



WSSFC 2023

Substantive Law Track – Session 6

**Nail It! Construct Compliant
Home Improvement
Practices & Contracts**

Presented By:

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About the Presenters...

Leslie Elkins is an attorney at Kramer, Elkins & Watt, LLC. She practices business, employment and real estate law, acting as a trusted adviser to businesses with needs such as contract drafting and negotiation, business purchases and sales, real estate transactions, lease drafting and negotiation as well as regulation compliance. Leslie assists employers regarding legal issues such as overtime and prevailing wage compliance, drafting employment documents, advising on employee discipline and termination, and administrative representation such as unemployment insurance issues, employee discrimination allegations and department of labor audits.

As the Director of the Bureau of Consumer Protection, **Michael M. Domke** leads a team of consumer protection specialists, mediators, investigators, and outreach liaisons who provide support and education for Wisconsin consumers and businesses. Every year the Bureau of Consumer Protection receives over 100,000 consumer contacts, mediates over 11,000 complaints and returns millions of dollars to consumers. This is achieved through his teams commitment to combatting deceptive business practices and educating communities on best practices to avoid falling victim to scams, fraud and identity theft. Prior to joining the Bureau of Consumer Protection, Michael had a long and rich career in public service serving as Section Chief of the DOT's Dealer and Agent Section, as a Police Officer in the City of Fond du Lac, Wisconsin, and retiring after 22 years of service in the US Army and Army Reserves. Michael holds bachelor's degrees in Criminal Justice and Sociology along with a Master's Degree in Public Administration; all from the University of Wisconsin – Oshkosh.

Nail it!
Construct a Compliant Home Improvement Contract

Wisconsin Solo and Small Firm Conference
October 20, 2023

Presenters:

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Director, Bureau of Consumer Protection

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I. Wisconsin Admin. Code § ATCP 110 Home Improvement Practices – To whom does this apply?

- A. This chapter is adopted under the authority of Wis. Stat. 100.20 and is administered by the Wisconsin department of agriculture, trade and consumer protection.
- B. Definitions.
 - i. “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. The term extends to the conversion of existing commercial structures into residential or non-commercial property. “Home improvement” does not include the construction of a new residence or the major renovation of an existing structure. (ATCP 110.01(2)).
 - ii. “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. (ATCP 110.01(3)).

- iii. “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
- iv. “Buyer” means either of the following persons who is a party or prospective party to a home improvement contract: (a) The owner of residential or noncommercial property to which the home improvement contract pertains; or (b) The tenant or lessee of residential or noncommercial property to which the home improvement contract pertains if the tenant or lessee is or will be obligated to make a payment under the home improvement contract.

II. What needs to be included in a home improvement contract?

A. Basics

- i. The contract and all changes must be in writing where payment of money or other consideration is exchanged. ATCP 110.05(1)(a)
- ii. The contract must be signed by all parties. ATCP 110.05(2)
- iii. The contract must contain the following information:
 - 1. Name and address of the Seller. ATCP 110.05(2)(a)
 - 2. Name and address of the individual who sold and/or negotiated the project on behalf of the Seller. ATCP 110.05(2)(a)
- iv. Before beginning work, the Seller must provide the Buyer with a copy of the contract. ATCP 110.05(3)
- v. Before entering into a written home improvement contract, the Seller should determine if the Buyer is able to read and understand the contract. If the Buyer is blind or unable to read the contract, the written contract shall be read and explained to the Buyer by a third party designated by the Buyer with no connection to the Seller. If a language other than English is primarily used in contract negotiations, the written contract shall be both in English and the language used to negotiate the contract. ATCP 110.05(6)

- B. Description of the work to be done and the principal products and materials to be used. 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. ATCP 110.05(2)(b)

