

RESIDENTIAL

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REPORT

news and views from SMACNA's National Residential Council

Construction Defect Litigation – Coming Soon To a Neighborhood Near You

*By Robert Tuck, chairman,
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Those of us engaged in new residential construction endure numerous challenges in the course of a project. We deal with the architects, plumbers, electricians, framers, roofers, inspectors and of course the general contractor. We fight for access, we deal with accelerated schedules and in the end we often wait for payment. Finally though, the project is done and we move on, banking our meager, but well-earned profits and that is that, or so we think.

Increasingly however, we are finding that these completed jobs are just sleeping and that eight or ten years later they will once again be swarming with activity. Once again you will be dealing with architects, plumbers, electricians, framers, roofers, inspectors, the general contractor and a new player — the attorney. The next phase of the project is called construction defect litigation. It may well take up more of your time than the actual construction and instead of being paid — you pay. Most frustrating of all, it doesn't make any difference if your work was flawless and had no connection whatsoever to any alleged damage from alleged or actual defects in construction. You were on the job so you will be named in a complaint or cross-complaint if a construction defect case arises.

Residential construction defect litigation, referred to as RCDL, is an industry that first started in California in the late 1960s and early 1970s. Some of the first cases and some of today's cases were born from actual shoddy construction. However, for every bonafide case there is a bogus one. In almost every case, faultless subcontractors become involved in the settlement, via their insur-

See **Construction Defect Litigation** on page 3

Moving from Construction To Service – Keeping a Customer for Life

Thirteen years ago Roger Zahn came to work at Welsch Heating and Cooling, in St. Louis, Mo., and saw an opportunity to expand a thriving company in a new direction.

“What strikes me about residential contractors that only perform work in new construction is that they are letting customers walk away without a fight,” commented Mr. Zahn, general manager at Welsch.

In 1988, Mr. Zahn began expanding Welsch into the service add-on/replacement market. “We started out with six service technicians and one add-on/replacement crew,” explained Mr. Zahn. “Now we have a team of 16 technicians who handle over 100 service calls a day and six add-on/replacement crews.”

See **Keeping a Customer for Life** on page 2

B-Card Program Gives Competitive Edge in Peoria

It's no secret that the residential market is highly competitive. Hiring and training a knowledgeable workforce is essential to being successful.

The residential program offered at the Central Illinois Chapter of SMACNA and the SMWIA Local 1 JATC in Peoria, Ill., is providing SMACNA Contractors with highly-skilled technicians. The program's “intent to hire” clause, which was adopted six years ago, enables the contractors the opportunity to pre-screen

See **B-Card Program** on page 2



Keeping a Customer for Life from page 1

With 35 percent of Welsch's total yearly sales attributed to the service add-on/replacement department, that investment in manpower and equipment has paid off in very significant profits each year.

"Offering excellent service is essential as well as following up with each homeowner who buys the home in which you did the initial installations," Mr. Zahn said. "Expanding into this market can be done with minimum advertising and soliciting. Our service department didn't have to go out and find customers — we had them right from the beginning."

Capturing customers after the home sale is the essential ingredient in making a successful transition to service add-on/replacement work. Welsch now follows each home from construction to homeowner and becomes the new owner's contact for servicing the HVAC system. After the home sale is complete, Welsch sends each new homeowner a letter explaining the system and work they performed on the home. The firm also offers to come out to the property to perform one final check when the homeowner initiates the system. In addition, they place their company name and phone number on the thermostat(s) and on the return air drop(s) in the basement.

"With any mechanical system it's just a matter of time before something does go wrong," commented Mr. Zahn. "We make contact with each homeowner and make sure we're the only one they call for help."

"Expanding into this market required a commitment to follow-up and service," Mr. Zahn said. "We believe in service. Customers will pay for good service and they appreciate good service. Your service department can make you a lot of money, if run properly. If you deliver great service to every customer they will find the value and become a customer for life." 📌

See B-Card Program from page 1



During a class session, program ▶
instructor Stuart Nerby (left)
offers assistance to apprentice
Andrew Smith (right).

