

**RESOLUTION 2024-006**

**RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA  
DISALLOWING THE CLAIM OF MELISSA AND JOSEPH STANCATO DATED  
OCTOBER 14, 2023 AND FILED WITH THE VILLAGE ON NOVEMBER 16, 2023.**

**WHEREAS**, Melissa and Joseph Stancato presented a Citizen Claim and Damage Form pursuant to Section 893.80, Wis. Stat., dated October 14, 2023 and filed with the Village Public Services Director on November 16, 2023 ("Stancato Claim");

**NOW THEREFORE, BE IT RESOLVED** that the Village Board of the Village of Caledonia disallows the Stancato Claim pursuant to Section 893.80, Wis. Stat., dated October 14, 2023 and filed with the Village on November 16, 2023, and that the Village Clerk is directed to provide written notice of disallowance as required by Section 893.80(1g), Wis. Stat. and without waiving any and all other defenses, procedural and substantive, of the Village as allowed by law.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 23 day of January, 2024.

**VILLAGE OF CALEDONIA**

By:   
Thomas Weatherston  
Village President

Attest:   
Jennifer Olsen  
Village Clerk



# Citizen Claim and Damage Form

## NOTICE OF CLAIM

Name: Joseph & Melissa Stancato  
Address: 3010 Yorktown St  
Racine WI 53404  
Phone: 410-562-6113

Incident/Accident Information  
Date: October 14, 2023  
Time: 5 AM  
Place: Our Property

## CIRCUMSTANCES OF CLAIM

In the space below briefly describe the circumstances of your claim. (Attach additional sheets, if necessary.) For auto damages, attach a copy of police report, if any, and attach a diagram of the accident scene indicating north, south, east or west corners if the accident occurred at an intersection. For bodily injury, indicate nature of injury and whether or not medical attention was given and give the name of the physician. Also identify any witnesses to the incident/accident.

At 5AM on October 14<sup>th</sup>, a tree from the easement  
belonging to the Village of Caledonia fell onto our house.

and garage. Creative Construction inspected the damages and proposed  
it will cost \$17,700 to repair.

Signed: Melissa Stancato

Date: 11/16/23

\*\*\*\*\*

## CLAIM

(NOTE: You are not required to make a claim at this time. As long as you have filed the above Notice of Claim you may file a claim with the Village at any time consistent with the applicable statute of limitations. However, in order for the Village to formally accept or deny your claim at this time, the following claim must be completed and signed.)

The undersigned hereby makes a claim against the City/Village of arising out of the circumstances described above in the amount of \$ 17,700 .

To process this claim it is necessary to detail all damages being sought.

Signed: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_



<b>DATE:</b> October 24, 2023	
<b>CUSTOMER NAME:</b>	Melissa Stancato
<b>CUSTOMER ADDRESS:</b>	3010 Yorktown St. Racine, WI 53404
<b>CUSTOMER PHONE:</b>	410-562-6113
<b>CUSTOMER EMAIL:</b>	melstancato1@gmail.com
<b>FOR WORK AT:</b>	3010 Yorktown St., Racine, WI 53404

## PROPOSAL

**Contractor proposes to furnish labor and materials for work to be performed in accordance with the following specifications:**

**Description of work:** *To repair roof, gutters, and fascia due to tree damage from storm as agreed between Bingo Emmons of Creative Construction of WI. Inc. and Melissa Stancato, owner. This includes removing damaged: shingles (13'x34'), felt, substrate, southside gutter, and west side fascia. After removal and disposal of listed damaged materials, they will be replaced with similar products. Colors to match existing as close as possible.*

**Cost of work:** \$17,700.00

**Down Payment:** \$8,850.00  
**Balance due upon Completion:** \$8,850.00

*The down payment will be half of the total cost of the work and is due at signing. The remaining balance will be due upon completion of the work.*

*By signing below, you are representing that you are the owner(s) or authorized representative(s) of the owner of the property on which the work is to be performed and for which the labor and materials are to be provided, and you are accepting the specifications set forth above and authorizing Contractor to perform the work as specified above, subject to the terms and conditions set forth on the following three pages, which are part of this Proposal.*

