



# Construction Laws, Codes, Contracts, Liability & Risk Management

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# CONSTRUCTION LAWS AND CODES

## CHAPTER SPS 321 CONSTRUCTION STANDARDS SUBCHAPTER II — DESIGN CRITERIA

### **SPS 321.02 Loads and materials.**

Every dwelling shall be designed and constructed in accordance with the requirements of this section.

(1) Design load. Every dwelling shall be designed and constructed to support the actual dead load, live loads and wind loads acting upon it without exceeding the allowable stresses of the material. The construction of buildings and structures shall result in a system that provides a complete load path capable of transferring all loads from point of origin through the load-resisting elements to the foundation.

#### CODE EXPLANATION

##### **321.02 Load Paths**

Individual structural members need their load paths analyzed all the way to grade for adequate load transfer. This may require additional wall studs or joist bay blocking below point loads. If such supports have a header in them, typically separate structural analysis must be provided to properly size this header and those supporting jamb columns.

(a) Dead loads. Every dwelling shall be designed and constructed to support the actual weight of all components and materials. Earth-sheltered dwellings shall

be designed and constructed to support the actual weight of all soil loads.

#### CODE EXPLANATION

##### **321.02 (1) (a) Dead Load of Insulation**

To avoid ceiling gypsum board sag or related problems, attic insulation dead load should not exceed gypsum board manufacturer's recommended capacity. This is especially true today where thick attic insulation and 24-inch truss spacing are common.

Attic insulation materials vary in density and thermal properties. Therefore, the total weight per installed R-value will vary depending on type, installation method and manufacturer of insulation product. Some typical values are estimated below; check actual weights supplied from your manufacturer or installer.

(b) Live loads.

1. 'Floors and ceilings.' Floors and ceilings shall be designed and constructed to support the minimum live loads listed in Table 321.02. The design load shall be applied uniformly over the component area.

**TABLE 321.02-1**

COMPONENT	LIVE LOAD (pounds per sq. ft.)
Floors	40
Garage Floors	50
Exterior Balconies, Decks, Porches	40
Ceilings (with storage)	20
Ceilings (without storage)	5

**CODE EXPLANATION****321.02 (1) (b) 2. Live Load - Snow**

Exterior balconies or decks should be designed to withstand 40 PSF as the critical live load. The effect of drifting or sliding snow on a roof should be considered as a matter of good design practice.

However, the UDC only requires a 30 or 40 PSF snow load applied uniformly to roofs. In complex roofs with side by side low-high portions or flat roofs below sloped upper roofs, a designer may want to consider potentially higher snow loads in the low roof areas where sliding or drifting snow may collect.

2. 'Snow loads.' Roofs shall be designed and constructed to support the minimum snow loads listed on the zone map. The loads shall be assumed to act vertically over the roof area projected upon a horizontal plane.

(c) Wind loads. Dwellings shall be designed and constructed to withstand either a horizontal and uplift pressure of 20 pounds per square foot acting over the

surface area or the wind loads determined in accordance with ASCE 7-05, Minimum Design Loads for Buildings and Other Structures.

*Note: ASCE 7-05 allows for substantial reduction from 20 psf as applied to the surface area.*

(2) Methods of design. All dwellings shall be designed by the method of structural analysis or the method of accepted practice specified in each part of this code.

*Note: See ch. NR 116, rules of the department of natural resources, for special requirements relating to buildings located in flood plain zones. Information regarding the elevation of the regional flood may be obtained from the local zoning official.*

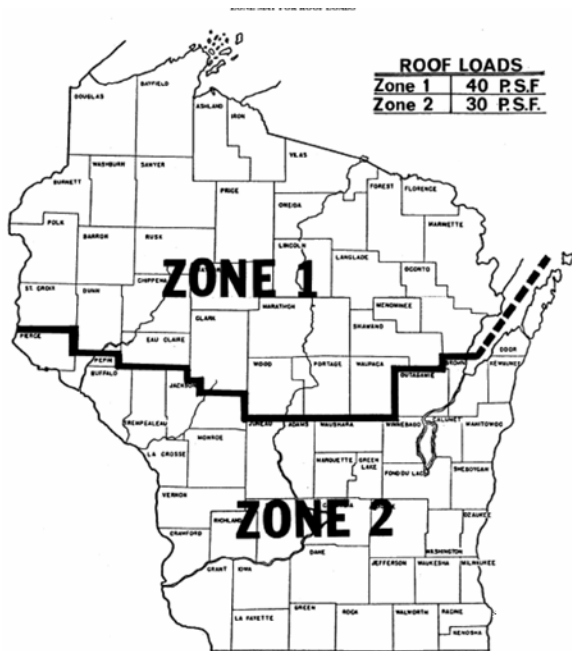
(3) Structural standards.

(a) General. Design, construction, installation, practice and structural analysis shall conform to the following nationally recognized standards.

(b) Wood.

1. Except as provided in subd. 1. a. and b., structural lumber, glue-laminated timber, timber pilings and fastenings shall be designed in accordance with the "National Design Specification for Wood Construction" and the "Design Values for Wood Construction," a supplement to the National Design Specification for Wood Construction.

Figure 321.02 ZONE MAP FOR ROOF LOADS



a. Section 2.2.5.3. The cumulative effects of short-time loads, such as snow, shall be considered in determining duration of load. For snow load, no greater duration of load factor than 1.15 shall be used.

b. Section 4.1.7. The provisions of this section shall also apply to reused lumber. Reused lumber shall be considered to have a duration of load factor of 0.90.

2. Span tables for joists and rafters printed in ch. SPS 325 Appendix A or approved by the department may be used in lieu of designing by structural analysis.

