



## MAINE OIL DEALERS ASSOCIATION

### TECHNICAL BULLETIN #18.1

#### HOME CONSTRUCTION CONTRACTS LAW

June 1997

#### **I Overview**

The 114th Legislature amended the Home Construction Contracts Law (10 MRSA §§1486-1490) to include "electrical, plumbing and heating work; carpeting; window replacements; and other non structural work". This law requires that you have a signed, written contract for all work done that has a cost of more than \$1400 in materials and labor. The contract must contain specific information listed in the law.

The law took effect on September 30th, 1989.

#### **II Background**

This law was originally passed by the 113th Legislature. It defined a "home construction contract" to mean "a contract to build, remodel, or repair a residence". In the fall of 1988, MODA informed you that, based upon discussions with the Attorney General's office, this law did not apply to the installation of heating equipment. In the spring of 1989, MODA advised you that the Attorney General's office wasn't so sure, and had, in fact, changed its opinion.

The Pine Tree Chapter of the Service Managers Association requested that MODA clarify the situation - one way or the other. MODA contacted the appropriate Legislators, who were unanimous in their opinion that heating systems be included.

The law has not been amended since 1989.

### **III Attachments, Including Sample Contract**

This Technical Bulletin has two attachments:

1. The current law.
2. A sample contract provided by the Attorney General's office.

#### **1. Current Law:**

## **CHAPTER 219-A**

### **HOME CONSTRUCTION CONTRACTS (HEADING: PL 1987, c. 574 (new))**

#### **10 § 1486. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 574 (new).]

**1. Change orders.** "Change orders" means a written amendment to the home construction contract which becomes part of and is in conformance with the existing contract. [1989, c. 502, Pt. A, §30 (amd).]

**2. Down payment.** "Down payment" means all payments to a home construction contractor prior to or contemporaneous with the execution of the home construction contract. [1987, c. 574 (new).]

**3. Materials.** "Materials" means all supplies which are used to construct, alter or repair a residence. [1987, c. 574 (new).]

**4. Home construction contract.** "Home construction contract" means a contract to build, remodel or repair a residence, including not only structural work but also electrical, plumbing and heating work; carpeting; window replacements; and other nonstructural work. [1989, c. 248, §1 (amd).]

**5. Residence.** "Residence" means a dwelling with 3 or fewer living units and garages, if any. Buildings used for commercial or business purposes are not subject to this chapter. [1989, c. 248, §1 (amd).]

Section History:

1987, c. 574 (NEW).

1989, c. 248, § 1 (AMD).

1989, c. 502, § A30 (AMD).

## **10 § 1487. Home construction contracts**

Any home construction contract for more than \$1,400 in materials or labor must be in writing and must be signed by both the home construction contractor and the homeowner or lessee. Both the contractor and the homeowner or lessee shall receive a copy of the executed contract prior to any work performance. This basic contract must contain the entire agreement between the homeowner or lessee and the home construction contractor and must contain at least the following parts: [1987, c. 574 (new).]

**1. Names of parties.** The name, address and phone number of both the home construction contractor and the homeowner or lessee; [1987, c. 574 (new).]

**2. Location.** The location of the property upon which the construction work is to be done; [1987, c. 574 (new).]

**3. Work dates.** Both the estimated date of commencement of work and the estimated date when the work will be substantially completed; [1987, c. 574 (new).]

**4. Contract price.** The total contract price, including all costs to be incurred in the proper performance of the work, or, if the work is priced according to a "cost-plus" formula, the agreed-upon price and an estimate of the cost of labor and materials; [1987, c. 574 (new).]

**5. Payment.** The method of payment, with the initial down payment being limited to no more than 1/3 of the total contract price; [1987, c. 574 (new).]

**6. Description of the work.** A general description of the work and materials to be used; [1987, c. 574 (new).]

**7. Warranty.** A warranty statement which reads:

"In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract"; [1989, c. 248, §2 (amd).]

**8. Resolution of disputes.** A statement allowing the parties the option to adopt one of 3 methods of resolving contract disputes. At a minimum, this statement must provide the following information:

"If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

(1) Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator's decision ( );

(2) Nonbinding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit ( ) ; or

(3) Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences ( )"; [1987, c. 574 (new).]

**9. Change orders.** A change order statement which reads:

"Any alteration or deviation from the above contractual specifications that results in a revision of the contract price will be executed only upon the parties entering into a written change order"; [1989, c. 248, §2 (amd).]

**10. Door-to-door sales.** If the contract is being used for sales regulated by the consumer solicitation sales law, Title 32, chapter 69, subchapter V or the home solicitation sales law, Title 9-A, Part 5, a description of the consumer's rights to avoid the contract, as set forth in these laws; [1989, c. 193, §1 (amd).]