<b>CUSTOMER SIGNATURE:</b> _____	<b>DATE:</b> _____
<b>PRINT NAME:</b> _____	<i>Please initial the following pages.</i>

**CUSTOMER'S RIGHT TO CANCEL**

*You may cancel this Agreement by mailing a written notice to Creative Construction of WI. Inc., 2129 S. 55th Street, West Allis, WI 53219, 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.*

*Serving South Eastern Wisconsin for the past 5 Generations*



## TERMS AND CONDITIONS

### DEFINITIONS

1. The term "CONTRACTOR" and the term "builder" refers to Creative Construction of WI. Inc.
2. The term "CUSTOMER" and the term "buyer" refers to the person/agent to whom the CONTRACTOR is rendering its services.
3. If CONTRACTOR must obtain access to others' properties in the course of work, CUSTOMER shall secure permission for such access and hold harmless and indemnify CONTRACTOR and its employees and agents against all actions and consequences arising out of or relating to the use of said properties, including, but not limited to, damage done in the normal course of work, excluding negligence, and for securing access to said property and its contents during and after work.
4. CUSTOMER shall secure, remove, and protect all property and its contents and remove and replace any obstruction from inside floors, walls, or ceiling if inside work is necessary. CONTRACTOR is not responsible for damage caused by CUSTOMER'S failure to do so.
5. CUSTOMER must furnish water and electricity for installation of the work.
6. CUSTOMER acknowledges that CONTRACTOR'S performance of the Work will necessarily involve the production of dust, debris, and noise at the Project Site. CONTRACTOR agrees to employ best efforts to attempt to keep noise and disruption to a reasonable level for the Work being performed at the Project Site.
7. Plaster repairs may include the removal of bad materials, lath, scratch, base, and finish coats of Gypsum-based products to match existing. Repaired areas to be primed and painted to match existing as close as possible but exact match may not be possible, if requested.
8. Unless specifically included in the proposal, CONTRACTOR is not responsible for or liable for damage to landscaping of any type, including, but not limited to, the survival of lawn, shrubs, or trees, except for limited restoration.
9. CONTRACTOR has the right to subcontract services as required to perform the work.
10. All work is done on a fixed, flat rate. The price includes labor, materials, and tax. No breakdown will be provided.
11. CONTRACTOR will not perform any other work or trade other than that which is specified herein, unless specified in writing. Unless otherwise stated, work that is not included in the scope of this Agreement and such items are the responsibility of CUSTOMER.
12. CUSTOMER agrees to allow CONTRACTOR to display its sign on the Project Site, provided such display does not violate any subdivision covenant, municipal ordinance, or other applicable law. CUSTOMER agrees to allow CONTRACTOR, or an agent thereof, to take photographs or video of the Project Site before, during, and after completion of the Work and to use such photographs/video in CUSTOMER'S marketing and promotional materials, without limitation. CUSTOMER shall not be entitled to any compensation for CONTRACTOR'S display of its sign on the Project Site or for the use of such photographs/video in CONTRACTOR'S marketing and promotional materials.

### UNFORESEEN CONDITIONS

13. An "Unforeseen Condition" is a hidden, concealed and condition that is not readily observable or easily discovered when inspecting the property to estimate and perform the work specified within the context of

this Contract. Examples of such conditions may include, but are not necessarily limited to, defective plumbing, hidden pipes or wires in walls that cannot be anticipated or observed from the basement or roof venting; unexposed rot; old septic tanks; covered wells and cisterns; prior fires; structural, mechanical or workmanship deficiencies; bad soil conditions that increase the costs of excavation and/or foundations; or any other unusual conditions that are beyond that which is specified in the Contract.