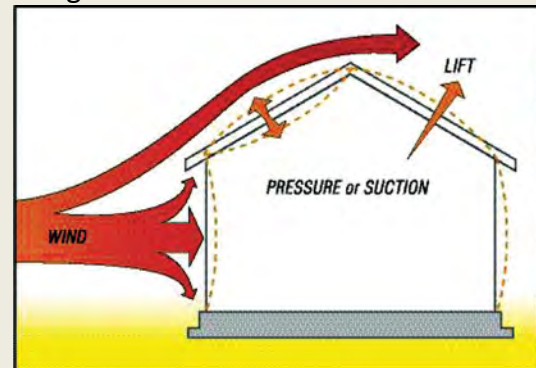
3. Sawn lumber that is not graded in accordance with the standards under subd. 1., shall use the NDS published allowable design stresses for the lumber species using grade number 3 when used for studs, stringers, rafters or joists and

may use grade number 1 when used for beams, posts or timbers.

CODE EXPLANATION

321.02(1)(c) Wind Design

Lateral wind forces can cause a building to rack, slide, or overturn, as well as uplift. All of these potential movements need to be addressed by the building design.



**Racking:** When wind blows against the side of the structure exerting a lateral force that causes it to lean over (rack) to one side.

**Sliding:** When wind blows against the side of the structure exerting a lateral force, causing it to slide off of its foundation.

**Overturning:** When the structure is anchored in place to limit racking or sliding, the lateral force of the wind causes the structure to rotate or overturn.

(c) Structural steel. The design, fabrication, and erection of structural steel for buildings shall conform to Specification for Structural Steel Buildings and the provisions of the accompanying commentary as adopted under Table 320.24-3.

(d) Concrete. Plain, reinforced or prestressed concrete construction shall conform to the following standards:

1. ACI Standard 318, Building Code Requirements for Structural Concrete.
2. ACI Standard 332, Residential Code Requirements for Structural Concrete.

*Note: Concrete construction in one- and two-family dwellings should meet the standards established in ACI 332.*

*Construction means, materials, or methods not addressed in ACI 332 should meet the standards established in ACI 318.*

(e) Masonry. The design and construction of masonry shall conform to the following standards:

1. ACI 530, Building Code Requirements for Masonry Structures.
2. ACI 530.1, Specification for Masonry Structures.

(f) Engineered structural components. Engineered structural components shall be used in accordance with structural analysis or with load tables supplied by the manufacturer, provided those load tables were developed using structural analysis or load testing.

(g) Whole logs. Dwellings constructed of whole logs shall conform to ICC 400, Standard on the Design and Construction of Log Structures.

*Note: This standard requires the minimum log diameter to be 8 inches.*

(h) Fasteners.

1. All building components shall be fastened to withstand the dead load, live load, snow load, and wind load.

2. Fasteners shall comply with the schedule listed in Table 321.02-2.

*Note: Other fastening methods may be allowed if engineered under s. SPS 321.02 (3).*

### CODE EXPLANATION

#### **321.02 (1) (h) Fasteners**

The fastener schedule in table 321.02-2 presents one means of showing adequate fastening to meet the code in most typical designs with sawn lumber. However, it may not be sufficient for certain designs, especially those using engineered lumber that can handle greater spans and loads than those assumed in the appendix fastener table. Be sure to verify that the fasteners provided will adequately transfer the greater loads that required special lumber.

**Table 321.02-2 MINIMUM FASTENER SCHEDULE TABLE**

<b>MINIMUM FASTENER SCHEDULE TABLE</b>	
<i>Other interior and exterior panel products and finishes installed per manufacturer requirements. For engineered connectors, use manufacturer's specified fasteners.</i>	
<b>DESCRIPTION OF BUILDING MATERIALS/CONNECTION</b>	<b>NUMBER AND TYPE OF FASTENER<sup>123</sup></b>
<b>FLOOR FRAMING</b>	
Joist to joist, face nailed over support	3-8d
Joist to sill or girder, toe nail	3-8d
Band or rim joist to joist, end nail	3-16d
Band or rim joist to sill or top plate	2-16d at 16" o.c.
Bridging to joist, toe nail each end	2-8d
Bridging to joist, toe nail each end	10d at 32" o.c. at top and bottom and staggered and two at ends and at each splice
Built-up girder and beams, side-loaded	16d at 16" o.c. at top and bottom and staggered and two at ends and at each splice
Ledger strip to beam, face nail	3-16d each joist
Joist on ledger to beam, toe nail	3-8d
<b>WALL FRAMING</b>	
Sole plate to joist or blocking, face nail	2-16d at 16" o.c.
Top or sole plate to stud, end nail	2-16d
Stud to sole plate, toe nail	3-8d or 2-16d
Doubled studs, face nail	10d at 24" o.c.
Doubled studs, face nail	10d at 24" o.c.
Doubled top plates, minimum 24-inch offset of end joints, face nail in lapped area	8-16d
Top plates, laps and intersections, face nail	2-10d
Continuous header, two pieces	16d at 16" o.c. along each edge
Continuous header to stud, toe nail	4-8d
1" corner brace to each stud and plate, face nail	2-8d or 2 staples, 1¾"
Built-up corner studs	10d at 24" o.c.
<b>ROOF/CEILING FRAMING</b>	