◀ Apprentice Ryan Otto (left)
and program instructor Bill Goad
(right) review the evening's
notes and drawings.



their future workforce. In addition, B-card apprentices graduate from the program in just 2 ½ years. By employing B-card apprentices contractors are able to contain crew costs to remain competitive.

"In the Peoria area, SMACNA Contractors hold close to 65 percent of the residential market share," commented Jerry Pyatt, Local 1 business manager. "They have consistently held the market with quality apprentices entering this program."

Attending classes one night per week from September through April, apprentices spend their days working for their sponsoring contractors and begin putting their schooling to work. The first six-week module in September features several classes on heating that students can use immediately on the job. During the next six-week session, just in time for the spring air-conditioning service rush, the students complete several classes in basic air-conditioning inspections.

"The B-card program was started almost 14 years ago," explained Carl Grubb, JATC coordinator. "The apprentices appreciate the value of the "earn as you learn" philosophy and put their skills to work right away."

"As one of the larger residential shops in Peoria, the B-card program allows us to maintain a workforce with a variety of pay scales and stay competitive in a market with more than 120 HVAC contractors hiring both union and non-union workforces," Linda Baker, of Fritch Heating and Cooling, said.

The Peoria residential training program instructs the apprentices in a wide range of skills. Apprentices begin their first year with an introduction to the sheet metal industry that also includes a segment on customer relations in residences. The students continue through the first year completing course work in safety, hand tools, power tools, materials, layout, mathematics and building plans. Continuing to expand on many of the topics covered during the first year, the second year curriculum covers more complicated HVAC installations and equipment as well as some elements of architectural sheet metal and an introduction to solar heating.

"The contractors are very active in selecting the program's apprentices and take advantage of the opportunity to pre-select their workforce," added Carl Grubb. "The apprentices in the program are committed to the industry and enjoy the work."

The apprentices, customers, contractors and industry all benefit from this win-win residential service training program. 📌

ance carriers or out of their own pocket, or both. If this sounds unfair, you're right, it is unfair, but it is a disease that has leapt the borders of California and is spreading as quickly as attorneys can carry it through the western states and over the Rockies. There is no known cure, but there are ways to protect yourself.

Almost without exception, residential HVAC contractors get pulled into these cases as a result of performing some architectural sheet metal work, or as a result of being suspected of performing such work.

Most RCDL cases start as a result of actual leaks in roofs, walls, decks, doors or windows. Some cases get started as a result of a clever attorney convincing a homeowners' association that they might have leaks later on. Regardless, if you did any exterior sheet metal work, they want you. Short of not doing that work, your best protection is to do it right and to document your work with photos and written correspondence concerning flashing details, including any and all suggestions you might make as to improving flashing especially those buried in deck or hot-mop roof assemblies. If you see a bad detail in the plans, discuss it, document it, suggest your improvement and price it. Any documented rejections of this type of proposed improvement could be your ticket out of a lawsuit if that flashing is questioned later on. Also document with photos and correspondence any problems with the work of related trades that touch your work, i.e., roofing, siding, stucco, deck coating, windows and doors.

Unfortunately, even if your work is impeccable and you have an airtight defense against a RCDL claim, your insurance carrier will most likely settle for some money. You will pay a deductible, your rates will rise and one-third of what was extorted will end up in the pockets of the plaintiff's attorney. You do have some rights to force your carrier not to pay out if you're willing to fight, using your own money, at your cost. If you feel that your carrier's attorney is not ably representing you because of a conflict in their representation,

you may also have the right to retain your own counsel, paid by your carrier, called "cumis counsel." Otherwise, the only protection you have is time.

There is a ten-year statute of limitations on filing a suit for latent defects and damage, so you can probably rest easy on any past projects that are 12 years or older. A case may be filed just before the ten-year expiration period and then it may take a year or two to name your company in a cross-complaint. The final line of protection is of course your insurance. If you are named in a RCDL complaint, be an active participant and educate your carrier's attorney so that he has the tools to defend you.