14. Unless specifically noted in the Proposal, the price for the work is based on the conditions that are visible at the property. If conditions and/or circumstances are encountered at the job site which are concealed physical conditions or unknown physical conditions of an unusual nature, either of which differ materially from that which is visually ascertained, CUSTOMER agrees to accept responsibility for such conditions and those circumstances outside the control of CONTRACTOR and further agrees to pay for any labor or materials, including repair to damaged equipment of CONTRACTOR.
15. If CONTRACTOR encounters an Unforeseen Condition, CONTRACTOR shall provide notice to CUSTOMER as soon as reasonably possible. CONTRACTOR will not disturb the Differing Site Condition prior to notification and direction from CUSTOMER except as necessary to protect the safety of personnel, the Project Site, and the Work. Any changes to the Contract Price and the Substantial Completion Date as a result of the Differing Site Condition shall be reflected in a Change Order.
16. Any additional work outside the scope of this Proposal will be billed Time and Material to be paid weekly as billed \$137.50 per hour per man hour plus materials.
17. If the building was built before 1978; all lead-safe precautions will have to be taken when removing the damaged materials.
18. The Contractor shall not be responsible for damages to the landscape, organic material replacement or removal due to the use of equipment including, but not limited to scaffolding and lift, that is used on the job site. Contractor is also not responsible for acts of God including, but not limited to, hurricanes, tornados, thunderstorms, meteor strikes, flooding, drought, locust swarms, freezes, etc., or damage caused by any person other than the Contractor's employees or any event outside our scope of maintenance.

#### **LIMITED WARRANTY**

19. CONTRACTOR warrants all work to be completed in a good and workmanlike manner and warrants that all work will be free from defects in workmanship for a period of one (1) year from the date that the work is completed. This warranty does not cover damage caused by CUSTOMER'S misuse, negligence, or damage caused by acts of God. This warranty is given to CUSTOMER and is non-transferable to any subsequent purchaser of the property upon which the work set forth in this Agreement is performed. Warranty work shall not extend the original warranty period.
20. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY OF REPAIR, REPLACEMENT, OR REFUND IS BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY. IN NO EVENT SHALL CONTRACTOR'S LIABILITY UNDER THIS WARRANTY EXCEED THE CONTRACTED PRICE OF ITS WORK GIVING RISE TO THE WARRANTY CLAIM. CONTRACTOR BEARS NO LIABILITY FOR LOST PROFITS, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXPENSES.**
21. CUSTOMER shall provide written notice to CONTRACTOR within twenty-four hours (24) of discovery of any issue giving rise to a warranty claim. CONTRACTOR shall respond with reasonable promptness during regular business hours, Monday through Friday, and excluding holidays and weekends.

#### **CHANGES**

22. Any alteration or deviation from the scope of work set forth in this Agreement that involves extra costs will be effective only upon a written change order and will become an extra charge over and above the cost of the work set forth in this Agreement.
23. CUSTOMER agrees that CONTRACTOR has the right to substitute materials with materials of equal or superior quality, should the materials listed in the description of the work become unavailable for any reason. CONTRACTOR has the right to make such substitution without notice to or permission from the CUSTOMER.

## **DELAYS**

24. CONTRACTOR is not responsible for or liable for any damages due to delays in completion of the work caused by unusual weather conditions or any other circumstances beyond CONTRACTOR'S control including, but not limited to lightning strikes, accidents, and acts of God.
25. If the CONTRACTOR'S work is delayed because the work is dependent on other's work being performed at the job site before the CONTRACTOR can proceed with its work under the Agreement, and the other work was not timely performed, CUSTOMER agrees to pay CONTRACTOR for its extra costs incurred due to such delays.

## **PAYMENT**

26. Unless otherwise specified in writing by CONTRACTOR, payment for the work described in this Agreement shall be due as follows: 50% of the total cost at the signing of this Agreement and 50% of the total cost when the work due upon completion. CONTRACTOR will issue invoices and payment is due upon receipt of the invoice.
27. Past due payments will be subject to a 1.5% per month interest charge. In the event that CONTRACTOR hires an attorney to collect money due under this Agreement, CUSTOMER is responsible for all costs of collection, including actual attorney fees and costs.
28. No deduction shall be made from payments due CONTRACTOR on account of penalty, liquidated damages, back charges for alleged defective work, or other sums withheld from payments to other contractors or on account of the cost of changes or defects in the work. Furthermore, CUSTOMER agrees and recognizes that payment for services performed by CONTRACTOR when payment is due is an express condition precedent to CONTRACTOR continuing work as herein described in this Agreement. CUSTOMER recognizes that the failure to pay for services when payment is due shall entitle CONTRACTOR to terminate work immediately without further notice. In the event that CONTRACTOR terminates work for non-payment as herein described, CONTRACTOR shall be entitled to all of its reasonable expenses, including, but not limited to, cost of labor, materials, a reasonable allowance for overhead and profit, and all other compensation as allowed by law. All warranties will be void if work is terminated as described in this paragraph.