- C. Total price, including all finance charges. If it is a time and materials contract, the hourly rate for labor must be included. ATCP 110.05(2)(c)
- D. Dates or time period within which the work is to begin and be completed by the seller. ATCP 110.05(2)(d)
- E. A description of any mortgage or security interest to be taken in connection with the financing or sale of the home improvement. ATCP 110.05(2)(e)
- 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 under ATCP 110.04(1). ATCP 110.05(2)(f)
- G. A description or identification of any other document which is to be incorporated in or form part of the contract. ATCP 110.05(2)(g)
 - i. Notice of Consumer's Right to Receive Lien Waivers. ATCP 110.025
 - ii. Copy of every written warranty made with respect to labor, services, products or materials furnished. ATCP 110.04
 - iii. Lead Paint Disclosure for homes and child-occupied facilities built before 1978. 40 CFR § 745, Subpart E – Residential Property Renovation.
- H. If any representations regarding insurance or other form of protection will be provided, the contract must clearly state such terms and conditions. ATCP 110.05(4)
- I. If anyone other than the Seller will act as the general contractor or assume responsibility for the contract, the name and address of such person shall be disclosed in the contract. ATCP 110.05(5)
- J. Liquidated damages for breach of contract by the Buyer are allowable, but cannot exceed 10% of the contract price. ATCP 110.05(7)
- K. If the Buyer is required to sign a note, the amount and terms shall correspond exactly with those stated in the contract. ATCP 110.05(8)

III. Lien Waivers

- A. A Seller must provide notice to Buyer that Buyer may request lien waivers from all contractors, subcontractors, and material suppliers at, or prior to, the time any payment is made on the home improvement contract. ATCP 110.025(1)
- B. The Notice must be provided in a separate document, written in a clear and conspicuous font.
- C. Seller must retain evidence of the buyer's acknowledgement of the Notice.
- D. The Notice shall state the following:
Notice of Consumer's Right to Receive Lien Waivers If a consumer requests lien waivers, a seller of home improvement services must provide lien waivers from all contractors, subcontractors, and material suppliers. This Wisconsin law protects consumers from having liens filed against their property. Lien waivers prevent the filing of a lien on your home in the event that a contractor does not pay suppliers or subcontractors. For more information about home improvement law, contact the Wisconsin Consumer Protection Bureau at 1-800-422-7128 or www.datcp.wi.gov.

IV. Warranties

- A. Seller must give Buyer a copy of all written warranties, and must document any oral warranties in writing. The warranties shall be given at the time the home improvement contract is entered into, with the exception of a manufacturer's product warranty which, in addition to at the time of entry of the contract, may be provided when the product is installed or at the conclusion of the contract, if specified therein. ATCP 110.04(1)
- B. Warranties must state any conditions or exclusions, limitations on scope or duration, time period within which the Seller will perform the obligations after the Buyer's valid claim. ATCP 110.04(2)

V. Delay in performance

- A. A seller must provide the buyer timely notice of any impending delay the performance will be delayed beyond a deadline specified in the contract. The notice needs to include reasons for the delay and new proposed deadlines. The change is not effective until signed by the Buyer. ATCP 110.027(1)

- B. Seller responsibility is excepted where the delay was caused by the Buyer, destructive acts of nature or disruptive civil disorder. ATCP 110.027(2)

VI. Substituting products or materials and altering the written contract

- A. Seller may not substitute products or materials for those specified in the home improvement contract, or for those which the seller represented would be used without the prior consent of the Buyer, and such consent must be in writing, with certain exceptions. ATCP 110.023(1)
- B. Such consent may be verbal where the change does not result in additional cost to the Buyer, or decrease in the value of materials used or services provided and the seller maintains the following specific written documentation: 1) manner in which the buyer communicated the authorization for the alteration; 2) name of the Buyer who authorized the alteration; 3) date and time that the Buyer authorized the alteration; 4) and a description of the alteration. Finally, the Seller must report any documented alterations to the Buyer before final payment is accepted. ATCP 110.023(2)

VII. Contract cancellation; Return of payments; Buyer Remedies

- A. If under a home improvement contract, Buyer pays a Seller for materials or services before the seller provides those materials to the buyer, and the Seller fails to (a) provide the materials or services by a deadline specified in the contract, (b) fails to give notice of an impending delay as required under ATCP 110.027(1), or (c) Buyer believes Seller has failed to provide the materials or service in a timely manner and the contract specifies no deadline for the materials or services, Buyer has remedies, as identified in ATCP 110.07(2). ATCP 110.07(1)
- B. Buyer remedies.
 - i. Buyer may cancel contract, demand return of all payments which Seller has not expended on home improvement, demand delivery of purchased products and demand a written accounting. ATCP 110.07(2)
 - ii. The remedies identified in this section are in addition to any other legal remedies. ATCP 110.07(5)
- C. Exercising Remedies; Procedure.