Ceiling joists to plate, toe nail	3-8d
Ceiling joist, laps over partitions, face nail	3-10d
Ceiling joist to parallel rafters, face nail	3-16d
Rafter to plate, toe nail (maximum 6 rafter span, engineered connector for longer)	2-16d
Roof rafters to ridge, valley or hip rafters, toe nail	4-16d
Roof rafters to ridge, valley or hip rafters, face nail	3-16d
Collar ties to rafters, face nail	3-8d
<b>BOARDS AND PLANKS</b>	
1" x 6" subfloor or less to each joist, face nail	2-8d or 2 staples, 1¾"
Wider than 1" x 6" subfloor toe to each joist, face nail	3-8d or 4 staples 1¾"
2" subfloor to joist or girder, blind and face nail	2-16d
1" x 6" roof or wall sheathing to each bearing, face nail	2-8d or 2 staples, 1¾"
1" x 8" roof or wall sheathing to each bearing, face nail	2-8d or 3 staples, 1¾"
Wider than 1" x 8" roof sheathing to each bearing, face nail	3-8d or 4 staples, 1¾"
2" planks	2-16d at each bearing

<b>PANEL SHEATHING</b>			
<b>MATERIAL</b>	<b>FASTENER</b>	<b>SPACING OF FASTENER</b>	
		<b>EDGES</b>	<b>INTERMEDIATE SUPPORTS</b>
<b>Engineered wood panel for subfloor and roof sheathing and wall corner wind bracing to framing</b>			
5/16" to 1/2"	6d common or deformed nail or staple, 1½"	6"	12" <sup>4</sup>
5/8" to 3/4"	8d smooth or common, 6d deformed nail, or staple, 14 ga. 1¾"	6"	12" <sup>4</sup>
7/8" to 1"	8d common or deformed nail	6"	12"
1½" to 1¾"	10d smooth or common, or 8d deformed nail	6"	12"
<b>Combination subfloor/underlayment to framing</b>			



3/4" or less	6d deformed or 8d smooth or common nail	6"	12"
7/8" to 1"	8d smooth, common or deformed nail	6"	12"
1 1/8" to 1 1/4"	10d smooth or common or 8d deformed nail	6"	12"
<b>Wood panel siding to framing</b>			
1/2" or less	6d corrosion-resistant siding and casing nails	6"	12"
5/8"	8d corrosion-resistant siding and casing nails	6"	12"
1/2" structural cellulosic fiberboard sheathing	1 1/2" galvanized roofing nail; 8d common nail; staple 16 ga., 1 1/2" long	3"	6"
25/32" structural cellulosic fiberboard sheathing	1 3/4" galvanized roofing nail; 8d common nail; staple 16 ga., 1 3/4" long	3"	6"
1/2" gypsum sheathing <sup>5</sup>	1 1/2" galvanized roofing nail; 6d common nail; staple galvanized 1 1/2" long; 1 1/4" screws, Type W or S	4"	8"
5/8" gypsum sheathing <sup>5</sup>	1 3/4" galvanized roofing nail; 8d common nail; staple galvanized 1 5/8" long; 1 5/8" screws, Type W or S	7"	7"
<p>1 All nails are smooth – common, box or deformed shank except where otherwise stated.</p> <p>2 Nail is a general description and may be T-head, modified round head or round head.</p> <p>3 Staples are 16-gauge wire, unless otherwise noted, and have a minimum 7/16" o.d. crown width.</p> <p>4 Staples shall be spaced at not more than 10" o.c. at intermediate supports for floors.</p> <p>5 Apply vertically 4' x 8' or 4' x 9' panels.</p>			

(4) Alternate materials and standards. No part of this code is intended to prohibit or discourage use of alternate, equivalent materials or standards; or the construction of innovative dwellings such as a dwelling built below ground, a geodesic dome, a concrete house, a fiberglass house, or any other nonconventional structure.

*Note: Examples of materials addressed by this subsection include structural insulated panels that are used in accordance with the manufacturer's instructions or structural analysis, and cold-formed steel framing*

*complying with AISI S230 Standard for Cold-Formed Steel Framing — Prescriptive Method for One and Two Family Dwellings.*

**SPS 321.03 Exits.** Exits, doors and hallways shall be constructed as specified in this section.

(1) Exits from the first floor.

(a) Except as allowed under par. (h), every dwelling unit shall be provided with at least 2 exit doors accessible from the first floor.

(b) At least one of the exits shall discharge to grade and may not go through a garage. This exit may include interior or exterior stairs.

*Note: Under this paragraph, only one of the two exit doors that are addressed in par. (a) is required to exit directly to grade.*

### CODE EXPLANATION

#### 321.03(1) Acceptable First Floor Exits

**Question:** Is it acceptable to use a ground floor exit door to help satisfy the requirement for two exits from a first floor?

**Answer:** Yes, assuming the two floors are connected with a stairway and the other requirements are met. In this situation, the exit separation distance would be measured from the middle of the first floor exit door to the middle of the top of the stairway on the first floor.

**Question:** Are first floor bedrooms required to have egress windows?

**Answer:** No. The code indicates two exits are required from the first floor; however, if two exits do not serve the first floor or their separation requirements of 321.03(1)(e) are not met, then any first floor bedroom would require egress windows.

(c) Any exit that does not comply with par. (b) may discharge to an outside balcony that complies with sub. (8).

(d) Any exit that does not comply with par. (b) may discharge into an attached garage provided the garage has an exit door that discharges to grade. An overhead garage door may not be used as an exit door.

(e) Except as allowed under pars. (f) and (h), the 2 required exit doors shall be separated by at least the greater of the following distances:

1. One-third the length of the longest diagonal of the floor in plan view, exclusive of an attached garage.
2. 20 feet.

*Note: See ch. SPS 325 Appendix A for examples of exit separation design.*

(f)

1. First floor levels that do not meet the separation requirements under par. (e), shall have at least one egress window complying with sub. (6) on that floor level.

2. An egress window to comply with subd. 1. shall be separated from at least one door on the first floor by one of the distances under par. (e).

3. If first floor levels that do not meet the separation requirements under par. (e) contain one or more sleeping rooms, each sleeping room shall have at least one egress window complying with sub. (6).