## **SCOPE OF AGREEMENT**

29. **This proposal and these terms and conditions together constitute the entire Agreement, which covers all the work to be done under this Agreement, and there are no prior representations, either oral or written, outside of this Agreement, and the CUSTOMER has not relied on representations other than those contained in this Agreement. Any subsequent modification or change in this proposal must be in writing and signed by CUSTOMER and an authorized representative of CONTRACTOR.**

## **LIEN NOTICES**

30. As required by the Wisconsin Construction Lien Law, builder hereby notifies buyer that persons or companies furnishing labor or materials for and on the buyer's land may have lien rights on buyer and builders if not paid. Those entitled to lien rights in addition to the undersigned builder, are those who contract directly with the buyer or those who give the buyer notice within 60 days after they furnish labor and materials for the construction and should give a copy of each notice received to the mortgage lender, if any. Builder agrees to cooperate with the owner and owner's lender, if any, to see that all potential lien claimants are duly paid.
31. **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.**
32. CUSTOMER has the right to receive partial waivers of lien for partial payments, upon request, and a complete waiver of lien will be furnished after final payment.
33. CONTRACTOR shall have the right to cure any conditions alleged to be defective work.

## **RIGHT TO CURE**

34. **Notice Concerning Construction Defects:** Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer.
35. Section 895.07(2) and (3) of the Wisconsin Statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obliged to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions. The Wisconsin Right To Cure Pamphlet is Attached to this Contract and it shall be presumed that Owner has received and reviewed the pamphlet unless Owner provides notice of non-receipt within 3 days of signing this Contract.

**DISPUTE RESOLUTION**

36. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF MAY, AT THE ELECTION OF THE CONTRACTOR, BE RESOLVED BY ARBITRATION CONDUCTED BY THE NATIONAL ASSOCIATION OF REMODELERS MILWAUKEE BRANCH. IN THE EVENT THAT CUSTOMER FILES A CLAIM AGAINST CONTRACTOR AND IT IS DETERMINED THAT THE CONTRACTOR IS WITHOUT FAULT, THE CONTRACTOR SHALL BE ENTITLED TO ITS ACTUAL ATTORNEYS FEES AND COSTS.

[THE REMAINING SPACE IS INTENTIONALLY LEFT BLANK.]

# Wisconsin "Right to Cure Law"

The "Right to Cure Law" provides the steps and timetables to be followed in resolving any claims of dwelling construction defects by consumers against contractors or suppliers. Claims must be pursued through the "Right to Cure Law" process before arbitration or before legal action.

The 2005 Wisconsin Act 201, the "Right to Cure Law," says that consumers at the time of contracting for construction or remodeling work for dwellings must be provided with this brochure describing requirements for making any future claims of construction defects.

People who feel they have a claim concerning defective workmanship or materials need to provide written notice to contractors or suppliers before any legal action may be filed. The contractors and suppliers have the opportunity and the responsibility to respond to claims.

Construction defects can involve workmanship, materials, or code requirements in new construction or remodeling, but not maintenance or repairs. Claims may be made by owners, tenants, or property associations.

This document highlights some of the provisions of the "Right to Cure Law", and is not a complete description of the law, and is not a substitute for legal representation.

## Notice Concerning Construction Defects

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

## More Highlights

- Claimants may accept settlement offers, accept them in part, or reject offers, doing so via detailed written notice.
- The law does not apply where there is no contract to construct, as in the case of purchasing an existing home.
- Contractors and suppliers have the right to inspect and, as appropriate, test alleged defects.
- Access must be provided in a timely fashion for inspections, tests, and repairs.
- Additional claims made or discovered after an original claim, are treated as separate in terms of time and process.
- There is a different timetable and process for the claims and responses if a contractor seeks contribution from a supplier.
- Failure by the claimant, contractor, or supplier to follow the "Right to Cure Law" can result in delay or dismissal of legal or arbitration actions.

