

DCQ Qualifier - Part 2

Other Construction Laws and
Business Practices

Contract Law

- ❑ All contracts in Wisconsin involving real property must be written. Verbal contracts are not permitted. (Chapter 706)
- ❑ The contract must be specific as to the conveyance. The court have said this:

“The question . . . is not what reasonable men intended to convey, or what the parties know; rather, the question is what the parties to the contract in fact described in their contract or memorandum.” Zapuchlak v. Hucal, 82 Wis.2d 184, 262 N.W.2d 514 (1978)

Statute of Frauds

- The Uniform Commercial Code (UCC) provides that a contract for the sale of goods for the price of \$500 or more is not enforceable by way of lawsuit or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent. The UCC also includes other Statute of Frauds provisions for various transactions involving personal property.
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Contracts

- A valid contract should identify
 - What is to be done
 - The role of the parties
 - Time of completion
 - Price & payment
 - Remedies and processes if things go wrong
 - The state law under which the contract will be interpreted
 - Offer and Acceptance – evidence of an agreement generally by signatures of each party and dated
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Construction Contracts

- Other issues to consider
 - Insurance
 - Control and possession of the property during construction
 - Lien notices
 - Process for change orders during construction
 - Role and relationship of subcontractors
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Model Contracts

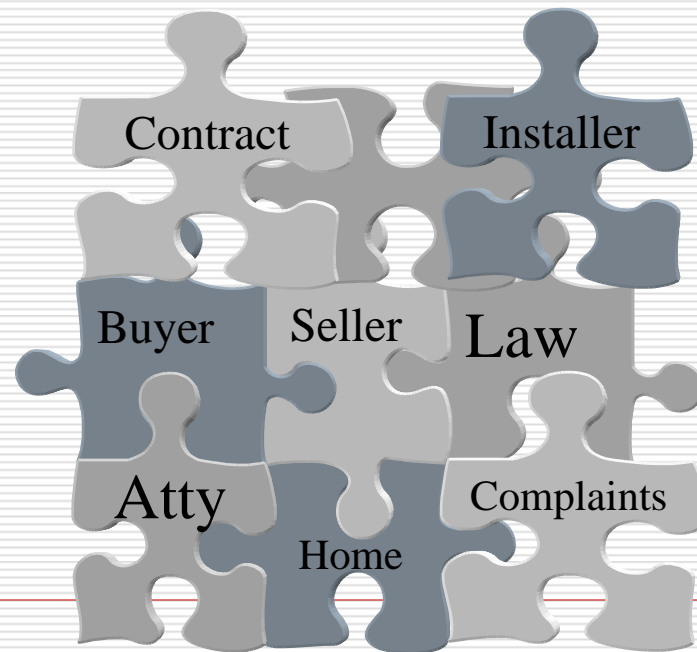
- ❑ Most state homebuilding association provide model contracts for their members
 - ❑ The Wisconsin Housing Alliance provides specific model contracts for manufactured home sales and modular home construction.
 - ❑ Make sure your business practices conform to the contracts you employ!
 - ❑ Sample – [Fannie Mae Single Family Contract](#)
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Other Legal Issues

- Wisconsin has a Right to Cure Law
 - 3 Day Right to Cancel
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Overview of Right to Cure

- ❑ Homeowner can't sue before exhausting other remedies first
- ❑ Builder is given a chance to fix home



Overview of Right to Cure

- This law is designed to resolve construction disputes before they land in court.
 - The builder has two specific duties under the law at the time the home is sold (contracted for).
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Key Definitions

- “Action” (lawsuit) means a civil action or an arbitration under ch. 788.
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Definitions

- ❑ “Contractor” means a person that enters into a written or oral contract with a consumer to construct or remodel a dwelling.
- ❑ “Dwelling” means any premises or portion of a premises that is used as a home or a place of residence and that part of the lot or site on which the dwelling is situated that is devoted to residential use. “Dwelling” includes other existing structures on the immediate residential premises such as driveways, sidewalks, swimming pools, terraces, patios, fences, porches, garages, and basements.

