

## Office of Policy and Legal Analysis

Date: February 10, 2021

To: Joint Standing Committee on Innovation, Development, Economic Advancement and Business

From: Rachel Olson, Legislative Analyst

Re: LD 110 *An Act To Clarify Prepayment Requirements in Home Construction Contracts*  
(McCreight)

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### Bill Summary

This bill clarifies the requirement that a contractor obtain informed consent from a homeowner or lessee in the event the initial down payment for a construction project is more than 1/3 of the total contract price. The bill requires a contractor to set forth a waiver from the requirement that an initial down payment not exceed 1/3 of the total contract price in writing, on a separate page included in the contract, signed by both the homeowner or lessee and the contractor. The bill also requires that the waiver document clearly state the initial down payment amount due.

### Summary of Testimony ([Link to Testimony](#))

#### Proponents

- When contracted work not completed, or not completed satisfactorily, the harm to the consumer is great, especially if the entire contract price has been pre-paid.
- Truly transparent contract payments will provide greater consumer protections.
- Consumers need to be made fully aware of the prepayment provision in current law and, if choosing to waive it, aware that they are doing so – this would be done through a separate document specifically related to this.
- Still allows consumers to pay more than 1/3<sup>rd</sup> of the costs up front, but would be made aware that it is their choice to do so.
- Need to make it clear to consumers that is an option to waive the 1/3 prepayment limit, not a requirement.
- By signing a contract with this waiver buried in the fine print, consumer's have little recourse if things go wrong.

#### Opponents

- None

#### Neither For Nor Against

- None

#### Potential Issues or Technical Problems:

- §1489(2) may need to be reworded to make clear that the homeowner or lessee and the contractor both sign the same page waiving the prepayment maximum provision, and that the page is a separate document from the remainder of the contract.

**Information Requests:**

1. *How many cases have been reported to the Attorney General's Office in the past couple of years related to construction prepayments?*

The AG's office provided a spreadsheet of [contractor complaints from 2018-2020](#). The list includes just over 2000 complaints from various businesses.

2. *How would this bill be implemented?*

According to the sponsor, this would require a separate document that must be signed by both the homeowner or lessee and the contractor in order to waive the 1/3 maximum prepayment provision outlined in 10 MRSA §1487 (5). This document would inform the homeowner or lessee of the right to pay no more than 1/3 of the contract price in an initial down payment and would clearly state the amount due as the initial down payment.

3. *Who would be responsible for policing or enforcing this provision?*

As stated in 10 MRSA §1490, any violation of this chapter is a violation of the Unfair Trade Practices Act, Title 5, chapter 10. A violation is a civil violation with penalties, payable to the State, of up to \$1,000. Consumers can also file a lawsuit. Information for both consumers and contractors can be found on the Attorney General's website under Consumer Information. The Consumer Protection Division of the Attorney General's Office deals with questions and complaints related to home construction contracts and has a free, voluntary consumer mediation service.

4. *Who would be responsible for generating the contract/additional waiver form?*

The Attorney General's Office puts out a Consumer Law Guide. [Chapter 17: Home Construction & Repair](#), §7, offers a model home construction contract that is free and available for use.

5. *Has the amount that requires a written and signed contract changed in the past?*

Yes, [Public Law 2003, Chapter 85](#) raised the amount from \$1,400 to \$3,000.

**Additional Information:**

The following news articles were provided by Rep. McCreight as follow up to questions asked during the public hearing:

- [Dozens of homeowners believed defrauded by contractor \(News Center Maine\)](#)
- [Former Castle Builders owners say they can't afford to pay mediator cost share \(Village Soup\)](#)

**Fiscal Impact:**

Not Yet Determined by the Fiscal Office

**Included:**

[10 MRSA, Chapter 219-A: Home Construction Contracts](#) or below.

