

## Chapter ATCP 110

### HOME IMPROVEMENT PRACTICES

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**History:** Chapter Ag 110 as it existed on May 31, 1974 was repealed and a new chapter Ag 110 was created, Register, May, 1974, No. 221, effective June 1, 1974; chapter Ag 110 was renumbered chapter ATCP 110 under s. 13.93 (2m)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 110.01 Definitions.** (1) "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.

(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.

(2) "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.

(2m) "Major renovation of an existing structure" means a renovation or reconstruction contract where the total price of the contract is more than the assessed value of the existing structure at the time the contract is initiated.

(3) "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.

(4) "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.

(5) "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.

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

**History:** Cr. Register, May, 1974, No. 221, eff. 6-1-74; renum. (1) to (4) to be (2) to (5), cr. (1) and (6), Register, September, 1993, No. 453, eff. 10-1-93; CR 13-066: am. (2), cr. (2m) Register March 2014 No. 699, eff. 6-1-14.

**ATCP 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) **PRODUCTION 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, form, 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.

(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 employee, 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 or she represents.

(d) Misrepresent that the seller is licensed, bonded, or insured. If the seller represents that the seller is licensed, bonded, or insured, the seller shall provide the buyer with a written statement specifically describing the type of license, bond, or insurance that the seller possesses.

**(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) Misrepresent 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 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.

(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) Where the buyer requests lien waivers under s. ATCP 110.025 (2), fail to give or furnish to the buyer lien waivers in writing from all contractors, subcontractors, and material suppliers 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, and the buyer requests lien waivers under s. ATCP 110.025 (2), fail to give or furnish to the buyer lien waivers in writing from all contractors, subcontractors, and material suppliers for the proportionate value of all labor, services, and products or materials furnished or delivered as of the time partial payment is made.

(n) Fail to provide notice to a buyer as required under s. ATCP 110.025 (1), before the buyer enters into a home improvement contract, that the buyer is entitled to receive written lien waivers.

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

**(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) Solicit or accept any payment for home improvement materials or services which the seller does not intend to provide according to the terms of the home improvement contract, or which the seller has reason to believe will not be provided according to the terms of the contract.

**(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.

**(10) 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.

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

**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; corrections in (6) made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448; cr. (4) (d), (6) (n) and (o), (10) and (11), am. (3) (d), (6) (g) and (h) and (7) (c), r. and recr. (7) (b), Register, September, No. 453, eff. 10-1-93; CR 01-028: am. (3) (d) and (7) (c), Register September 2001 No. 549, eff. 10-1-01; CR 13-066: r. (3) (d), am. (6) (L) to (n), r. (7) (c) Register March 2014 No. 699, eff. 6-1-14.

**ATCP 110.023 Substituting products or materials; altering the written contract.** (1) No seller may substitute products or materials for those specified in the home improvement contract, or for those which the seller represented would be used in the home improvement, without the prior consent of the buyer. Except as provided in sub. (2), if a written home improvement contract is required under s. ATCP 110.05 (1) or the buyer signs a written contract, the buyer's consent under this paragraph shall also be in writing.

**Note:** According to s. 137.15 (3), Stats., "If a law requires a record to be in writing, an electronic record satisfies that requirement in that law."

**(2) VERBAL AUTHORIZATION.** The seller may act on alterations to the contract that are verbally authorized by the buyer, if all the following conditions are met:

(a) The alteration does not represent any additional cost to the buyer.

(b) The alteration does not represent a decrease in the value of the materials used or the services provided.

(c) The seller maintains documentation of the following:

1. The manner in which the buyer communicated the authorization for the alteration. In this subdivision, "manner" means face-to-face discussion, phone call, or some other method of communicating.

2. The name of the buyer who authorized the alteration.

3. The date and time that the buyer authorized the alteration.

4. A description of the alteration.

(d) The seller must report any alterations documented pursuant to par. (c) to the buyer before final payment is accepted.

**History:** CR 13-066: cr. Register March 2014 No. 699, eff. 6-1-14; corrections in (2) (c) 1. and (d) made under s. 13.92 (4) (b) 7., Stats., correction in (1) made under s. 35.17, Stats., Register March 2014 No. 699.

