



Attention
CRA Members & Colorado
Roofing Contractors

Stay informed on SB38!

FACTSHEET: SB38 -The Consumer Protection/Roofing Bill

'Concerning measures to protect consumers who engage a roofing contractor to perform roofing services on residential property.'

This Legislation:

****UPDATE**** - Will be signed into law by Governor Hickenlooper and **BECOME EFFECTIVE ON WEDNESDAY 6-6-12.**

There is no 'grace period' for compliance. The recommendation is to ***comply with the spirit and intent of the law immediately*** and get contracts printed or altered with newly required contract language as soon as is practical and possible.

Applies to residential properties for roofing work over \$1000.

Requires a written & signed contract between the property owner and the roofing contractor which must include at least the following:

- *scope of work & materials to be provided*
- *cost for same based on damages known at the time the contract is entered into*
- *approximate dates of service*
- *roofing contractor's contact information*
- *identification of contractor's surety & liability coverage insurer & their contact information*
- *contractor's policy regarding cancellation of contract & refund of any deposit including a rescission clause allowing the property owner to rescind the contract for roofing services and obtain a full refund of any deposit within 72 hours after entering the contract.*
- *a statement that if the property owner plans to pay for the roofing services through an insurance claim, the contractor cannot pay, waive or rebate the homeowner's insurance deductible in part or in whole.*
- *a statement that the contractor shall hold in trust any payment from the property owner until the contractor has delivered roofing materials to the jobsite or has performed a majority of the roofing work on the property.*
- *a statement that the property owner may rescind a contract for services, the payment for which will be made from the proceeds of a property insurance claim, within 72 hours after receiving notice from their insurer that the claim is denied in whole or in part.*

Prohibits a roofing contractor from paying, waiving or rebating an insurance deductible for a property owner. (Nor may a contractor *advertise or promise to waive, pay or rebate same.*)

Requires a contractor to return any payment or deposit made by the property owner in conjunction with the contract for roofing work within 10 days after rescission of a contract.

- A contractor may retain an amount of any payment made by the property owner to compensate for actual work performed however, as long as the work is completed in a workmanlike manner consistent with standard roofing practices.

States that if a roofing contractor promises to pay, waive or rebate a homeowner's deductible, the insurance carrier for the property owner is not obligated to consider the estimate of costs for the roofing work prepared by that contractor.

- **This does not mean that an insurer can deny a claim simply because a contractor offered to pay a deductible.** It means they do not have to consider the estimate from *that* contractor. Insurance companies have strict requirements about unreasonably delaying or denying a claim. (CRS 10-3-1115 & 10-3-1116) Enforced by the Division of Insurance, any such tactic to delay or deny, subjects the carrier to double damages and attorney's fees.

Prohibits a roofing contractor from acting as or claiming to be a public adjuster, adjusting claims for losses or damages *unless legally licensed to do so.*

- **This does not mean that a contractor is unable to discuss the scope of work with an insurer!** Specifically *"Nothing in this subsection precludes a roofing contractor from discussing, on behalf of the property owner, the scope of repairs with a property and casualty insurer when the roofing contractor has a valid contract with the property owner of the residential property on which the roofing contractor has contracted to perform roofing work."*

Please feel free to contact Amy Hawkins, CRA Government Relations Chair with any questions at 303.443.4646.



SB38
The Consumer Protection/Roofing Bill
Effective 6/6/12

Additional Information

SB 38, applying to residential properties for roofing work over \$1000, **will be signed into law by Governor Hickenlooper and become effective on Wednesday 6/6.**

There is no 'grace period' for compliance. The recommendation is to *comply with the spirit and intent of the law immediately* and get contracts printed or altered with newly required contract language as soon as is practical and possible.

Therefore, effective 6/6/12:

Allow for the stated rescission periods; do not waive, pay or rebate any deductibles; if your company requires/accepts deposits from property owners, set up a trust account to hold funds as required by law.