For the past five years, most primary liability insurance carriers have included a "Montrose Exclusion" in their policies. This clause basically states that the carrier will only cover you for the period of your policy with no coverage for claims arising out of work you did before that period. Another recent development is a new exclusion found in most umbrellas or "excess coverage" policies that denies coverage of losses due to insolvency of your primary carrier. Therefore, if your primary carrier declares bankruptcy and your umbrella carrier has the insolvency exclusion, you may very well have no coverage whatsoever.

Hopefully, you will never experience any of these litigation joys. You may operate in a region where it is a rare occurrence. If so, count your blessings. One of the main reasons my company stopped doing residential project work, after almost 90 years in that sector, was the harassment of construction defect litigation. We are now a happy add-on, replacement and service contractor and when I pass a new construction jobsite, I just honk and wave. 🏠

Editorial Note: The author's experience is based on construction defect litigation in the state of California. Other similar regulations may vary from state to state. Consult with an attorney in your area to determine the regulations in your state.

Residential Sheet Metal Guidelines Available at Year's End

As housing construction becomes more complex, SMACNA Contractors need a reference manual on the proper fabrication and installation of exterior sheet metal in residential buildings. The first edition of SMACNA's "Residential Sheet Metal Guidelines" will be available at year's end and offer a source of expert information on this subject.

Covering topics that include roof drainage systems, decks, chimneys, windows, doors and ledges, the new manual presents details

and explanations based on and designed for low-rise residential buildings, up to three stories, that are used as single-family and multi-family dwellings. This publication will highlight details commonly used in residential sheet metal work throughout the industry and is intended as a guide for contractors, designers, builders and homeowners. In addition to generic detail drawings, design

See **Guidelines** on page 6

Maintaining Morale Takes Time and Work

(Excerpted from Contractor Cents newsletter by Ruth King)

Your employees and you should enjoy coming to work every day. Yes, there are busy and stressful days. However, overall everyone should enjoy what he or she is doing and the work environment should be pleasant. In positive environments, employees are generally upbeat about what they do. When describing their work, they tend to downplay the problems and say “there are days” but don’t dwell on the negatives.

As the owner, everyone follows your lead. If you are generally happy, the environment will be generally happy. Your employees will watch your mood and react to it. If you are having problems outside the office, or there are profitability issues with the business, then everyone will know something is wrong even if you don’t say anything. They may not be bold enough to ask you what’s going on. However, they will know that “something isn’t right” and perhaps let their imaginations run wild. If it is a personal issue, a statement such as “there are some personal issues that I’m having to deal with” to some of the employees and managers is sufficient. Employees won’t think that the business is falling apart and will be accepting of your moods...at least for a while.

If business issues have you in a bad mood, then a statement such as, “The weather isn’t as hot as I’d like. Do you have any ideas on how to increase sales?” This lets the employee know you want input and ideas on how to generate sales. And, that employee might come up with the magic bullet!

If you are in a rotten mood leave the office. You don’t need to drag everyone’s morale down. Visit a customer. Sell something. You’ll feel better.

Keeping up morale takes a lot of work and a lot of time. When you start planning activities, meetings, etc. they need to continue. If you stop, you’ll find that productivity will decrease and revenues may decrease too. Activities don’t have to be done every day. They should be spaced far enough apart so that everyone looks forward to them and enjoys them. Everyone should be able to participate in them too.

For example, you might have a month long sales contest once a year. Take a traditionally slower month and establish a company-wide sales goal for that month. If February is a slow month for you, establish a sales goal for February that is higher than you’ve ever had (but not so high that it is unattainable). Assuming that the sales goal is reached, take everyone out to dinner (spouses included...baby sitters paid for). Make sure that the goal is high enough so that the

See **Maintaining Morale** on page 6

Combating the Extended Warranty Trend

Today’s consumer is warranty savvy. Their car carries a 10-year bumper-to-bumper warranty and their home appliances come complete with limited lifetime warranties. This trend has now spread into the home heating and cooling market.


