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Missouri Roofing and Siding Contractors Must Deal with Another Trap Door

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This trap door is a new statute that impacts any contractor who performs roofing or exterior construction work for which they are going to be paid out of insurance proceeds. Originally, the law applied only to residential real estate, but effective August 28, 2014, the law was expanded to include all "commercial real estate." However, the word "commercial" is not defined. This raises many questions. For example, is a church commercial property?

Basically, the law applies to contractors who enter into a contract with an owner or possessor of residential or commercial property to repair or replace roof systems or perform any other exterior repair, replacement, construction, or reconstruction work upon such real estate. A "roof system" includes roof coverings, roof sheathing, roof weatherproofing, and insulation.

First, the new law now prohibits a contractor from advertising or promising to pay or rebate all or any part of an insurance deductible as an inducement to the sale of goods or services.

The prohibition against rebating deductibles includes offering any discount against the fees or any kind of compensation, gift, prize, bonus, coupon, credit referral fee or other item of monetary value.

The law is intended to limit and restrict written contracts between a contractor and an owner or possessor of real estate to provide goods or services to be paid under property and casualty insurance. If the contract is written in such a way that the contractor is to be paid from insurance proceeds then the contractor must give to the owner a particular notice which allows the owner to void the contract in the event that he or she does not have insurance that covers the work.

The contractor who agrees in writing to be paid out of insurance proceeds must give a notice to the party with whom the contractor enters into a contract that the owner has the right to cancel the contract. This notice must be given to the insured in bold-face type of a minimum size of 10 point and state the following:

> **"You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. See attached Notice of Cancellation form for any explanation of this right."**

In addition, the contractor must furnish to the insurer a fully completed form in duplicate, captioned "NOTICE OF CANCELLATION" which shall be attached to the contract but easily

detachable, and which shall contain in bold-face type of a minimum size of 10 point, the following statement:

NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time prior to midnight on the fifth business day after you have received such notice from your insurer. If you cancel, any payments made by you under the contract, except for certain emergency work already performed by the contractor, will be returned to you within ten business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION

_____

(date)

_____

(insured's signature).

Once the insured gives notice of cancellation then the contractor must within ten days return to the owner or possessor of the real estate all payments, whether partial or whole, or deposits made and notes or evidence of the indebtedness.

The only exception is if the contractor performs emergency services, acknowledged as such by the insured in writing, necessary to prevent damages to the premises. In the case of performance of emergency services, the contractor is entitled to receive reasonable value of those services.

If a contractor agrees to perform repair work for a roof or exterior construction and agrees to be paid out of insurance proceeds, the only safe way to enter into such a contract is to not perform the services until such time as the insurance company has confirmed there is coverage. If you perform the work before the insurance company acknowledges there is coverage, you do so at the risk of having to refund all sums paid.

Any contractor who violates any provision of the statute is liable to the insured under the Missouri merchandising practices act. This act is a very consumer-friendly statute that will allow the insured to recover actual damages, punitive damages, consequential damages and attorneys' fees.

The only safe way to enter into a contract for roofing or siding work where payment is made from insurance proceeds is to wait until there is confirmation from the insurance company that there is indeed insurance coverage before performing.