

From: Patel, Swati
To: Soura, Christian <ChristianSoura@gov.sc.gov>
Date: 6/11/2013 3:23:24 PM
Subject: FW: Need Legal Review - H.3409

Thoughts from the legal office are below. I'm reading it and will discuss with you too.

From: Schimsa, Rebecca
Sent: Tuesday, June 11, 2013 11:26 AM
To: Patel, Swati
Cc: Johnson, Andrew
Subject: RE: Need Legal Review - H.3409

To answer Christian's question: The homeowner's ability to cancel a contract is limited in two ways: (1) the homeowner is limited to a five-day time period provide notice to the roofing company; and (2) the homeowner cannot cancel a contract for completed emergency repairs. The bill expressly requires a homeowner to pay a roofing company for services rendered for emergency repairs "to prevent damages to the premises".

My thoughts: This bill provides equitable protections by protecting homeowners, waiting on insurance, to contract for emergency repairs while preserving the roofing company's right to collect payment for services rendered. The public policy implications of this bill will discourage a roofing company from entering into a contract, with a homeowner seeking a claim, for anything but emergency repairs until the homeowner's claim has been approved, which seems reasonable and fair. Homeowners nor roofing companies should be disadvantaged from denied claims, and this bill provides equitable protections to both parties.

Review of H. 3409

Generally, the Bill provides that if a roofer is going to be paid out of the homeowner's home insurance policy, the homeowner can get out of the contract for goods/services where (a) the insurance company notifies the roofer in writing that the insurance doesn't cover any part of a claim/the contract and (b) the homeowner cancels the contract within five business days of the homeowner/insured receiving that same written non-coverage notice from the insurance company. The contract must be for a "roofing system" as defined in (1)(A)(4).

Regarding the roofer's protection, subsection (1)(C) makes the homeowner pay for emergency services rendered, provided the insured acknowledges, in writing, the necessity of those services "to prevent damage to the premises.

I agree with Becca regarding the fairness and policy rational for the section; it is reasonable for the contracting parties to hold off on performance until payment is guaranteed. Yet, I think that, where services truly are "emergency" in nature, a homeowner may get out of that payment by not agreeing in writing to the performance of the work. Moreover, where a roofer knows of a need for an "emergency" service, I would assume the lack of that roofer performing the services could result in the homeowner suing the roofer for damages sustained (but I don't know much about this law nor about roofers' liability or code).

-Andrwe

From: Soura, Christian
Sent: Tuesday, June 11, 2013 10:17 AM
To: Patel, Swati; Schimsa, Rebecca
Cc: Baker, Josh
Subject: Need Legal Review - H.3409

Dear Lawyers,

H. 3409 is in the stack of bills that we'll get today. The only person who voted against it in either body was Kenny Bingham. The quickie version of it is that if a homeowner enters into a contract with a roofing company based upon his expectation that the job will be paid at least partially through the proceeds of a homeowner's insurance claim, then the homeowner can cancel the contract within 5 days of learning that his claim has been reduced or wholly denied.

Here's my question – I don't see anything in the bill that limits the homeowner's ability to cancel. So does this bill give the homeowner the ability to cancel the contract even if the actual work has already begun? And if so, how would the homeowner and the roofer resolve that? Does this create the risk of a bunch of new civil claims, etc.?

We can discuss when you get a minute...just wanted to email you before I forgot. Thanks.

CLS

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