(g)

1. The exit separation distance required under par. (e) shall be calculated or measured as a straight line from the midpoint of one doorway to the midpoint of the other doorway.

2. For exiting through an attached garage, the separation distance shall be measured using the door connecting the

garage and the dwelling. Distance within the garage shall be ignored.

(h)

1. Dwellings consisting of no more than a first floor with a maximum floor area of 400 square feet and a loft area not exceeding half of the first floor area, shall be provided with at least one exit door leading directly to the exterior and at least one egress window that complies with sub. (6).

2.

a. Dwellings that meet the size restrictions under subd. 1., are not required to meet the exit separation requirements under par. (e) or (f).

b. If a dwelling that meets the size restrictions under subd. 1., has more than one room on the first floor, the door and the egress window shall be located in different rooms.

3. One of the exit doors required in par. (a) may be omitted for a dwelling unit that has one or more egress windows on the first floor. If there are bedrooms, each must have a window that complies with sub. (6).

(2) Exits from the second floor.

(a) At least 2 exits shall be provided from the second floor. At least one of the exits shall be a stairway or ramp and lead to the first floor or discharge to grade. The second exit may be via a stairway or ramp that discharges to grade, or to a balcony which complies with sub. (8), or to a deck that complies with s. SPS 321.225 and that

is no more than 15 feet above the grade below.

(b) Windows that comply with sub. (6) may be provided in each second floor bedroom — or in another location on the second floor if there are no bedrooms on that floor — in lieu of the second exit from that floor.

(c) Where the second floor of a building is the lowest floor level in a dwelling unit, as in an up-and-down duplex, no exit from the unit may go through another dwelling unit or other party's occupancy on the first floor.

### CODE EXPLANATION

#### 321.03(2) Second Floor Bedroom Egress

**Question:** If one of the second floor bedrooms has a code-compliant exit door out of the bedroom onto a deck or balcony, can the requirement for egress windows in the other second floor bedrooms be waived?

**Answer:** Yes, but only if the hardware on the bedroom door, which leads to the second exit is incapable of being locked from the hallway that serves as the exit path from these other bedrooms. See section 320.07 for 'EXIT' definition.

(3) Exits above the second floor.

(a) Except as provided under pars. (b) and (c), each habitable floor above the second floor shall be provided with at least 2 exits that meet all of the following requirements:

## CODE EXPLANATION

### 321.03(3) Acceptable Exits Above the Second Floor

Small third floor rooms specified under s. SPS 321.03 (3) (b) require only one stairway or ramp that leads to the second floor or lower in the dwelling. If the dwelling is fully sprinklered, only one exit is required from the third floor. Otherwise, only stairways or ramps to the second floor or grade are acceptable to meet the two exit requirements. If an exterior stair is used, access to it from the third floor shall be with a door and if the stairway terminates at the second floor, then there must be a door leading back into the dwelling or a code-compliant egress balcony to complete the exit path.

1. The exits shall be stairways or ramps that lead to the second floor or discharge to grade.
2. The exits shall be located such that an exit is accessible to the second floor if another exit is blocked.

(b) A second stairway or ramp exit is not required for habitable areas on a third floor that meet all of the following requirements:

1. The habitable area consists of a single room.

*Note: Non-habitable areas, such as closets and bathrooms may be partitioned off.*

2. The room is not used for sleeping.
3. The habitable area has a floor area of 400 square feet or less.

4. There is at least one egress window meeting the requirements of sub. (6) in the habitable area.

(c) A second stairway or ramp exit is not required for habitable areas on a third floor that meet all of the following requirements:

1. The dwelling is fully sprinklered in accordance with NFPA 13R or NFPA 13D.
2. If a required exit includes an attached garage, the garage shall be sprinklered.

## CODE EXPLANATION

### 321.03(4) Exits from Lofts

A code-complying loft is not subject to the exiting requirements of the other subsections of this section. In other words, a loft open to a first-floor or second-floor below, only requires a single stairway or ladder (depending on area) to satisfy exiting. A loft bedroom or loft level would not require an egress window but would require natural light and ventilation the same as any other habitable space. See s. SPS 320.07(50) of the code and this commentary for a discussion of what is considered "open to the floor below."

(4) Exits from lofts.

(a) At least one stairway exit shall be provided, to the floor below, for a loft exceeding 400 square feet in area.

(b) At least one stairway or ladder exit shall be provided to the floor below for a loft, 400 square feet or less, in area.

(5) Exits from basements and ground floors.

(a) General. Except as provided in par. (b), all basements and ground floors shall be provided with at least one exit of the following types:

1. A door to the exterior of the dwelling.
2. A stairway or ramp that leads to the floor above.

(b) Basements and ground floors used for sleeping.

1. Basements and ground floors used for sleeping shall be provided with at least 2 exits.
2. The exits shall be located as far apart as practical.
3. The exits may not be accessed from the same ramp or stairway.
4. In addition to the exit type required under par. (a), the second exit from a basement or ground floor used for sleeping shall be one of the following types:
  - a. A door to the exterior of the dwelling.
  - b. A stairway or ramp that leads to the floor above.
  - c. A stairway that leads to a garage provided the garage has an exit door other than the overhead door.
  - d. An egress window that complies with sub. (6), located in each bedroom.

(6) Windows used for exiting. Windows which are installed for exit purposes shall comply with the requirements of this subsection.

## CODE EXPLANATION

### 321.03(6) Bedroom Exit Windows

**Question:** Can egress windows be located in sitting or dressing areas of a master bedroom suite?

**Answer:** This section requires egress windows in some bedrooms. However, it does not specify the location of the window within the bedroom itself. A sitting room or area located in an alcove of a master bedroom is an acceptable location for the bedroom egress window. The alcove can be considered part of the bedroom if there are no doors obstructing communication between the two areas.