Definitions

- “Construction defect,” if there is a warranty then defect means the definition of “defect” in the warranty. In all other cases, “construction defect” means a deficiency in the construction or remodeling of a dwelling that results from any of the following:
 1. Defective material.
 2. Violation of applicable codes.
 3. Failure to follow accepted trade standards for workmanlike construction such as NAHB Standards
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Right to Cure

- ❑ Builder must give a notice and a brochure to all buyers before a contract is completed
 - ❑ Therefore make it a regular practice to provide the notice and brochure early in the contracting process.
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Right to Cure Claims

- *Step One: Notice of Claim* - At least 90 working days before commencing an action against a contractor, a claimant must deliver a written notice of the alleged defect to the contractor.
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Right to Cure Claims

- *Step Two: Contractor's Response* - You have 15 working days to provide the claimant with a written: (1) offer to repair or remedy the defect; (2) offer to settle the claim with a monetary payment; (3) offer of a combination of (1) and (2); (4) rejection of the claim and the reasons for rejecting the claim; or (5) proposal to inspect the alleged defect or perform any necessary testing.
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Right to Cure Claims

- *Step Three: Claimant's Response* - If you reject the claim, the claimant may proceed to a lawsuit. The claimant must serve written notice on the contractor within 15 working days if he or she either accepts any offer or rejects an offer.
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Right to Cure Claims

- *Step Four: Contractor's Supplemental Response* - If the claimant rejects the offer, the contractor has five working days to provide a written supplemental offer or a notice that no additional offer will be made.
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Right to Cure Claims

- *Step Five: Claimant's Response* - If you send a written notice that no additional offer will be made, the claimant may commence a lawsuit or other action against you. If the claimant has received a supplemental offer from the contractor, the claimant must respond within 15 working days.
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Right to Cure – Other Aspects

- ❑ Claimants may accept settlement offers, accept them in part, or reject offers, doing so via detailed written notice.
 - ❑ Remedies to claims may involve repairs, monetary payment, or a combination of repairs and payments.
 - ❑ You have the right to inspect and, as appropriate, test alleged defects. Access must be provided in a timely fashion for inspections, tests, and repairs.
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Right to Cure Resources

- Copy of Notice – [Notice](#)
 - Copy of Brochure – [Brochure](#)
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3 Day Right to Cancel

- ❑ The Wisconsin Consumer Act provides a 3-Day Right to Cancel a contract if the transaction begins away from the merchant's normal place of business.
 - ❑ A special notice to the consumer is required.
 - ❑ It is recommended therefore that construction agreements be signed at your place of business.
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Liens

- ❑ Getting Paid is important!
 - ❑ If the homeowner fails to pay for construction work, the builder can “lien” the property if the proper notices are given.
 - ❑ Ch 779 provides:

“Any person who performs, furnishes, or procures any work, labor, service, materials, plans, or specifications, used or consumed for the improvement of land, and who complies with s. 779.02, shall have a lien therefor on all interests in the land belonging to its owners.”
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- ❑ The Lien Notice is specified by state law in Ch 779.02
 - ❑ The notice may be in the contract OR
 - ❑ May be provided to the owner within 10 days of work beginning.
 - ❑ Notice must be at least 8 point Bold Type
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Liens for Subs

- Every person other than a prime contractor (a sub) who performs, furnishes, or procures labor, materials, plans, or specifications for an improvement shall have the lien and remedy only if within 60 days after performing, furnishing, or procuring the first labor, services, materials, plans, or specifications the person serves a written notice, in 2 signed copies, on the owner or authorized agent at the last-known post-office address.
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Enforcing the Lien

- ❑ A Claim must be filed in Circuit Court within 6 months of doing the work.
 - ❑ The legal process is spelled out in Ch 779.06 to 779.10 Wis Stats.
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Theft By Contractor

- ❑ All money paid to the contractor by a mortgage or otherwise from an owner are treated as “trust funds”
 - ❑ The use of the money for any other purpose by the prime contractor is theft punishable under the criminal code.
 - ❑ Any payments received by persons other than the prime contractor as the result of misappropriation is a civil liability recoverable by a civil action.
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Theft by Contractor

- If a contractor purchases material and identifies the building or improvement but uses the funds for another project without the consent of the seller is subject to a fine of \$300 or imprisonment for 3 months.
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Payments to Employees

In any situation where a laborer or mechanic employed by any prime contractor or subcontractor has wage payments due and has worked on more than one improvement for the employer during the period for which the wages are due, and a payment of less than all wages due is made, the payment is deemed to apply to the unpaid work in chronological sequence starting with the earliest unpaid time, unless the laborer agrees in writing that the payment shall be applied in a different way.