**11. Residential insulation.** If the construction includes installation of insulation in an existing residence, any disclosures required by chapter 219, Insulation Contractors; and [1989, c. 193, §1 (amd).]

**12. Energy standards.** A statement by the contractor that chapter 214 establishes minimum energy efficiency building standards for new residential construction, and whether the new building or an addition to an existing building will meet or exceed those standards. [1989, c. 193, §2 (new).]

Section History:

1987, c. 574 (NEW).

1989, c. 193, § 1,2 (AMD).

1989, c. 248, § 2 (AMD).

### **10 § 1488. Change orders**

Each change order to a home construction contract must be in writing and becomes a part of and is in conformance with the existing contract. All work shall be performed under the same terms and conditions as specified in the original contract unless otherwise stipulated. The change order must detail all changes to the original contract that result in a revision of the contract price. The previous contract price must be stated and the revised price shall also be stated. Both parties must sign the change order. [1987, c. 574 (new).]

Section History:

1987, c. 574 (NEW).

### **10 § 1489. Exemption**

Parties to a home construction contract may exempt themselves from the requirements of this chapter only if the contractor specifically informs the homeowner or lessee of his rights under this chapter and the parties then mutually agree to a contract or change order that does not contain the parts set forth in sections 1487 and 1488. [1987, c. 574 (new).]

Section History:

1987, c. 574 (NEW).

### **10 § 1490. Penalties**

**1. Violation.** Any violation of this chapter shall constitute prima facie evidence of a violation of the Unfair Trade Practices Act, Title 5, chapter 10. [1987, c. 574 (new).]

**2. Civil penalty.** Each violation of this chapter constitutes a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. No action may be brought for a civil violation under this subsection more than 2 years after the date of the occurrence of the violation. No home construction contractor may be held liable for a civil violation under this subsection if the contractor shows by a preponderance of the evidence that the violation was unintentional and a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. [1987, c. 574 (new).]

Section History:

1987, c. 574 (NEW).

2. Sample Contract:

[see next page]

Contractor name, address and phone need to be added by the printer when preparing this form for a specific contractor

HOME CONSTRUCTION CONTRACT

Contract No. \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_ Phone \_\_\_\_\_

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Work Location \_\_\_\_\_

Estimated work dates: Commencement \_\_\_\_\_ Completion \_\_\_\_\_

CONTRACT PRICE:

A. Total contract price \_\_\_\_\_ A. \$ \_\_\_\_\_  
Of (Use only one)

B. "Cost-Plus" Formula: \_\_\_\_\_  
Estimated Cost of Labor \$ \_\_\_\_\_ and Materials \$ \_\_\_\_\_ B. \$ \_\_\_\_\_

Less: Downpayment (not more than 1/3 of contract price) \$ \_\_\_\_\_

Balance due \$ \_\_\_\_\_

Payment of balance to be made as follows \_\_\_\_\_

Description of work and materials \_\_\_\_\_

CAMP

(Other terms may be set forth on additional sheets of this contract - mark them "continued page 2 etc.")

**WARRANTY:** In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skilled manner and fit for habitation. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract.

**RESOLUTION OF DISPUTES:** If a dispute arises concerning the provisions of this contract or the performance by the parties, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):

- Binding arbitration as regulated by the Maine Uniform Arbitration Act, with the parties agreeing to accept as final the arbitrator's decision.
- Nonbinding arbitration, with the parties free to not accept the arbitrator's decision and to seek satisfaction through other means, including a lawsuit.
- Mediation, with the parties agreeing to enter into good faith negotiations through a neutral mediator in order to attempt to resolve their differences.

**CHANGE ORDERS:** Any alteration or deviation from the above contractual specifications that involve extra cost will be executed only upon the parties entering into a written change order.

ACCEPTANCE OF CONTRACT BY BOTH PARTIES

Signature \_\_\_\_\_ Date \_\_\_\_\_  
(Homeowner or Lessee)

Signature \_\_\_\_\_ Date \_\_\_\_\_  
(Contractor or authorized Representative of Company) (Title)

This contract does not apply to door-to-door sales nor residential insulation.

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Form HCC-88 Hoda's Mating & Printing, Inc., Lewiston, ME 04240 703-1484

#### **IV Arbitration Caution**

The contract is required to contain a "Resolution of Disputes" clause. In that clause, the contractor and the customer agree to settle any dispute by one of three methods: binding arbitration, non binding arbitration, and mediation.

MODA counsel points out that the Maine Arbitration Act, which governs the binding arbitration option, has a provision in it for the payment of attorney's fees. You may want to consult your attorney about which option to select.

#### **V Additional Questions**

If you have any questions about this law, please call the MODA office, or contact your attorney.