The Department Safety and Professional Services prepared this brochure, but does not investigate, arbitrate, or judge consumer-contractor/supplier disputes. Those disputes are solved through the "Right to Cure Law" process, by the state's court system, and, for alterations and additions, the Home Improvement Practices Code, ATCP 110, of the state Department of Agriculture, Trade, and Consumer Protection.

The Department Safety and Professional Services does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability. Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact the Industry Services Division at 608-266-2112, or TTY 800-947-3529.

## **Chronology of the step-by-step claim and response interaction between consumers and contractors/suppliers**

*Step One Notice of Claim*—At least 90 working days before commencing an action against a contractor or window or door supplier or manufacturer, a claimant must deliver a written notice of the alleged defect to the contractor.

*Step Two: Contractor's Response*—The contractor will have 15 working days (or 25 working days if it involves a defect involving a window or door supplier) 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) statement that the contractor rejects the claim and the reasons for rejecting the claim; or (5) proposal to inspect the alleged defect or perform any necessary testing.

*Step Three: Claimant's Response*—If the contractor rejects the claim, the claimant may proceed to commence an action against the contractor. 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. Note that if the claimant has a claim against a window or door supplier or manufacturer, the claimant should contact the supplier to ensure that the supplier received a notice of the claim from the contractor.

*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.

*Step Five: Claimant's Response*—If the contractor has provided the claimant written notice that no additional offer will be made, the claimant may commence a lawsuit or other action against the contractor. If the claimant has received a supplemental offer from the contractor, the claimant must respond within 15 working days.

Rev. 9/14



<b>DATE:</b> October 24, 2023	
<b>CUSTOMER NAME:</b>	Melissa Stancato
<b>CUSTOMER ADDRESS:</b>	3010 Yorktown St. Racine, WI 53404
<b>CUSTOMER PHONE:</b>	410-562-6113
<b>CUSTOMER EMAIL:</b>	melstancato1@gmail.com
<b>FOR WORK AT:</b>	3010 Yorktown St., Racine, WI 53404

## PROPOSAL

**Contractor proposes to furnish labor and materials for work to be performed in accordance with the following specifications:**

**Description of work:** *To repair roof, gutters, and fascia due to tree damage from storm as agreed between Bingo Emmons of Creative Construction of WI. Inc. and Melissa Stancato, owner. This includes removing damaged: shingles (13'x34'), felt, substrate, southside gutter, and west side fascia. After removal and disposal of listed damaged materials, they will be replaced with similar products. Colors to match existing as close as possible.*

**Cost of work: \$17,700.00**

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**Balance due upon Completion: \$8,850.00**

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<b>CUSTOMER SIGNATURE:</b> _____	<b>DATE:</b> _____
<b>PRINT NAME:</b> _____	<i>Please initial the following pages.</i>

**CUSTOMER'S RIGHT TO CANCEL**

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Serving South Eastern Wisconsin for the past 5 Generations



**CERTIFIED**  
NARI PROFESSIONAL  
MCR, CR, CLC,  
CRPM, UDCP



EXTERIOR  
DESIGN  
INSTITUTE



## TERMS AND CONDITIONS

### DEFINITIONS

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18. The Contractor shall not be responsible for damages to the landscape, organic material replacement or removal due to the use of equipment including, but not limited to scaffolding and lift, that is used on the job site. Contractor is also not responsible for acts of God including, but not limited to, hurricanes, tornados, thunderstorms, meteor strikes, flooding, drought, locust swarms, freezes, etc., or damage caused by any person other than the Contractor's employees or any event outside our scope of maintenance.