- i. If Buyer provides notice in accordance with ATCP 110.07(3), demanding return of payments to which Buyer is entitled under ATCP 110.07(2)(b), Seller shall return payments within 15 calendar days after Buyer's demand is served on Seller pursuant to ATCP 110.07(3).
- ii. If Buyer provides notice in accordance with ATCP 110.07(3), demanding delivery of materials to which Buyer is entitled under ATCP 110.07(2)(c), Seller shall deliver those materials to the site within 15 calendar days after Buyer's demand is served on Seller pursuant to ATCP 110.07(3) or within 5 calendar days after the seller receives the materials from the Seller's supplier, whichever is later.
- iii. If Buyer provides notice in accordance with ATCP 110.07(3), demanding an accounting to which Buyer is entitled under ATCP 110.07(d), Seller shall provide the accounting within 30 calendar days after Buyer's demand is served on Seller pursuant to ATCP 110.07(3).
- iv. The remedies are not exclusive.

VIII. Contract takeover

- A. Every assignee of a home improvement contract takes subject to all claims and defenses of the Buyer or successors in interest; Seller cannot enter into a 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. ATCP 110.06(6)(1), (2)
- B. Claims and defense of any Buyer against an assignee are limited to the total amount for which the Buyer was obligated at the time of entering into the contract. ATCP 110.06(5)

IX. Building Permits

- A. Seller is required inform Buyer of all building or construction permits required for the home improvement. ATCP 110.03(1)
- B. Where inspections are required, Seller shall furnish copies of inspection certificates to the Buyer when construction completed and before final payment is due or before signing of completion slip. If the inspection certificates are not provided, Seller must provide a summary with inspector's name, date of inspection, inspection number or identifying information. ATCP 110.03(2), (3)

X. Prohibited Trade Practices

- A. No Seller shall engage in the following unfair methods of competition or unfair trade practices (not exclusive):
- i. Production and Material Representations. A Seller cannot misrepresent any specific qualities of the materials such as functionality, size, quality, how they must be maintained or serviced, etc. ATCP 110.02(2)
 - ii. Bait Selling.
 1. Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands. ATCP 110.02(3)(e).
 - iii. Identity of Seller. Misrepresent the Seller's status, authority, affiliation. ATCP 110.02(4).
 - iv. Price and Financing. Misrepresent to Buyer any details regarding cost, discounts and/or financing of the project.
 1. Request the Buyer 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. ATCP 110(6)(e)
 2. 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. ATCP 110(6)(f)
 3. Misrepresent or fail to disclose to a buyer, before the buyer enters into a home improvement contract, the existence or amount of any financing charges, interest service charges, credit investigation costs, building or installation permit fees or other costs or charges to be paid by the Buyer. ATCP 110(6)(h)
 4. Fail to furnish lien waivers at or before final payment under ATCP 110.025(2) where requested by Buyer. ATCP 110.02(6)(L)
 5. Fail to provide notice to Buyer regarding entitlement for lien waivers as required under ATCP 110.025(1). ATCP 110.02(6)(n).
 - v. Misappropriation of Buyer's Prepayments. Use any home improvement contract payment, received from a buyer prior to the completion of a home improvement, for any purpose other than to provide materials or services for the home improvement. ATCP 110.02(10)
- B. Basement waterproofing