**ATCP 110.025 Lien waivers.** (1) A seller shall provide notice to buyer that buyer may request written lien waivers from all contractors, subcontractors, and material suppliers at, or prior to, the time any payment is made on the home improvement contract. Notice shall be provided before the buyer and seller enter into a home improvement contract. The notice shall meet the following requirements:

(a) The notice shall be in writing and consist of the following, verbatim statement:

***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](http://www.datcp.wi.gov).*

(b) The notice shall be provided as a separate document, written in a clear and conspicuous font, in a format that the buyer can retain.

(c) The seller shall retain evidence of the buyer's acknowledgement of receipt of the notice.

**(2)** Upon request from the buyer, the seller shall provide the buyer with lien waivers in writing from all contractors, subcontractors, and material suppliers for the proportionate value of all labor, services, and products or materials furnished or delivered as of the time payment is made. Unless the buyer specifies that the lien waiver request applies only to the final payment, the seller shall provide lien waivers at the time any partial payments are made.

**History:** CR 13-066: cr. Register March 2014 No. 699, eff. 6-1-14; correction in (1) (intro.) made under s. 35.17, Stats., Register March 2014 No. 699.

**ATCP 110.027 Delay in contract performance.** (1) A seller must give the buyer timely notice of any impending delay in the home improvement contract performance if performance will be delayed beyond a deadline specified in the home improvement contract. The notice shall specify any reasons for the delay and shall specify new proposed deadlines by which the seller will begin and complete the work. If a written home improvement contract is required under s. ATCP 110.05 (1) or the buyer signs a written contract, no change in performance deadlines is effective unless the buyer agrees in writing to the change.

**Note:** According to s. 137.15 (3), Stats., "If a law requires a record to be in writing, an electronic record satisfies that requirement in that law."

**(2)** Notwithstanding sub. (1), a seller shall not be responsible for delays in contract performance if the seller can demonstrate any of the following:

(a) The delay was caused by actions or inactions of the buyer.

(b) The delay was caused by a destructive act of nature such as tornado, flood, or fire.

(c) The delay was caused by disruptive civil disorder such as a strike, hostile action, or war.

**History:** CR 13-066: cr. Register March 2014 No. 699, eff. 6-1-14.

**ATCP 110.03 Building permits.** (1) Before a buyer enters into a home improvement contract, the seller shall inform the buyer of all building or construction permits that are required for the home improvement. Except as provided in sub. (4), no seller may start work under a home improvement contract until all required state and local permits have been issued.

**(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.

**(3)** Pursuant to sub. (2), if the state or local inspector who completed the inspection does not issue an inspection document, the seller may provide a summary of the inspection to the buyer. The summary shall include the inspector's name, the date of the inspection, and inspection number or some other way to identify the inspection in the state or local building inspection database.

**(4)** Notwithstanding sub. (1), if the home improvement contract includes subprojects, no seller may start work on any subproject of a home improvement contract that requires state or local permits until all permits required for that subproject have been issued.

**History:** Cr. Register, May, 1974, No. 221, eff. 6-1-74; am. (1), Register, September, 1993, No. 453, eff. 10-1-93; CR 13-066: am. (1), cr. (3), (4) Register March 2014 No. 699, eff. 6-1-14.

**ATCP 110.04 Warranties.** (1) A seller shall give a buyer a copy of every written warranty made with respect to labor, services, products, or materials furnished in connection with a home improvement. If a seller makes any oral warranty, the seller shall document that warranty in writing and give a copy to the buyer. The seller shall provide all warranty documents to the buyer at the time the buyer enters into a home improvement contract, except that a manufacturer's product warranty may be provided at any of the following times:

(a) At the time the buyer enters into a home improvement contract.

(b) At the time the product is installed.

(c) At the conclusion of the project, if specified in the contract.

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

(a) Any warranty conditions or exclusions.

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

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

**(3)** No seller may 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.

**History:** Cr. Register, May, 1974, No. 221, eff. 6-1-74; r. and recr. Register, September, 1993, No. 453, eff. 10-1-93; **CR 13-066: renum. (1) to (1) (intro.), cr. (a) to (c) Register March 2014 No. 699, eff. 6-1-14.**

**ATCP 110.05 Home improvement contract requirements.** **(1)** The following home improvement 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)** If sub. (1) requires a written home improvement contract or the buyer signs a written contract, the written contract shall be signed by all parties and shall clearly, accurately and legibly set forth all material terms and conditions of the contract, including:

(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 s. ATCP 110.04 (1).