(a) The window shall be openable from the inside without the use of tools or the removal of a sash. If equipped with a storm or screen, it shall be openable from the inside.

(b)

1. The nominal size of the net clear window opening shall be at least 20 inches by 24 inches irrespective of height or width. Nominal dimensions shall be determined by rounding up fractions of inches if they are ½-inch or greater or rounding down fractions of inches if they are less than ½-inch.

2. No portion of the window, including stops, stools, meeting rails and operator arms, shall infringe on the required opening.

(c) The area and dimension requirements of par. (b) may be infringed on by a storm window.

(d)

1. For any window used for exiting, the lowest point of clear opening shall be no more than 60 inches above the floor.
2. If the lowest point of clear opening is more than 46 inches above the floor, a permanent platform or fixture shall be installed such that a flat surface at least 20 inches wide and 9 inches deep is located no more than 46 inches directly below the clear opening.
3. The topmost surface of the platform or fixture shall be no more than 24 inches above the floor.
4. The topmost surface of the platform or fixture shall support a live load of at least 200 pounds.
5. A stair used for the sole purpose of reaching the top of the platform or fixture is exempt from the requirements of s. SPS 321.04.

(e)

1. An egress window with any point of clear opening below adjacent grade shall be provided with an areaway in accordance with this section.
2. The width of the areaway shall be at least equal to the width of the window.
3. The areaway shall be a minimum of 36 inches measured perpendicular from the outer surface of the below-grade wall.
4. If the bottom of the areaway is more than 46 inches below adjacent grade or the top of the areaway enclosure, the areaway shall be provided with a ladder or stair to aid egress. Stairs used to

comply with this section are exempt from the requirements of s. SPS 321.04.

5.

- a. Ladders or other stairs used to comply with subd. 4. may infringe on the required area of the areaway by a maximum of 6 inches.
- b. Ladder rungs shall have a minimum inside width of at least 12 inches and shall project at least 3 inches from the wall behind the ladder.
- c. Ladder rungs shall be able to support a concentrated load of 200 pounds.
- d. Ladder rungs shall have a maximum rise of 12 inches between rungs and shall extend to within 12 inches of exterior grade.
6. The areaway shall be constructed such that water entering the areaway does not enter the dwelling.

(f) An egress window under a deck or porch shall discharge through a clear path of at least 36 inches in height and 36 inches in width, and no more than 15 feet in length, to a yard or open space.

*Note: Under this paragraph, there is no maximum height above grade for an egress window. Similarly, egress windows are not prohibited from discharging to a roof, regardless of the slope of the roof.*

(7) Doors used for exiting.

(a) Doors used for exiting from a dwelling shall meet the following dimensions:

1. At least one exit door shall be a swing-type door at least 80 inches high by 36 inches wide.
2. Except as allowed under subds. 3. and 4., other required exit doors shall be at least 76 inches high by 32 inches wide.
3. Where double doors are used as a required exit, each door leaf shall provide a clear opening at least 30 inches wide and be at least 76 inches high.
4. Where sliding doors are used as a required exit, the clear opening shall be at least 29 inches wide and be at least 76 inches high.

(b) All exit doors shall be openable from the interior without the use of a key.

#### CODE EXPLANATION

##### **321.03(8) Balconies**

Balconies not used for a required exit purposes may be greater than 15 feet above grade. All guards for balconies more than 24" above grade are required to comply with SPS 321.04(3) regarding height, in-fill or spindle and rail spacing requirements.

(8) Balconies.

(a) Balconies shall be made of concrete, metal or wood which is treated, protected or naturally decay-resistive in accordance with s. SPS 321.10.

(b) Balconies shall be provided with guards in accordance with s. SPS 321.04 (3).

(c) Balconies which are required for exit purposes shall also comply with all of the following requirements:

1. The balcony guard shall terminate no more than 46 inches above the floor level of the balcony.
2. The floor level of the balcony shall be no more than 15 feet above the grade below.
3. The floor of the balcony shall have minimum dimensions of 3 feet by 3 feet. The guard and its supports may infringe on the dimensions of the required area no more than 4.5 inches.

#### CODE EXPLANATION

##### **321.03(9) Split Level Dwellings**

This section allows floor levels within 5 feet vertically of each other to be considered one floor level for exiting purposes. This does not change the definitions of the floor levels as set forth in s. SPS 320.07. Also the requirements of ss. SPS 321.03(1), 321.03(5)(b), and 321.03(6)(b) for proper separation of exits apply to the combined areas of the floor levels.

Also, any combined floor levels must all be within 5 feet of each other. In other words, a floor level that is between two other floor levels, separated by more than 5 feet, does not make all three levels into one even if exiting is from the middle level. However, the middle level may be combined with only one of the other levels.

(9) Split level dwellings. In determining the exit requirement in a split level dwelling, all levels that are to be considered a single story shall be within 5 feet of each other.

(10) Two-family dwellings. In a 2-family dwelling, each dwelling unit shall be

provided with exits in compliance with this section.

(11) Exits to courtyards. No exit may discharge to a courtyard having a perimeter that is entirely enclosed by exterior building walls or other obstructions that prevent pedestrian passage.

### **SPS 321.035 Interior circulation.**

(1) Doors and openings. All doors and openings to the following areas shall be at least 80 inches high and provide either a net clear opening width of 30 inches or be a 32-inch door:

(a) Except as provided under pars. (b) and (c), all entrances into common use areas.

(b) At least 50% of the bedrooms.