Today many manufacturers now offer extended parts coverage for not just the compressor and heat exchanger, but on all functional parts. These warranties may extend the coverage between three to 10 years. While these warranties may be appealing to homeowners, they may have an adverse effect on residential contractors.

“The advent of longer and longer limited warranties on furnaces and split system air conditioners could be a dark cloud on the horizon,” commented Bob Tuck, of Atlas Heating and Air Conditioning, in Oakland, Calif. “The eventual result is obvious — our service departments become labor pools for the manufacturers instead of profit centers for our business.”

Contractors are left few options to directly combat this trend. Consumers look for the protection that warranties provide and manufacturers are forced to match the competition. While contractors may express their concerns about extending the warranty coverage to the major manufacturers, discontinuing a dealer agreement may only cut into the contractor’s bottom line.

Extended warranty coverage also affects a contractor’s ability to promote the need for service agreements and regular preventive maintenance checks.

“This trend lulls customers into a false sense of security,” explained MacArthur Coffin, of Frank Millard and Company Inc., in Burlington, Iowa. “Extended warranties erode the proven value of preventive maintenance calls and agreements. Customers do not feel the necessity to properly maintain the system because the warranty seems to protect them. It is our experience that customers who continue to properly maintain their systems face fewer problems in the long run than customers who wait until the system gives them a problem.”

“Educating the customer is the best defense to stop this market development. Consumers should be made aware that the proper maintenance and service of their system is the best way to protect their investment, home and family,” Mr. Coffin said. “A well maintained HVAC system provides superior air quality, improves air circulation and is energy efficient, thus cutting energy costs. These are benefits that a consumer gains only from performing regular maintenance on their system. An extended warranty is no excuse to ignore proper maintenance of their system.” 



Operating in a Round-the-Clock World

Many businesses today operate on a 24-hours a day, seven-days a week schedule. The residential HVAC service industry is no exception. The heating and cooling needs of the customer may require service at any time or day. SMACNA residential contractors handle this challenge in a variety of ways.

Roger Zahn, Welsch Heating and Cooling Co.,
St. Louis, Mo.


“We advertise and operate a 24-hour, seven-day a week service department. The climate and the customers make it a necessity to remain competitive. After our normal business hours, calls are routed to a manned answering service. If a customer calls and needs a technician, the technician is paged and returns the call. Many times the problem is solved over the phone, but if the customer needs the technician to come to their home we charge a time-and-a-half labor rate. We do not charge for the phone consultation. Customers appreciate the value of good service and having help whenever they need it.”

Richard Spinelli, Bryant Air Conditioning Contractors Inc.,
North Babylon, N.Y.

“We primarily focus on servicing the systems we sell and do not advertise as a round-the-clock service contractor. Many of the emergency calls I receive after hours are from service agreement customers and about 95 percent of the calls are not emergencies and can be helped by troubleshooting over the phone. If the customer insists on having a technician come to their home, they are reminded that overtime service is not part of their agreement and will cost them a premium labor cost. Many times the customer asks to be scheduled the next day and is willing to wait. We are sensitive to the needs of working families and will schedule an occasional evening call to accommodate a customer’s schedule.”

Robert Tuck, Atlas Heating and Air Conditioning,
Oakland, Calif.


“In coastal California, where the winter lows rarely dip below 40 degrees and the summer highs seldom rise above 85 degrees with low humidity, 24-hour seven-day a week service is a luxury for the customer, rather than a necessity. Perhaps that is why our customers are usually perfectly happy to wait overnight or over the weekend for a heating or cooling repair. Not operating a round-the-clock service department has not cost us any customers.”

How does your company address the needs of the 24-hours a day, seven-day a week world? Discuss this topic with other SMACNA Contractors at the residential market sector discussion forum at www.smacna.org. 

“Total Comfort System Story” Being Updated

The National Residential Council has appointed a task force to update the “Total Comfort System Story,” an educational brochure developed by Michigan area SMACNA Contractors to educate consumers as to what a total comfort system should include.

The new Web-based document will enable local chapters and contractors to promote the merits of local SMACNA residential contractors. In addition to informing consumers of the benefits of having a total comfort system, the updated promotional piece will include a section to help homeowners identify a quality total comfort system contractor.