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

**(3)** Before the seller begins work or receives any payment under a written home improvement contract, the seller shall provide the buyer with a copy of the contract.

**(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 furnishing such protection, if different from the seller. A copy of the insuring or protection agreement, declarations page, or some other document that shows evidence of insurance or other protection 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)** Before a buyer enters into a written home improvement contract prepared or offered by the seller, the seller shall 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 and having no connection with the seller. If a language other than English is primarily used in contract negotiations, the written contract shall be both in English and in the language used to negotiate the contract.

**(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.

**(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.

**History:** Cr. Register, May, 1974, No. 221, eff. 6-1-74; am. (2) (intro.), (3) and (6), r. (9), Register, September, 1993, no. 453, eff. 10-1-93; CR 01-028: am. (2) (intro.), Register September 2001 No. 549, eff. 10-1-01; **CR 13-066: am. (4), (7) Register March 2014 No. 699, eff. 6-1-14.**

**ATCP 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 successors in interest.

**Note:** Under this section, where the seller assigns the debt to a finance company before completing the contract and then fails to complete the contract, the finance company is subject to the same claims and defenses the buyer has against the contractor.

**(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; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448.

**ATCP 110.07 Contract cancellation; return of payments.** **(1)** CONDITIONS WARRANTING EXERCISE OF BUYER'S REMEDIES. If, under a home improvement contract, a buyer pays a seller for any home improvement materials or services before the

seller provides those materials or services to the buyer, the buyer may proceed under sub. (2) if any of the following occurs:

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

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

**Note:** Section ATCP 110.02 (7) (c) specified that it was a prohibited unfair trade practice for a seller to fail to give the buyer timely notice of any impending delay in contract performance, if performance will be delayed beyond the deadline specified in the contract. Effective May 1, 2014, s. ATCP 110.02 (7) (c) is repealed and s. ATCP 110.027 (1) is created. Section ATCP 110.027 (1) requires sellers to give buyers timely notice of any impending delay in the home improvement contract performance if performance will be delayed beyond a specified deadline.

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

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

(a) Cancel the contract.

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

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

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

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

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

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

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

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

**History:** Cr. Register, September, 1993, No. 453, eff. 10-1-93.

**ATCP 110.08 Contract compliance.** A home improvement contract which constitutes a "consumer approval transaction" as defined in s. 423.201, Stats., shall comply with ch. 423, Stats.

**History:** Cr. Register, September, 1993, No. 453, eff. 10-1-93.

### ATCP 110.09 Basement waterproofing practices.

**(1) 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.

**(2) DEFINITIONS.** (a) "Advertising" means any oral, written, printed, or graphic statement or representation made in connection with the solicitation or sale of basement waterproofing services.

(b) "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.

(c) "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.

(d) "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.

(e) "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.

(f) "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.

**(3) PROHIBITED PRACTICES.** No seller of basement waterproofing services, products, or materials shall engage in the following unfair trade practices or unfair methods of competition:

(a) Make or offer to make any guarantee with respect to basement waterproofing services unless the guarantee meets the requirements of sub. (4), and is furnished to the buyer in writing with a seller's analysis prior to final execution of any contract.

(b) 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.

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

(d) Enter into a basement waterproofing contract which provides, in whole or in part, for the performance of services 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.

(e) 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.

(f) 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.

(g) 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 sub. (4).

(h) 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.

(i) 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.

(j) Fail to provide, in all instances where the seller's basement waterproofing services are not guaranteed, the following dis-

claimer, 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."

(4) **GUARANTEES.** (a) 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.

(b) 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."

(c) 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.

(5) **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 13-066: cr. (title), (1) renum. from ATCP 111.01, (2) renum. from ATCP 111.02 (title), (1) to (4), (6), (7), (3) (intro.), (a) renum. from ATCP 111.03 (intro.), (1) and am., (3) (b) to (f) renum. from ATCP 111.03 (2) to (6), (3) (g) renum. from ATCP 111.03 (7) and am., (3) (h) to (j) renum. from ATCP 111.03 (8) to (10), (4) renum. from ATCP 111.04, (5) renum. from ATCP 111.05 Register March 2014 No. 699, eff. 6-1-14; corrections in (3) (a), (g) made under s. 13.92 (4) (b) 7., Stats., Register March 2014 No. 699.