XI. Right to Cancel; Consumer Approval Transaction

- A. A “Consumer Approval Transaction” means a consumer transaction that is initiated by face-to-face solicitation away from a regular place of business of the Seller or by mail or telephone solicitation directly to the Buyer and in which the offer to contract is away from the regular place of business of the Seller and involves extension of credit or a cash transaction over \$25. Wis. Stat. § 423.201(1).
- i. Example 1: A contractor has a booth at a trade show, and the contractor engages in a conversation with a potential customer. The contractor then visits the potential customer’s home, and the contract is signed at the customer’s home.
 - ii. Example 2: Again, a contractor has a booth at a trade show, and the contractor engages in a conversation with a potential customer. The contractor then visits the potential customer’s home, but then sends the contract electronically to the customer, from the contractor’s office.
Violation?
- B. Right to Cancel. A Buyer in a Consumer Approval Transaction has the right to cancel the contract until midnight of the 3rd business day after the Buyer has given the requisite notice. Wis. Stat. § 423.202
- C. The Seller must give two copies of a typed or printed notice to the Buyer in not less than 12-point boldface type, which appears under the following caption, “CUSTOMER’S RIGHT TO CANCEL.” The notice must read as follows:
- You may cancel this agreement by mailing a written notice to (*insert name and mailing address of seller*) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing “I hereby cancel” and adding your name and address. A duplicate of this page is provided by the seller for your records.**
- Wis. Stat. § 423.203
- D. Language. Where a language other than English is regularly used in advertising or soliciting of customers, the notice should be printed in both English and such other language. Wis. Stat. § 423.203(2)
- E. Damages
- i. Liability to the customer for twice the amount of finance charge, but not less than \$100, or greater than \$1000, or more likely in this scenario, the actual damages. Wis. Stat. § 423.304

XII. Other Consumer Transaction Concerns

- A. Direct Marketing ATCP 127
- B. Wis. Stat. § 100.18 Fraudulent representations.
- C. Wis. Stat. § 100.20 Methods of competition and trade practices

XIII. Other

- A. Lead Based Paint certification required for contractors that disturb paint in housing and child-occupied facilities built before 1978. 40 CFR § 745, Subpart E – Residential Property Renovation.

XIV. Basement Waterproofing

- A. Seller's analysis. Sellers must prepare and furnish to the Buyer a signed copy of the Seller's analysis prior to the final execution of any basement waterproofing contract. A 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. ATCP 110.09(5); (2)(e).
 - i. Engineer's analysis is required for the pressure pumping method. ATCP 110.09(3)(g), (2)(d);
- B. Prohibited Practices
- C. Guarantees
 - i. Where no guarantees, basement waterproofing contracts need to have a separate disclaimer, in bold face type that states: **the basement waterproofing services provided by this contract are not guaranteed.** ATCP 110.09(3)(j).
 - ii. All guarantees need to be provided in writing prior to final execution of contract, including the name and address of Seller or person responsible for performance. Guarantees must set forth clear and explicit terms and fully guarantee the work will effectively prevent or control the basement water problem intended to control. Dampness may only be excluded from the guarantee if a specific disclosure is provided, in bold face type that states: **the guarantee provided herein does not cover dampness on the basement walls – it does cover any water leakage or flow.** ATCP 110.09(4)(a,b).
 - iii. Guarantees must contain a provision that any remedial work or services to be performed shall begin within 45 days and completed within 6 months after notice by the Buyer to the Seller of any failure.

XV. DATCP Procedure

- A. Complaint filing option
 - i. Online portal, email, hard copy, in-person
- B. Mediation
 - i. Letters sent within two days of assignment
 - ii. Legal citations when appropriate
 - iii. Liaison to reach resolution
- C. Education
 - i. Leases, contracts, practices, etc.
- D. Monitor trends and patterns
 - i. Enforcement review

XVI. Using DATCP as a resource

- A. Consumer Education and Information Unit
 - i. Hotline
- B. Online resources
 - i. Fact Sheets
- C. Outreach Specialists
 - i. In-Person and Virtual Presentations



NAIL IT!



CONSTRUCT A COMPLIANT HOME IMPROVEMENT CONTRACT

PRESENTED BY:

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Partner
Kramer, Elkins & Watt, LLC

Michael Domke
Director
WI Bureau of Consumer Protection

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AGENDA

- | | |
|---------------------------|----------------------------|
| 1. Applicability | 9. Building Permits |
| 2. Contract Requirements | 10. Prohibited Practices |
| 3. Lien Waivers | 11. Right to Cancel |
| 4. Warranties | 12. Consumer Transactions |
| 5. Performance Delays | 13. Lead Paint |
| 6. Material Substitutions | 14. Basement Waterproofing |
| 7. Contract Cancellations | 15. DATCP Complaints |
| 8. Contract Takeover | 16. DATCP Resources |

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WISCONSIN ADMIN. CODE § ATCP 110

TO WHOM DOES THIS APPLY?