(c)

1. At least one full bathroom, including doors or openings to a sink, toilet and tub or shower. If this bathroom is accessible only through a bedroom, the bedroom door shall meet the minimum width requirements of this section.

2. If one or more full bathrooms are provided on the first floor, the bathroom meeting the requirements under this section shall be on the first floor.

*Note: This section does not require a full bathroom on the first floor.*

(2) Hallways.

(a) Except as allowed under par. (b), the clear width of hallways shall be at least 36 inches.

(b) The following are allowed to infringe on the required clear width of a hallway:

1. Door hardware and finish trim.

2. Handrails may infringe into the minimum width of a hallway up to 4½ inches on each side.

3. Heating registers may infringe into the minimum width of a hallway up to 4½ inches and no part of the register may be more than 38 inches above the floor.

4. Ducts, pipes, light fixtures, structural features, and corner treatments that are within 84 inches of the floor may infringe into the minimum width of a hallway by a maximum of 4½ inches on each side.

5. Unlimited infringements are allowed in a hallway more than 84 inches above the floor.

### **CODE EXPLANATION**

#### **321.035(3) Clearance Between Cabinets & Appliances**

The required 30 inches of clearance between major appliances and islands, walls or built-in cabinets, is measured to the face of the cabinets, not including countertop nosings.

(3) Kitchens.

(a) There shall be at least 30 inches of clearance between a wall, a permanently-installed kitchen island, permanently-installed kitchen cabinets and the following kitchen appliances, if provided:

1. A range, cook top or oven.

2. A sink, refrigerator or freezer.



(b) Measurements shall be taken from the face of the wall, island, cabinet or appliance, ignoring knobs and handles.

*Note: See ICC/ANSI A117.1 chapter 10 for more guidelines relating to doors and accessible routes. Under that standard, doors must be at least 80-inches in height and provide a minimum net clear opening of 31¾-inches in width in order to provide accessibility for people with disabilities.*

### **SPS 321.04 Stairways and elevated areas.**

#### (1) Scope.

(a) General. Except as provided under par. (b), the following stairways shall conform to the requirements of this section.

1. Every interior and exterior stairway attached to, or supported by any part of the structure covered under this code.
2. Tub access stairs, unless they are an integral part of an approved plumbing product.

(b) Exceptions. The following stairways are not required to comply with the requirements of this section:

1. Stairways leading to non-habitable attics or crawl spaces.
2. Non-required stairways connecting the basement directly to the exterior of the structure without communicating with any other part of the structure.

#### (2) Details.

(a) Width.

### **CODE EXPLANATION**

#### **321.04(1) Exterior Stairs**

**Question:** This section applies to exterior stairs but how far away from the dwelling would this coverage extend?

**Answer:** The stair requirements would apply to any steps necessary to get an occupant free and clear of the dwelling and to grade, as stated in SPS 320.02(1)(g) Scope.

1. Except for spiral staircases under subd. 2., stairways shall measure at least 36 inches in width. Handrails and associated trim may project a maximum of 4.5 inches into the required width at each side of the stairway. The minimum clear width at and below the handrail, including at treads and landings, may not be less than 31.5 inches where a handrail is installed on one side, and 27 inches where handrails are provided on both sides.

2. Spiral staircases shall be at least 26 inches wide measured from the outer edge of the supporting column to the inner edge of the handrail.

#### (b) Riser height.

1.
  - a. Except for spiral staircases under subd. 2., risers may not exceed 8 inches in height measured vertically from tread to tread.
  - b. At the top and bottom of a flight, measurement shall be taken from the top of the nosing to the finished floor surface unless the finished surface is

carpeting, in which case measurement shall be made to the hard surface below the carpeting.

2. Risers in spiral staircases may not exceed 9.5 inches in height measured vertically from tread to tread.

(c) Tread depth.

1. 'Rectangular treads.' Rectangular treads shall have minimum tread depth of 9 inches measured horizontally from nosing to nosing.

2. 'Spiral staircase treads.' Spiral staircase treads shall have a minimum tread depth of 7 inches from nosing to nosing measured at a point 12 inches from the outer edge of the center column.

3. 'Winder treads in series.' Two or more winder treads may be placed immediately adjacent to each other anywhere in a stairway provided both of the following conditions are met:

a. The winder treads shall have a minimum tread depth of 7 inches measured at a point 12 inches from the narrow end of the tread.

b. The depth of the immediately adjoining winder treads shall be equal at a point 12 inches from the narrow end of the tread or inside face of spindles or balusters.

c. Winder treads may not be used on a straight stairway.

4. 'Individual winder treads.'

a. An individual winder tread may be placed between rectangular treads or

at the end of a flight of rectangular treads provided the tread depth is at least 9 inches, when measured at a distance of 12 inches from the narrow end of the tread or from the inside face of the wall.

b. There may be more than one individual winder tread in a stairway.

c. Winder treads may not be used on a straight stairway.

(d) Headroom.

1. Stairways shall be provided with a minimum headroom clearance of 76 inches measured vertically from a line parallel to the nosing of the treads to the ceiling, soffit or any overhead obstruction directly above that line.

2. The headroom clearance shall be maintained over an intermediate landing.

3. The headroom clearance shall be maintained over a landing that is at the top or bottom of a stairway for a minimum distance of 36 inches in the direction of travel of the stairway.

(e) Uniformity.

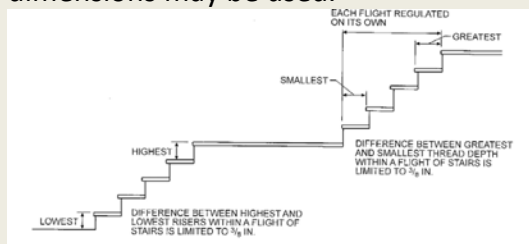
1. Within a stairway flight, the greatest tread depth may not exceed the smallest tread depth by more than 3/8 inch and the greatest riser height may not exceed the smallest riser height by more than 3/8 inch.