Home Improvement Laws

- ❑ ATCP 110 and 110 apply to improvement practices and home waterproofing.
 - ❑ ACTP 110 applies to a very broad range to home improvement services but not the construction of a new residence.
 - ❑ The rule provides a long list of prohibited practices
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ATCP 110 Prohibited Practices

Misrepresent or falsely state that the is to serve as a “model” or “advertising job”, or that a price reduction as such is being offered.

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.

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- (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, firm or organization, or that they are the users of such products or materials.
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- (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.
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Bait and Switch

□ 6 Prohibited Practices

1. 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.
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Bait and Switch

2. 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.

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3. Refuse to show, demonstrate or sell products or materials as advertised, offered, or represented as being for sale.
 4. 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.
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5. Fail to have available a quantity of the advertised product sufficient to meet reasonably anticipated demands.
 6. 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.
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Misrepresent Identity

It is illegal to misrepresent you identity to gain access to a buyer such as:

1. That you are a government employee.
2. That you are a manufacturer or importer

You cannot misrepresent your status in the company.

You cannot misrepresent that you are licensed, bonded or insured.

Giftng

- It is illegal to 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.
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Price & Financing

It is illegal to 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.

Other Misrepresentations

- ❑ That another person is interested in making sure the buyer gets a good price, bargain or similar concession.
 - ❑ That insurance or other protections will be available if the customer dies, becomes ill or is unable to pay.
 - ❑ Misrepresenting the legal nature of signing a contract or other document.
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Other Misrepresentations

- ❑ Failure to disclose that the price does not include deliver or installation or that other requirements apply.
 - ❑ Misrepresenting that the down payment is the full price.
 - ❑ Failure to disclose any financing charges, credit costs or installation permits fees.
 - ❑ Failure to disclose that any debt or promissory note may be assigned to a 3rd party.
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Other Misrepresentations

- ❑ 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.
 - ❑ 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.
 - ❑ 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.
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More Misrepresentations

- ❑ Where partial payments are required at various stages in the performance of the contract, 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.
 - ❑ Fail to disclose to a buyer, before the buyer enters into a home improvement contract, that the buyer is entitled to receive written lien waivers.
 - ❑ Misrepresent that the seller is the only person who can provide financing for the home improvement contract.
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Interference with Competitors

Both ATCP 110 and common law tort of interference with contracts means that builders must be wary of these practices:

- Misrepresent that a purchase will help a charity
 - Misrepresent that a competitors work was performed by the seller
 - Misrepresent that the seller's work or products are equal to or better than a competitor's
 - Use or imitate the trademarks of others
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Interference & Deception

- ❑ Builders must also avoid encouraging or assisting owners break contracts with others.
 - ❑ Generally, making 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 is illegal
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Building Permits

- 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. No seller may start work under a home improvement contract until all required state and local permits have been issued.
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Building Permits

- ❑ The owner may obtain a building permit or the contractor may do so provided the contractor has the Dwelling Contractor Qualifier certificate.
 - ❑ For home improvement projects, 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.
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Warranties

- ❑ Except for manufactured homes, generally warranties are not required. However, if a warranty is offered specific laws apply.
 - ❑ ATCP 110 requires that copies of written warranties be given to the buyer at the time the contract is signed except for product warranties which may be delivered when the product is installed.
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Home Improvement Warranties

- Must clear and specific as to
 - Any warranty conditions or exclusions.
 - Any limitations on the scope or duration of the warranty.
 - The time period within which the seller will perform the seller's warranty obligations after the buyer makes a valid warranty claim.
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Warranties

- 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.
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Statute of Repose

- ❑ A statute of repose is a limit on when an injured party may bring suit for damages.
 - ❑ In Wisconsin that period is 10 years immediately following substantial completion of the improvement.
 - ❑ There are exceptions, thus the need for completed operations insurance coverage.
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