables or pressure, and other factors or conditions affecting the existence and correction of basement water problems, and an opinion as to the probability that the process and the particular substances or materials which are to be used in the performance of basement waterproofing services will or will not cure the basement water problem or have a significant waterproofing effect.

(4) "Pressure pumping" means a basement waterproofing process by which a substance is injected into the

ground adjacent to the basement walls or beneath the basement foundation or floor by pipes or other conduits for the purpose of protecting or sealing the basement walls, foundation or floors against water penetration.

(5) "Seller" means a person, firm, corporation or other business organization or entity engaged in the business of basement waterproofing and includes any of their representatives, agents and employees.

(6) "Seller's analysis" is a written statement by the seller of the causes and conditions responsible for the buyer's basement water problem and the specific processes and materials to be used in correcting the problem.

(7) "Guarantee" means any promise, made by or on behalf of the seller in connection with the sale of basement waterproofing services, which provides that the seller's services, materials or workmanship are defect free or will meet a specified level of performance over a specified period of time, or which provides that the seller will correct, repair, service, replace, make refunds for or otherwise remedy any systems, problems, defects or malfunctions that relate to or arise out of basement waterproofing services. The term includes service contracts or agreements made by or on behalf of the seller in connection with a basement waterproofing contract under which the seller provides or agrees to perform, over a fixed or extended period of time, basement waterproofing inspection, maintenance or repair services, whether or not a separate or additional charge is made for such services.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; cr. (7), Register, March, 1976, No. 243, eff. 4-1-76.

ATCP 111.03 Prohibited practices. No seller shall engage in the following unfair trade practices or unfair methods of competition:

(1) Make or offer to make any guarantee with respect to basement waterproofing services unless the guarantee meets the requirements of s. ATCP 111.04, and is furnished to the buyer in writing with a seller's analysis prior to final execution of any contract.

(2) Make any guarantee the seller knows or reasonably ought to know cannot be performed or which exceeds the period of time the seller or other persons obligated under the guarantee may be able to honor or perform under the guarantee.

(3) Submit a seller's analysis to the buyer which the seller knows or reasonably ought to know is founded on incorrect facts or conclusions.

(4) Enter into a basement waterproofing contract which provides, in whole or in part, for the performance of ser-

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vices which the seller knows or reasonably ought to know are unnecessary or will not materially serve to correct the buyer's basement water problem, unless such unnecessary or noncorrective services are separately and distinctly identified and enumerated in the seller's analysis, or an amendment thereto, provided to the buyer prior to execution of a basement waterproofing contract.

(5) Advertise basement waterproofing services in a manner which explicitly states or otherwise suggests or implies that such services will be guaranteed unless they are in fact guaranteed and a copy of the guarantee is furnished to the buyer in connection with any basement waterproofing contract.

(6) Advertise that basement waterproofing services of the seller are or will be effective unless the seller is experienced in and uses basement waterproofing methods generally recognized as being effective for the prevention or control of basement water problems in the basement waterproofing industry.

(7) Sell basement waterproofing services using the pressure pumping method unless the need or effectiveness of such method is established in a seller's analysis verified by an engineer's analysis furnished to the buyer prior to the sale, and the work is guaranteed as provided under s. ATCP 111.04.

(8) Advertise basement waterproofing services using the pressure pumping process without disclosing in the advertisement that an engineer's analysis recommending this process is required as a condition to the use thereof and must be furnished to the buyer before a contract is signed.

(9) Enter into any contract for basement waterproofing services which does not contain all agreements, promises or representations made with respect to such services, and which is not in writing and signed by the buyer and seller.

(10) Fail to provide, in all instances where the seller's basement waterproofing services are not guaranteed, the following disclaimer, which shall be set forth on the face of the contract, separate and apart from all other contract provisions and in bold face type: "THE BASEMENT WATERPROOFING SERVICES PROVIDED BY THIS CONTRACT ARE NOT GUARANTEED."

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; am. (1) and (4), cr. (9) and (10), Register, March, 1976, No. 243, eff. 4-1-76.

ATCP 111.04 Guarantees. (1) All guarantees shall be furnished to the buyer in writing prior to the final execution

of any contract and include the name and address of the seller or person responsible for performance under the guarantee. Guarantees shall be considered part of the basement waterproofing contract and any breach in the terms or conditions thereof shall entitle the buyer to a full refund of money paid under the contract, less the value of benefits actually derived from the performed services. The burden of establishing any benefit to the buyer shall be on the seller.

(2) All guarantees shall be set forth in clear and explicit terms and shall fully guarantee that the work or services to be performed will effectively prevent or control the basement water problem they were designed or intended to prevent or control for the period of time specified in the guarantee. Basement dampness may be excluded from the guarantee if agreed to by the buyer in writing and the guarantee or contract contains the following statement in bold face type: "THE GUARANTEE PROVIDED HEREIN DOES NOT COVER DAMPNESS ON THE BASEMENT WALLS—IT DOES COVER ANY WATER LEAKAGE OR FLOW."

(3) All guarantees shall contain a provision that any remedial work or services to be performed under the guarantee shall begin within 45 days and be completed within 6 months after notice by the buyer to the seller of any failure of the waterproofing services under the contract. Notice of any claim by the buyer under the guarantee shall be deemed actual notice if mailed by certified mail to the seller's address as set forth in the guarantee.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75.

ATCP 111.05 Seller's analysis. Sellers of basement waterproofing services shall prepare and furnish to the buyer a signed copy of the seller's analysis prior to the final execution of any basement waterproofing contract.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75; r. and recr. Register, March, 1976, No. 243, eff. 4-1-76.

ATCP 111.06 Interpretation. A seller under this chapter is also a seller under s. ATCP 110.01 (4) and is subject to ch. ATCP 110 home improvement trade practice rules. In the event of any conflict between this chapter and ch. ATCP 110, the provisions of ch. ATCP 111 shall prevail.

History: Cr. Register, March, 1975, No. 231, eff. 4-1-75.