[Consumer Law Guide, Chapter 17: Home Construction & Repair \(last revised 05/10/19\)](#)

[Public Law 2003, Chapter 85](#)

[Contractor complaints from 2018-2020](#)

## CHAPTER 219-A

### HOME CONSTRUCTION CONTRACTS

#### §1486. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Change orders.** "Change orders" means a written amendment to the home construction contract which becomes part of and is in conformance with the existing contract.
2. **Down payment.** "Down payment" means all payments to a home construction contractor prior to or contemporaneous with the execution of the home construction contract.
3. **Materials.** "Materials" means all supplies which are used to construct, alter or repair a residence.
4. **Home construction contract.** "Home construction contract" means a contract to build, remodel or repair a residence, including not only structural work but also electrical, plumbing and heating work; carpeting; window replacements; and other nonstructural work.
5. **Residence.** "Residence" means a dwelling with 3 or fewer living units and garages, if any. Buildings used for commercial or business purposes are not subject to this chapter.

#### §1487. Home construction contracts

Any home construction contract for more than \$3,000 in materials or labor must be in writing and must be signed by both the home construction contractor and the homeowner or lessee. Both the contractor and the homeowner or lessee must receive a copy of the executed contract prior to any work performance. This basic contract must contain the entire agreement between the homeowner or lessee and the home construction contractor and must contain at least the following parts:

1. **Names of parties.** The name, address and phone number of both the home construction contractor and the homeowner or lessee;
2. **Location.** The location of the property upon which the construction work is to be done;
3. **Work dates.** Both the estimated date of commencement of work and the estimated date when the work will be substantially completed. The estimated date of commencement of work and the completion date may be changed if work can not begin or end due to circumstances beyond the control of the contractor, including, but not limited to, the lack of readiness of the job site or the unavailability of building materials;
4. **Contract price.** The total contract price, including all costs to be incurred in the proper performance of the work, or, if the work is priced according to a "cost-plus" formula, the agreed-upon price and an estimate of the cost of labor and materials;
5. **Payment.** The method of payment, with the initial down payment being limited to no more than 1/3 of the total contract price;
6. **Description of the work.** A general description of the work and materials to be used;
7. **Warranty.** A warranty statement which reads:  
"In addition to any additional warranties agreed to by the parties, the contractor warrants that the work will be free from faulty materials; constructed according to the standards of the building code applicable for this location; constructed in a skillful manner and fit for habitation or appropriate use. The warranty rights and remedies set forth in the Maine Uniform Commercial Code apply to this contract";
8. **Resolution of disputes.** A statement allowing the parties the option to adopt one of 3 methods of resolving contract disputes in addition to the option of a small claims action. At a minimum, this statement must provide the following information:  
"If a dispute arises concerning the provisions of this contract or the performance by the parties that may not be resolved through a small claims action, then the parties agree to settle this dispute by jointly paying for one of the following (check only one):  
(1) Binding arbitration under the Maine Uniform Arbitration Act, in which the parties agree to accept as final the arbitrator's decision (        );  
(2) Nonbinding arbitration, with the parties free to reject the arbitrator's decision and to seek a solution through other means, including a lawsuit (        ); or

(3) Mediation, in which the parties negotiate through a neutral mediator in an effort to resolve their differences in advance of filing a lawsuit ( )";

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

"Any alteration or deviation from the above contractual specifications that results in a revision of the contract price will be executed only upon the parties entering into a written change order";

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

**11. Residential insulation.** If the construction includes installation of insulation in an existing residence, any disclosures required by chapter 219, Insulation Contractors;

**12. Energy standards.** A statement by the contractor that chapter 214 establishes minimum energy efficiency building standards for new residential construction, and whether the new building or an addition to an existing building will meet or exceed those standards;

**13. Consumer protection information.** As an addendum to the contract, a copy of the Attorney General's consumer protection information on home construction and repair, which includes information on contractors successfully sued by the State, as provided on the Attorney General's publicly accessible website; and

**14. Attorney General's publicly accessible website.** A clear and conspicuous notice that states that consumers are strongly advised to visit the Attorney General's publicly accessible website to gather current information on how to enforce their rights when constructing or repairing their homes, as well as the Attorney General's publicly accessible website address and telephone number.

#### **§1488. Change orders**

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

#### **§1489. Exemption**

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

#### **§1490. Penalties**

**1. Violation.** Any violation of this chapter shall constitute prima facie evidence of a violation of the Unfair Trade Practices Act, Title 5, chapter 10.

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