Immediately and always include in the *required written & signed contract* between the property owner and roofing contractor the following information:

- scope of roofing services & materials to be provided
- cost for same based on damages known at the time the contract is entered into
- approximate dates of service
- roofing contractor's contact information

The statute also requires that the written contract must include provisions

(1) stating that the roofing contractor shall hold in trust any payment from the property owner until the roofing contractor has delivered materials or has performed a majority of the work; (2) identifying the contractor's surety and liability coverage insurer if applicable; (3) stating the contractor's cancellation and refund policy, including a 72 hour right of rescission; (4) stating that the contract may be rescinded within 72 hours after the property owner receives written notice that its insurance claim has been denied; and (5) stating that that contractor cannot pay or waive an insurance deductible.

IN AN EFFORT TO FACILITATE COMPLIANCE WITH THE NEW STATUTE, THE CRA CONSULTED WITH ATTORNEY STEPHEN PHILLIPS, OF HENDRICK, PHILLIPS, SALZMAN & FLATT WHO HAS OFFERED SAMPLE LANGUAGE* WHICH CLOSELY MONITORS THE LANGUAGE IN THE STATUTE FOR THESE PROVISIONS.

**OBVIOUSLY, CRA MEMBERS/ROOFING CONTRACTORS SHOULD FEEL FREE TO USE WHATEVER LANGUAGE THEY DEEM SUITABLE AND CONSIDER SEEKING ADVICE FROM YOUR CURRENT LEGAL ADVISOR.*

Sample Language:

1. **[Name of CRA Member] shall hold in trust any payment received from you until [Name of CRA Member] has delivered roofing materials at the site or has performed a majority of the roofing work on your property.**

**The above provision is to be on the face of the contract in bold face type!*

2. [Name of CRA Member] carries workers' compensation, automobile and commercial general liability (bodily injury and property damage) insurance. A Certificate of Insurance identifying our insurance carrier and the types and amounts of coverage and our insurance contact information is attached or will be provided to Customer and is incorporated herein by reference and should be considered as part of this contract.

OR

[Name of CRA Member's] liability coverage insurer is [Name of CRA Member's liability insurance carrier (s)] and can be contacted through [Name and contact information for CRA Member's insurance agent(s) or address for CRA Member's insurance carrier(s).]

**'Because the statute refers only to "liability coverage insurer," it is unknown which liability insurance carriers are to be disclosed. I would think that the intent of the statute is to identify the roofing contractor's general liability policy, but to be safe, a roofing contractor might provide the name and contact for general liability, auto liability and workers' compensation/employer liability policies. If the same agent handles all these policies, only one contact would need to be included in the contract'.*

3. You have the right to rescind this contract and obtain a full refund of any deposit within 72 hours after entering the contract. If you plan to use the proceeds of a property and casualty insurance policy to pay for the roofing work, you may rescind this contract within 72 hours after you receive written notice from the property and casualty insurer that your claim has been denied in whole or



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in part. However, [Name of CRA Member] is entitled to retain payments or deposits to compensate [Name of CRA Member] for roofing work actually performed in a workmanlike manner consistent with standard roofing industry practices. [Name of CRA Member] cannot pay, waive, rebate, or promise to pay, waive or rebate all or part of any insurance deductible applicable to the insurance claim for payment for roofing work on your property.

4. Property Owner is _____ / is not _____ intending to make payment from the proceeds of a property and casualty insurance policy.

Other Items of advisement:

CRA Members should consider not beginning any work and/or ordering any materials until after the 72 hour right of rescission period(s) have expired.

Include in contract language a statement regarding entitlement to compensation for custom or non-returnable materials that may have been ordered prior to any contract rescission.

Penalties:

1. Existing Colorado statute related to property insurance fraud (CRS 18.13.119.5) states that paying, waiving or rebating a property owner's insurance deductible is a Class 2 Misdemeanor. This bill goes farther to say that if it is proven a deductible was paid/waived/rebated, the insurance company does not have to consider the estimate from any contractor violating the provision, and the property owner or the insurer may sue the contractor for any damages related to same. Damages may include just the deductible amount, or the cost difference between appropriate roofing materials and any lesser quality materials that a contractor may have used in order to offset the cost of the deductible, etc. Recoverable damages would be case specific.
2. A contract lacking SB38's specific written provisions may be found to be unenforceable by either party.

**Feel free to contact Amy Hawkins, CRA Government Relations Chair
with any questions at 303.443.4646.**