2. The allowed variation in uniformity under subd. 1. may not be used to exceed the maximum riser height under

## CODE EXPLANATION

### 321.04(2)(e)1. Tread Height and Depth Uniformity

Within a stairway flight, the greatest tread depth may not exceed the smallest tread depth by more than 3/8 inch and the greatest riser height may not exceed the smallest riser height by more than 3/8 inch. Once an intermediate landing occurs, a new flight starts and new riser and tread dimensions may be used.



par. (b) or to decrease the minimum tread depth under par. (c).

(f) Open risers. Stairways with open risers shall be constructed to prevent the through-passage of a sphere with a diameter of 4 inches or larger between any 2 adjacent treads.

(g) Walking surface. The walking surface of stair treads and landings shall be a planar surface that is free of lips or protrusions that could present a tripping hazard.

### (3) Handrails and guards.

#### (a) General.

1. A flight of stairs with more than 3 risers shall be provided with at least one handrail for the full length of the flight.
2. Guards shall be provided on all open sides of stairs consisting of more than 3

risers and on all open sides of areas that are elevated more than 24 inches above the floor or exterior grade.

*Note: A handrail provided at 30 to 38 inches above the tread nosing meets the height requirement for a guard on a stairway.*

#### 3.

a. Except as provided in subd. 3. b., guards shall be constructed to prevent the through-passage of a sphere with a diameter of 4 3/8 inches, when applying a force of 4 pounds.

b. The triangular area formed by the tread, riser and bottom rail shall have an opening size that prevents the through-passage of a sphere with a diameter of 6 inches, when applying a force of 4 pounds.

c. Rope, cable, or similar materials used in guard infill shall be strung with maximum openings of 3 1/2 inches with vertical supports a maximum of 4 feet apart.

*Note: In some cases, the vertical supports could be simple cable stays that offer vertical support to the rope or cable span. Structural posts must be supplied to provide the rail with the minimum 200 pound load resistance, as well as to resist the tensile loads exerted by the tightened rope or cable.*

#### 4.

a. Handrails and guards shall be designed and constructed to withstand a 200 pound load applied in any direction.

b. Handrail or guard infill components, balusters and panel fillers shall withstand a horizontally applied perpendicular load of 50 pounds on any one-foot-square area.

c. Glazing used in handrail or guard assemblies shall be safety glazing.

5. Exterior handrails and guards shall be constructed of metal, decay resistant or pressure-treated wood, or shall be protected from the weather.

(b) Handrails.

1. 'Height.'

a. Handrails shall be located at least 30 inches, but no more than 38 inches above the nosing of the treads, except as provided in subds. 1. b. to d. Measurement shall be taken from the hard structural surface beneath any finish material to the top of the rail. Variations in uniformity are allowed only when a rail contacts a wall or newel post or where a turnout or volute is provided at the bottom tread.

b. A volute, turnout, or starting easing that does not comply with subd. 1. a. may extend over the lowest tread.

c. Transition fittings on handrails may extend above the 38-inch height limit.

d. Where handrail fittings or bendings are used to provide a continuous transition between flights, or at winder treads, or from a handrail to a guard, or at the start of a flight, the height at the fittings or bendings may exceed 38 inches.

2. 'Clearance.' The clearance between a handrail and the wall surface shall be at least 1 1/2 inches.

3. 'Winders.'

a. Except as provided under subd. 3. b., the required handrail on winder stairs shall be placed on the side where the treads are wider.

b. Where all winder treads in a flight have a depth of at least 9 inches from nosing to nosing measured at a point 12 inches from the narrow end of the tread, the required handrail may be located on either side of the stairway.

4. 'Projection.' Handrails and associated trim may project into the required width of stairs and landings a maximum of 4 1/2 inches on each side.

5. 'Size and configuration.' Handrails shall be symmetrical about the vertical centerline to allow for equal wraparound of the thumb and fingers.

a. Handrails with a round or truncated round cross sectional gripping surface shall have a maximum whole diameter of 2 inches.

b. Handrails with a rectangular cross sectional gripping surface shall have a maximum perimeter of 6 1/4 inches with a maximum cross sectional dimension of 2 7/8 inches.

c. Handrails with other cross sections shall have a maximum cross sectional dimension of the gripping surface of 2 7/8 inches with a maximum linear gripping surface measurement of 6 1/4

inches and a minimum linear gripping surface of 4 inches.

*Note: See ch. SPS 325 Appendix A for further information on handrail measurement.*

6. 'Continuity.' Handrails shall be continuous for the entire length of the stairs except in any one of the following cases:
- a. A handrail may be discontinuous at an intermediate landing.
  - b. A handrail may have newel posts.
  - c. A handrail may terminate at an intermediate wall provided the lower end of the upper rail is returned to the wall or provided with a flared end, the horizontal offset between the 2 rails is no more than 12 inches measured from the center of the rails, and both the upper and lower rails can be reached from the same tread without taking a step.
- (c) Guards.
1. 'Application.'
    - a. All openings between floors, and open sides of landings, platforms, balconies or porches that are more than 24 inches above grade or a floor shall be protected with guards.
    - b. The requirements under subd. 1. a. apply where insect screens are the only means of enclosure or protection for a surface that is more than 24 inches above grade or a floor.
    - c. For exterior applications, the 24 inch vertical measurement shall be taken from the lowest point within 3 feet

horizontally from the edge of the deck, landing, porch or similar structure.

d. This paragraph does not apply to window wells, egress wells, and retaining walls.