- “Home Improvement”
- “Residential or non-commercial property”
- “Seller”
- “Buyer”

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CONTRACT REQUIREMENTS

- Basics
- Description of work & materials
- Total Price
- Start and completion dates
- Mortgage or security interest
- Guarantee or warranty
- Additional documents
- Insurance representations
- Seller representative
- Liquidated damages
- Buyers note

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LIEN WAIVERS

- A Seller must provide notice to Buyer that Buyer may request lien waivers from all contractors, subcontractors, and material suppliers at, or prior to, the time any payment is made on the home improvement contract.
- The Notice must be provided in a separate document, written in a clear and conspicuous font.
- Seller must retain evidence of the buyer's acknowledgement of the Notice.
- The Notice shall contain all required language.

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WARRANTIES

- Seller must give Buyer a copy of all written warranties, and must document any oral warranties in writing. The warranties shall be given at the time the home improvement contract is entered into, with the exception of a manufacturer's product warranty which, in addition to at the time of entry of the contract, may be provided when the product is installed or at the conclusion of the contract, if specified therein.
- Warranties must state any conditions or exclusions, limitations on scope or duration, time period within which the Seller will perform the obligations after the Buyer's valid claim

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PERFORMANCE DELAYS

- A seller must provide the buyer timely notice of any impending delay the performance will be delayed beyond a deadline specified in the contract. The notice needs to include reasons for the delay and new proposed deadlines. The change is not effective until signed by the Buyer.
- Seller responsibility is excepted where the delay was caused by the Buyer, destructive acts of nature or disruptive civil disorder.

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PRODUCT SUBSTITUTIONS

- Seller may not substitute products or materials for those specified in the home improvement contract, or for those which the seller represented would be used without the prior consent of the Buyer, and such consent must be in writing, with certain exceptions.
- Such consent may be verbal where the change does not result in additional cost to the Buyer, or decrease in the value of materials used or services provided and the seller maintains the following specific written documentation:
 - 1) manner in which the buyer communicated the authorization for the alteration;
 - 2) name of the Buyer who authorized the alteration;
 - 3) date and time that the Buyer authorized the alteration;
 - 4) a description of the alteration.
- Finally, the Seller must report any documented alterations to the Buyer before final payment is accepted.

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CONTRACT CANCELLATIONS RETURN OF PAYMENTS & BUYER REMEDIES

- Buyer has remedies if under a home improvement contract, Buyer pays a Seller for materials or services before the seller provides those materials to the buyer, and the Seller fails to:
 - provide the materials or services by a deadline specified in the contract
 - give notice of an impending delay as required
 - provide the materials or services in a timely manner when the contract specifies no deadline
- Buyer remedies:
 - Buyer may cancel contract, demand return of all payments which Seller has not expended on home improvement, demand delivery of purchased products and demand a written accounting.
 - The remedies identified in this section are in addition to any other legal remedies.

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CONTRACT CANCELLATIONS RETURN OF PAYMENTS & BUYER REMEDIES (CONTINUED)

- Exercising Remedies; Procedure.
 - If Buyer provides notice demanding return of payments to which Buyer is entitled, Seller shall return payments within 15 calendar days after Buyer's demand is served on Seller
 - If Buyer provides notice demanding delivery of materials to which Buyer is entitled, Seller shall deliver those materials to the site within 15 calendar days after Buyer's demand is served on Seller or within 5 calendar days after the seller receives the materials from the Seller's supplier, whichever is later.
 - If Buyer provides notice demanding an accounting to which Buyer is entitled, Seller shall provide the accounting within 30 calendar days after Buyer's demand is served on Seller
 - The remedies are not exclusive.

