



MEMO TO FILE

Ice Dam Repair Contracts

They are a slippery slope – tips for how not to lose your footing.

Chances are you have at least one ice dam repair project that is under contract for the spring or summer. Good contractors have explained to their customers that (1) water infiltration from ice dams results from heat loss due to inadequate insulation and air-sealing – the roofing may be totally fine, and (2) the project is equal parts repair and prevention, so that it doesn't happen again (hopefully). Repair is the easy part (i.e. remove the old, wet insulation and replace with a better R-value product, fix or replace stained or moldy drywall or blueboard, prime, paint, etc.). Prevention gets complicated for two reasons: first, as a matter of building science; second, as a matter of law.

As a matter of building science, you can only stop so much heat loss, especially when dealing with old 2x6 or 2x8 joist or rafter bays. Even if you meticulously apply as much closed-cell foam in the joist and/or rafter bays of the affected area as possible, some level of ice damming will inevitably occur, people will crank their heat in the winter, and water is still water – often impossible to predict and control with a high degree of certainty ... insidious and stubborn.

So, what do we say when lining up an ice dam repair project? “Dear Customer, I am going to do this meticulous and expensive work to repair this mess and stop it from happening again, but it actually might happen again next winter!” In the moment, reasonable people will understand that you can't guarantee that this will not happen again. But what about the following winter, when there's a blizzard and water is dripping down the kitchen island pendant lights again? The frustrated customer will probably want answers from you, and some level of warranty service. They forget the “I can't make any guarantees” conversation ever happened. From a legal perspective, the prevention part of these projects is tricky because homeowners expect that after they pay you a lot of money (and maybe go through an insurance claim process), this problem is not going to happen again.

Contractually, contractors need to proceed with caution on two fronts. First, under M.G.L. c. 142A, §17(4), contractors must be careful what they promise in the lead-up to getting the job. Second, if you are to cover yourself with a “no guarantees” disclaimer in your contract, it must be clear and conspicuous under M.G.L. c. 143, §90.

(1) G.L. 142A, §17(4).

This is section of the Massachusetts Home Improvement Contractor (HIC) law prohibits making promises you cannot keep, no matter how well-intentioned, in your efforts to close the deal. Be careful what you say if it could be interpreted by a homeowner as a promise, guarantee or warranty

of some kind. We know that we cannot promise that our ice dam repair work will prevent any future ice dam melt water infiltration. The HIC law requires contractors to be upfront about that with customers.

(2) M.G.L. c. 143, §90.

This little-known Massachusetts home improvement law requires language for “exculpatory” matters, like liability waivers or “no guarantee” clauses, for example, to be in 12-point, bold face type. Keep in mind that no matter what they say or sign, customers cannot waive certain laws, like building code compliance (which generally is not at play in ice dam repair work).

Below is an example of a “no guarantees” clause that could be included in a scope of work or, perhaps more appropriately, in the warranty provision of your contract:

Owner understands and agrees that Contractor cannot guarantee or warrant that the work performed will prevent (a) ice dams on the roof, in gutters or along fascia and/or (b) interior heat loss through walls and ceilings causing future snow/ice melt in, on or around roof/soffit/fascia areas and subsequent water infiltration into the house.

This “no guarantees” clause is not a waiver of liability in the traditional sense, but it is close, especially in a state that is as consumer protection oriented as Massachusetts. For maximum enforceability, you want that “no guarantees” clause integrated into the signed contract.

If you have ice dam repair projects under contract, but you don’t have any kind of “no guarantees” clause, fear not. If the work has not yet started, then there is still time to have that conversation with your customer and put it in writing. Better to have attempted to inform the customer, than to have not.

What if you encounter widespread mold? Read our Memo to File on [Unforeseen Conditions: MOLD](#).

After all this, homeowners may ask “Is anything else we can do to keep this from happening again?” Answer? Consider President Jimmy Carter’s proposed thermostat policy during the 1977 energy crisis: 65 degrees in the daytime and high 50’s at night. Modern households crank their heat, utility bills be damned. But keeping a home’s heat in the low-mid 60’s in the winter, and wearing a sweater or sweatshirt, can do wonders to stop an old, drafty home’s heat loss problem – because there is little heat to lose in the first place.

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