#### **LIMITED WARRANTY**

19. CONTRACTOR warrants all work to be completed in a good and workmanlike manner and warrants that all work will be free from defects in workmanship for a period of one (1) year from the date that the work is completed. This warranty does not cover damage caused by CUSTOMER'S misuse, negligence, or damage caused by acts of God. This warranty is given to CUSTOMER and is non-transferable to any subsequent purchaser of the property upon which the work set forth in this Agreement is performed. Warranty work shall not extend the original warranty period.
20. **THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDY OF REPAIR, REPLACEMENT, OR REFUND IS BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY. IN NO EVENT SHALL CONTRACTOR'S LIABILITY UNDER THIS WARRANTY EXCEED THE CONTRACTED PRICE OF ITS WORK GIVING RISE TO THE WARRANTY CLAIM. CONTRACTOR BEARS NO LIABILITY FOR LOST PROFITS, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXPENSES.**
21. CUSTOMER shall provide written notice to CONTRACTOR within twenty-four hours (24) of discovery of any issue giving rise to a warranty claim. CONTRACTOR shall respond with reasonable promptness during regular business hours, Monday through Friday, and excluding holidays and weekends.

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22. Any alteration or deviation from the scope of work set forth in this Agreement that involves extra costs will be effective only upon a written change order and will become an extra charge over and above the cost of the work set forth in this Agreement.
23. CUSTOMER agrees that CONTRACTOR has the right to substitute materials with materials of equal or superior quality, should the materials listed in the description of the work become unavailable for any reason. CONTRACTOR has the right to make such substitution without notice to or permission from the CUSTOMER.

## **DELAYS**

24. CONTRACTOR is not responsible for or liable for any damages due to delays in completion of the work caused by unusual weather conditions or any other circumstances beyond CONTRACTOR'S control including, but not limited to lightning strikes, accidents, and acts of God.
25. If the CONTRACTOR'S work is delayed because the work is dependent on other's work being performed at the job site before the CONTRACTOR can proceed with its work under the Agreement, and the other work was not timely performed, CUSTOMER agrees to pay CONTRACTOR for its extra costs incurred due to such delays.

## **PAYMENT**

26. Unless otherwise specified in writing by CONTRACTOR, payment for the work described in this Agreement shall be due as follows: 50% of the total cost at the signing of this Agreement and 50% of the total cost when the work due upon completion. CONTRACTOR will issue invoices and payment is due upon receipt of the invoice.
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28. No deduction shall be made from payments due CONTRACTOR on account of penalty, liquidated damages, back charges for alleged defective work, or other sums withheld from payments to other contractors or on account of the cost of changes or defects in the work. Furthermore, CUSTOMER agrees and recognizes that payment for services performed by CONTRACTOR when payment is due is an express condition precedent to CONTRACTOR continuing work as herein described in this Agreement. CUSTOMER recognizes that the failure to pay for services when payment is due shall entitle CONTRACTOR to terminate work immediately without further notice. In the event that CONTRACTOR terminates work for non-payment as herein described, CONTRACTOR shall be entitled to all of its reasonable expenses, including, but not limited to, cost of labor, materials, a reasonable allowance for overhead and profit, and all other compensation as allowed by law. All warranties will be void if work is terminated as described in this paragraph.

## **SCOPE OF AGREEMENT**

29. This proposal and these terms and conditions together constitute the entire Agreement, which covers all the work to be done under this Agreement, and there are no prior representations, either oral or written, outside of this Agreement, and the CUSTOMER has not relied on representations other than those contained in this Agreement. Any subsequent modification or change in this proposal must be in writing and signed by CUSTOMER and an authorized representative of CONTRACTOR.

## **LIEN NOTICES**

30. As required by the Wisconsin Construction Lien Law, builder hereby notifies buyer that persons or companies furnishing labor or materials for and on the buyer's land may have lien rights on buyer and builders if not paid. Those entitled to lien rights in addition to the undersigned builder, are those who contract directly with the buyer or those who give the buyer notice within 60 days after they furnish labor and materials for the construction and should give a copy of each notice received to the mortgage lender, if any. Builder agrees to cooperate with the owner and owner's lender, if any, to see that all potential lien claimants are duly paid.
31. 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.
32. CUSTOMER has the right to receive partial waivers of lien for partial payments, upon request, and a complete waiver of lien will be furnished after final payment.
33. CONTRACTOR shall have the right to cure any conditions alleged to be defective work.

## **RIGHT TO CURE**

34. **Notice Concerning Construction Defects:** Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer.
35. Section 895.07(2) and (3) of the Wisconsin Statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obliged to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions. The Wisconsin Right To Cure Pamphlet is Attached to this Contract and it shall be presumed that Owner has received and reviewed the pamphlet unless Owner provides notice of non-receipt within 3 days of signing this Contract.