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CONTRACT TAKEOVER

- Every assignee of a home improvement contract takes subject to all claims and defenses of the Buyer or successors in interest; Seller cannot enter into a 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.
- Claims and defense of any Buyer against an assignee are limited to the total amount for which the Buyer was obligated at the time of entering into the contract.

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PROHIBITED TRADE PRACTICES

- No Seller shall engage in the following unfair methods of competition or unfair trade practices (not exclusive):
 - Misrepresent any specific qualities of the materials such as functionality, size, quality, how they must be maintained or serviced, etc.
 - Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands.
 - Misrepresent the Seller's status, authority, affiliation.
 - Use any home improvement contract payment, received from a buyer prior to the completion of a home improvement, for any purpose other than to provide materials or services for the home improvement.

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PROHIBITED TRADE PRACTICES

(CONTINUED)

- Misrepresent to Buyer any details regarding cost, discounts and/or financing of the project.
 - Request the Buyer 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.
 - 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.
 - Misrepresent or fail to disclose to a buyer, before the buyer enters into a home improvement contract, the existence or amount of any financing charges, interest service charges, credit investigation costs, building or installation permit fees or other costs or charges to be paid by the Buyer.
 - Fail to furnish lien waivers at or before final payment
 - Fail to provide notice to Buyer regarding entitlement for lien waivers

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RIGHT TO CANCEL; CONSUMER APPROVAL TRANSACTION

- A “Consumer Approval Transaction” means a consumer transaction that is initiated by face-to-face solicitation away from a regular place of business of the Seller or by mail or telephone solicitation directly to the Buyer and in which the offer to contract is away from the regular place of business of the Seller and involves extension of credit or a cash transaction over \$25.
- A Buyer in a Consumer Approval Transaction has the right to cancel the contract until midnight of the 3rd business day after the Buyer has given the requisite notice.

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RIGHT TO CANCEL; CONSUMER APPROVAL TRANSACTION (CONTINUED)

- The Seller must give two copies of a typed or printed notice to the Buyer in not less than 12-point boldface type, which appears under the following caption, “CUSTOMER’S RIGHT TO CANCEL.” with the required language.
- Where a language other than English is regularly used in advertising or soliciting of customers, the notice should be printed in both English and such other language.
- Liability to the customer for twice the amount of finance charge, but not less than \$100, or greater than \$1000, or more likely in this scenario, the actual damages.

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OTHER TRANSACTION CONSIDERATIONS

- Direct Marketing ATCP 127
- Wis. Stat. § 100.18 Fraudulent representations
- Wis. Stat. § 100.20 Methods of competition and trade practices

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OTHER CONTRACTOR CONSIDERATIONS

- Lead Based Paint certification required for contractors that disturb paint in housing and child-occupied facilities built before 1978.

see 40 CFR § 745, Subpart E – Residential Property Renovation.

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BASEMENT WATERPROOFING

- Sellers must prepare and furnish to the Buyer a signed copy of the Seller's analysis prior to the final execution of any basement waterproofing contract.
 - A 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. Engineer's analysis is required for the pressure pumping method.
- Guarantees
 - Where no guarantees exist, basement waterproofing contracts need to have a separate disclaimer in bold face type
 - All guarantees need to be provided in writing prior to final execution of contract, including the name and address of Seller or person responsible for performance.
 - Guarantees must set forth clear and explicit terms and fully guarantee the work will effectively prevent or control the basement water problem intended to control. Dampness may only be excluded from the guarantee if a specific disclosure is provided, in bold face type
 - Guarantees must contain a provision that any remedial work or services to be performed shall begin within 45 days and completed within 6 months after notice by the Buyer to the Seller of any failure.

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CONSUMER PROTECTION PROCEDURES

- Complaint filing option
 - Online portal, email, hard copy, in-person
- Mediation
 - Letters sent within two days of assignment
 - Legal citations when appropriate
 - Liaison to reach resolution
- Education
 - Leases, contracts, practices, etc.
- Monitor trends and patterns
 - Enforcement review

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CONSUMER PROTECTION RESOURCES

- Consumer Education and Information Unit
 - Hotline
- Online resources
 - Fact Sheets
- Outreach Specialists
 - In-Person and Virtual Presentations

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QUESTIONS?