2. 'Height.' Guards shall extend to at least 36 inches above the floor or to the underside of a stair handrail complying with s. SPS 321.04 (3) (b). Measurement shall be taken from the hard structural surface beneath any finish material to the top of the guard.

3. 'Opening size.' Guards shall be constructed to prevent the through-passage of a sphere with a diameter of 4 3/8 inches, when applying a force of 4 pounds.

#### CODE EXPLANATION

##### **321.04(4)(a) Projections into Minimum Stair Landing Width**

The 4 1/2-inch maximum allowed projection of handrails or trim into the width of a stairway on each side also applies to both sides of a landing since the landing is part of the stairway. Also see SPS 321.035(2)(b) regarding infringements permitted at hallways.

(4) Landings.

(a) Intermediate landings.

1. A level intermediate landing shall be provided in any stairway with a height of 12 feet or more.
2. Intermediate landings that connect 2 or more straight flights of stairs, or 2 flights of stairs at a right angle, shall be at least as wide as the treads and shall

measure at least 36 inches in the direction of travel.

3. Curved or irregular landing shall have a radius of at least 36 inches.

4. Curved or irregular landings shall have a minimum straight line measurement of 26 inches between the nosing of the 2 connecting treads measured at a point 18 inches from the narrow end of the landing measured along the nosing of the 2 treads.

(b) Landings at the top and base of stairs. A level landing shall be provided at the top and base of every stairs except as provided in par. (d). The landing shall be at least as wide as the treads and shall measure at least 3 feet in the direction of travel.

(c) Doors at landings. Except as provided in subds. 1. to 3. and par. (d), level landings shall be provided on each side of any door located at the top or base of a stair, regardless of the direction of swing. In the following exceptions, a stairway between a dwelling and an attached garage, carport or porch is considered to be an interior stair:

1. A landing is not required between the door and the top of interior stairs if the door does not swing over the stairs.
2. A landing is not required between the door and the top of an interior stairs of 1

or 2 risers regardless of the direction of swing.

3. A landing is not required between a sliding glass door or an in-swinging glass door and the top of an exterior stairway of 3 or fewer risers.

(d) Exterior landings.

1. The exterior landing, platform, or sidewalk at an exterior doorway shall be located a maximum of 8 inches below the interior floor elevation, be sloped away from the doorway at a minimal rate that ensures drainage, and have a length of at least 36 inches in the direction of travel out of the dwelling.

2. The landing at the base of an exterior stair shall be sloped away from the stair at a minimal rate that ensures drainage.

### CODE EXPLANATION

#### **321.04(4)(d) Exterior Landings**

This section would allow exterior landings at grade to be turf, gravel or other stable material as long as it sloped away from the dwelling.

# LIABILITY AND RISK MANAGEMENT

## ATCP 110 HOME IMPROVEMENT PRACTICES

### 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-

### CODE EXPLANATION

**Wisconsin's home improvement law, Wis. Adm. Code ch. ATCP 110, protects consumers contracting for improvements including:**

- basements
- porches
- landscaping
- sidewalks
- terraces
- water softeners
- patios/decks
- garages
- floor coverings
- driveways
- heating
- air conditioning
- swimming pools
- home alarm systems

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.

### **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, firm, 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.

### **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 disclaimer, 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 DAMPNES 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.

# CONSTRUCTION CONTRACTS

## ATCP 110 HOME IMPROVEMENT PRACTICES

### **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.

### **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).*

### CODE EXPLANATION

#### **Lien waivers (Wis. Adm. Code s. ATCP 110.025)**

Home improvement contractors by law, must give the buyer a “Notice of Consumer’s Right to Receive Lien Waivers” before the buyer and seller enter into a home improvement contract. The notice shall inform the buyer, that the buyer may request lien waivers from all contractors, subcontractors, and material suppliers at, or prior to, the time any payment is made on the home improvement contract.

When any payment is made – especially final payment – consumers have the option to get lien waivers from the contractor.

Contractors must provide the lien waivers if you request them.

(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.

### CASE STUDY

Mr. Jones signed a contract with ABC Contractors for the construction of an addition to his home. When the work was done, Jones paid the contracted price and started enjoying his new addition.

A month later, he received a “Notice of Intent to File Claim for Lien” from the lumberyard where ABC Contractors obtained building materials in the mail.

What happened? Although Jones had paid his bill, ABC Contractors did not pay the lumberyard. The law allows a subcontractor or supplier of materials to place a lien on the property where the work was done, if the contractor does not pay his bills. This can happen even if the homeowner has paid the contract in full.

To protect against this, insist on being given completed “waiver of lien” forms from the contractor and each subcontractor anytime payment is made. These forms should be signed by the contractor and every other person supplying materials or labor covered by the payment.

(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.

### **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.

### **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.

### **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.

### **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:

## CODE EXPLANATION

### Contracts

Do not rely on oral agreements. For the protection of both homeowner and the contractor, it is wise to request a written contract in all situations. The contract serves as a statement that the contractor knows exactly what services you want performed. Do not sign anything until you understand it all. Consult an attorney if you have questions.

#### **Make sure the contract contains (Wis. Adm. Code s. ATCP 110.05):**

- The name and address of the salesperson, as well as the company name and address (not just a post office box number).
- A full description of the job. Again, do not rely on oral agreements.
- A detailed list of materials to be used including the name, brand, size, models, performance capacity of the items, and the quantity of materials to be used.
- The total price, plus finance charges.
- A starting and completion date, to prevent the job from going on indefinitely.
- A statement explaining any warranties on materials, labor or services. Be sure you understand any exceptions or limitations.

If any payment is required before the work is done, a written contract is required by the law.

(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.

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.

### **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 110.027 (1), or fails to obtain the buyer's agreement to a new performance 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.