**DISPUTE RESOLUTION**

36. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BREACH THEREOF MAY, AT THE ELECTION OF THE CONTRACTOR, BE RESOLVED BY ARBITRATION CONDUCTED BY THE NATIONAL ASSOCIATION OF REMODELERS MILWAUKEE BRANCH. IN THE EVENT THAT CUSTOMER FILES A CLAIM AGAINST CONTRACTOR AND IT IS DETERMINED THAT THE CONTRACTOR IS WITHOUT FAULT, THE CONTRACTOR SHALL BE ENTITLED TO ITS ACTUAL ATTORNEYS FEES AND COSTS.

[THE REMAINING SPACE IS INTENTIONALLY LEFT BLANK.]

# Wisconsin "Right to Cure Law"

The "Right to Cure Law" provides the steps and timetables to be followed in resolving any claims of dwelling construction defects by consumers against contractors or suppliers. Claims must be pursued through the "Right to Cure Law" process before arbitration or before legal action.

The 2005 Wisconsin Act 201, the "Right to Cure Law," says that consumers at the time of contracting for construction or remodeling work for dwellings must be provided with this brochure describing requirements for making any future claims of construction defects.

People who feel they have a claim concerning defective workmanship or materials need to provide written notice to contractors or suppliers before any legal action may be filed. The contractors and suppliers have the opportunity and the responsibility to respond to claims.

Construction defects can involve workmanship, materials, or code requirements in new construction or remodeling, but not maintenance or repairs. Claims may be made by owners, tenants, or property associations.

This document highlights some of the provisions of the "Right to Cure Law", and is not a complete description of the law, and is not a substitute for legal representation.

## Notice Concerning Construction Defects

Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer. Section 895.07 (2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.

## More Highlights

- Claimants may accept settlement offers, accept them in part, or reject offers, doing so via detailed written notice.
- The law does not apply where there is no contract to construct, as in the case of purchasing an existing home.
- Contractors and suppliers have the right to inspect and, as appropriate, test alleged defects.
- Access must be provided in a timely fashion for inspections, tests, and repairs.
- Additional claims made or discovered after an original claim, are treated as separate in terms of time and process.
- There is a different timetable and process for the claims and responses if a contractor seeks contribution from a supplier.
- Failure by the claimant, contractor, or supplier to follow the "Right to Cure Law" can result in delay or dismissal of legal or arbitration actions.

The Department Safety and Professional Services prepared this brochure, but does not investigate, arbitrate, or judge consumer-contractor/supplier disputes. Those disputes are solved through the "Right to Cure Law" process, by the state's court system, and, for alterations and additions, the Home Improvement Practices Code, ATCP 110, of the state Department of Agriculture, Trade, and Consumer Protection.

The Department Safety and Professional Services does not discriminate on the basis of sex, race, religion, age, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability. Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact the Industry Services Division at 608-266-2112, or TTY 800-947-3529.

## **Chronology of the step-by-step claim and response interaction between consumers and contractors/suppliers**

*Step One Notice of Claim*—At least 90 working days before commencing an action against a contractor or window or door supplier or manufacturer, a claimant must deliver a written notice of the alleged defect to the contractor.

*Step Two: Contractor's Response*—The contractor will have 15 working days (or 25 working days if it involves a defect involving a window or door supplier) 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) statement that the contractor rejects the claim and the reasons for rejecting the claim; or (5) proposal to inspect the alleged defect or perform any necessary testing.

*Step Three: Claimant's Response*—If the contractor rejects the claim, the claimant may proceed to commence an action against the contractor. 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. Note that if the claimant has a claim against a window or door supplier or manufacturer, the claimant should contact the supplier to ensure that the supplier received a notice of the claim from the contractor.

*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.

*Step Five: Claimant's Response*—If the contractor has provided the claimant written notice that no additional offer will be made, the claimant may commence a lawsuit or other action against the contractor. If the claimant has received a supplemental offer from the contractor, the claimant must respond within 15 working days.

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