



Residential Construction Law Newsletter

Summer 2006

By Atty. Mark R. Hinkston

Knuteson, Powers & Quinn, Racine, WI

www.homeimprovementlawyer.com

WISCONSIN ENACTS NEW LAWS AFFECTING RESIDENTIAL CONSTRUCTION

RIGHT TO CURE ACT

In March, the Wisconsin legislature enacted 2005 Wisconsin Act 201, known as the Contractor “Right to Cure” law. It becomes effective October 1, 2006. It establishes procedures to resolve construction defect claims by requiring consumers (generally homeowners) to provide contractors notice of alleged defects and afford the contractors an opportunity to resolve the matter by making repairs or paying money. The homeowner may not initiate litigation or arbitration unless he or she provides the notice and the contractor fails to respond, rejects the claim, or makes an unacceptable settlement proposal. The new law applies to contracts to construct a new dwelling or remodel an existing one. It does not apply to commercial construction.

The law is comprised of two statutes: sections 101.148, Wis. Stats., entitled “Contractor notices,” and 895.07, Wis. Stats., entitled “Claims against contractors and suppliers.” Under section 101.148, before contracting, a builder is required to deliver to a homeowner a brochure from the Wisconsin Department of Commerce that explains the construction defects process the new law. The brochure is at <http://commerce.wi.gov/SB/SB-DivPublications.html>.

The contractor is also required to provide a written notice that alerts a consumer to their obligation to follow that process before suing. The statute provides recommended language for the notice. The notice language may be included in the contract. In cases of oral contracts, the notice must be provided in writing before commencing work.

The second statute, section 895.07, Wis. Stats., sets forth the defect claim process. At least 90 working days before commencing an action relating to a defect, a claimant must give the contractor or supplier written notice of the claimed defect and an opportunity to repair it. The contractor has 15 days to respond. The contractor may reject the claim, offer to repair or pay money to settle, or propose to inspect the dwelling to assess whether an offer to repair or remedy is warranted. If the contractor rejects the claim or does not respond in time, the claimant may commence an action without further notice.

A claimant has 15 days to respond to the contractor’s offer. If the claimant rejects the offer, the contractor may serve a supplemental offer. If no supplemental offer is made, the claimant may proceed with an action without further notice. If any offer or supplemental offer is accepted, the claimant is to provide reasonable access to allow the contractor to perform the repair work per the contractor’s proposed timetable. If the contractor does not repair or remedy the defect per the settlement offer and timetable, the consumer may proceed with an action.

A contractor may inspect and do testing before responding to a claim. Within 10 working days after inspection, the contractor shall serve on the claimant a rejection notice or make an offer to repair, pay money, or do both. The law also details a contractor’s obligations to window and door suppliers against whom contribution claims are made. It behooves both contractors and homeowners alike to be aware of and follow this new law to resolve defect disputes.

Go to www.homeimprovementlawyer.com for an interactive flowchart to walk through the new Right to Cure Act

CONTRACTOR EDUCATION ACT

In Wisconsin, a contractor needs a Certificate of Financial Responsibility to engage in residential construction. To obtain the certificate, one previously only had to meet certain insurance and bonding requirements. Under a new law, 2005 Act 200, known as the Contractor Education Act, the Department of Commerce will establish new rules requiring residential contractors to also meet continuing education requirements. The law's passage was intended to crack down on substandard work and enhance the professionalism of Wisconsin's residential construction force.

Under the new law, to obtain a residential building permit, a person must annually complete at least 6 hours of continuing education and attend at least one meeting or seminar designed for both building contractors and building inspectors. New contractors not holding a certificate of financial responsibility will have to complete an examination developed by the Department of Commerce.

The exam and continuing education requirements will not take effect until January 1, 2008. After that date, contractors will have to show proof of compliance with the continuing education requirements to obtain a permit. The Department may suspend or revoke a building inspector's certification if the inspector knowingly issues a building permit to a contractor who has not complied with the new requirements. The Department may also suspend or revoke a certificate of financial responsibility if a contractor fails to comply with the continuing education regulations.

As of April 2006, the Department may also suspend or revoke a certificate if a contractor constructs a dwelling without a permit, is convicted of a crime

related to the construction of a dwelling, or is adjudged bankrupt on 2 or more occasions.

LIEN LAW CHANGES

2005 Wisconsin Act 204 made several changes to existing construction lien laws. The changes apply to improvements that visibly commence on or after April 11, 2006.

Numerous changes were made to synchronize and modernize wording. For example, the terms "general contractor" and "contractor" are changed to "prime contractor." The Act also revises the definition of "prime contractor" to specifically include "construction managers" and "other service providers." Finally, references to "plans and specifications" have been added to confirm the item's status as a lienable activity.

The Act also makes several procedural changes. Under prior law, lien notices could only be served via hand delivery or by registered mail. The new law expands the service options to allow service by certified mail as well. The new law also requires a lien claimant to serve a copy of its lien claim on an owner within 30 days after filing the claim.

Finally, under prior law the private project theft-by-contractor statute provided that personal liability for theft could be imposed on officers, directors, or agents of a corporation. The new law recognizes the increasing use of business formations other than corporations by expanding liability to representatives of other entities. It provides that in cases of theft by contractor in which the prime contractor or subcontractor is a corporation, limited liability company, or other legal entity except a sole proprietorship, such misappropriation also shall be deemed theft by any officers, directors, members, partners, or agents responsible for the misappropriation.

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