

Use ADR to Avoid or Reduce Workmanship Liability

Anyone who has been in business for any appreciable amount of time will tell you that you cannot please everyone. The construction world is definitely not immune to disgruntled customers. One of the last things any contractor wants to receive is a complaint regarding a workmanship issue or a building code violation from the Michigan Department of Licensing & Regulatory Affairs, Bureau of Commercial Services Enforcement Division. Should this happen to you then you should be thinking about how to avoid or limit any liability.

Fortunately, in regards to workmanship complaints you can use your contract with a customer to avoid or reduce any liability. Pursuant to MCL 339.2411(4)(d), a contractor may contractually provide for an alternative dispute resolution procedure to resolve complaints filed with the State of Michigan. The procedure shall be conducted by a neutral third-party for determining the rights and responsibilities of the parties and shall be initiated by the contractor, who shall provide notice of the initiation of the procedure to the customer by certified mail not less than thirty (30) days before the commencement of that procedure. The procedure shall be conducted at a location mutually agreed to by the parties.

The State of Michigan cannot initiate a proceeding against a contractor under that subsection if the contractor has contractually provided for an alternative dispute resolution procedure that has not been utilized and completed, *unless* it is determined that: (1) the contractor has not complied with a decision or order issued as a result of that alternative dispute resolution procedure; or (2) that alternative dispute resolution procedure was not fully completed within 90 days after the filing of the complaint with the State of Michigan; or (3) an alternative dispute resolution procedure meeting the requirements of 2411(d) is not available to the customer¹.

This is one of those situations that need to be addressed immediately. First, make sure your contract includes the proper language to require an alternative dispute resolution procedure to resolve any workmanship disputes. Secondly, if you receive a complaint, then do not delay in contacting an attorney. Lastly, the use of these alternative dispute resolution procedures should help prevent or limit any negative, licensing consequences. The protections provided under MCL 339.2411(4)(d) are time bound propositions that should not be squandered.

Zacharia S. Bonham is an attorney at JKY Legal Group, P.C., focusing primarily on Commercial Litigation, Construction Law, Employment Law, and Business Law. He can be contacted for any questions related to this article or other areas of law at zac@jkylegal.com or (517) 381-2663.

¹ MCL 339.2411(4)(e)

ATTORNEYS AT LAW

Christopher M. Kroll | Adil Daudi | Zacharia S. Bonham | Matthew S. Nowak
4121 Okemos Rd. Suite 10 | Okemos, Michigan 48864
Tel: (517) 381-2663 | Fax: (517) 381-9775
www.jkylegal.com