This marketing tool will help SMACNA residential contractors reclaim market share that has been lost to non-union contractors. 


National Fuel Gas Code Undergoing Additional Revisions

Residential contractors should take note of an errata to the 1999 edition of the National Fire Protection Association’s (NFPA) Standard 54, the National Fuel Gas Code.

Among the corrections is a revision in section 5.3.2, *Equipment Located in Unconfined Spaces*, that eliminated an option of supplying all air for combustion from inside the building in structures of *unusually tight construction*. Using section 5.3.2 (a) is not an option. All combustion air would have to be outdoor air per section 5.3.3 (b).

In addition, extensive new proposed revisions to NFPA 54-99 were closed for public review and comment on Oct. 5, 2001. Thereafter, committee action on public comments and other NFPA dispositions will follow, with presentation of a proposed new edition of NFPA 54 slated for approval at the NFPA May meeting.

Among the proposed revisions are changes which would eliminate the definition of confined space, unconfined space and unusually tight construction and restore an option to use indoor air for combustion air if a sufficient quantity is available.

For additional information on NFPA Standard 54 visit the NFPA Web site at www.nfpa.org. 

Forum Addresses Energy Efficiency, Training Issues

"Saving Energy and Providing Value in Homes Today" was the message conveyed at this year's Residential Contractor's Forum.

During this keynote presentation, John Abbott and Jay Gordon, of the Trane Company Unitary Products Group, addressed the challenges and opportunities that the homeowner faces when making buying decisions regarding their home air conditioning system.

Mr. Gordon helped attendees better understand how they can influence the buyer's decision — knowing what to expect and how to manage the opportunity. He also helped them see how they can use their knowledge in air filtration, air delivery and humidity control to provide comfort and value to the homeowner.

Using a hands-on demonstration, Mr. Abbott illustrated how contractors can provide savings to homeowners by installing high efficiency air conditioning systems. Attendees also participated in an exercise in which they calculated energy consumption and applied variable-speed HVAC technology solutions to solve high energy usage.

Following the keynote session, attendees participated in a roundtable discussion voicing concerns about the continued need for training as well as technician certification. ▲

"Did You Know?"

2000 International Energy Conservation Code Specifies SMACNA Manual

Did you know that the 2000 International Energy Code specifies that for residential building design forced-air distribution systems shall be "substantially leak free?" This is defined as the condition under which the entire air distribution system, including the air handler cabinet, is capable of maintaining a 0.1-inch w.g. (25 Pa) internal pressure at 5 percent or less of the air handler's rated airflow when the return grilles and supply registers are sealed off.

This test should be conducted using methods and procedures as specified in Section 3 of the SMACNA "HVAC Air Duct Leakage Test Manual," first edition, or by using other similar pressurization test methods and as approved by the code official. ▲

Guidelines continued from page 3

data located in certain sections and the appendixes will help users to adapt the drawings to local climate and project conditions. Carefully examining the information along with the local climate conditions will enable manual users to select the proper details for practically any residential architectural sheet metal requirement.

Many details are shown with alternate methods of design or installation to reflect the varying building practices and climate conditions across the country and to offer manual users a choice. It is impossible, however, to cover every local practice. Deviations from these recommendations may be permissible, but will depend upon verified satisfactory service beyond conditions covered in the manual. ▲

Maintaining Morale continued from page 4

reward will pay for itself. Everyone will come up with ideas and leads for the sales people, service technicians, and other revenue producing employees. The sales people will be under pressure to close the sales, the service technicians will be under pressure to do their jobs right and find legitimate work that needs to be done, service agreement sales will increase and installation crews will get their jobs installed properly and quickly so they can get to the next job.

When having a contest like this, the daily sales need to be posted. So, the office has to stay on top of their jobs too. They will ask questions to make sure that sales got closed, jobs got put in properly, etc. Everyone in the company will be under pressure to perform.

You can also run monthly sales contests for service agreement sales, replacement jobs, accessory sales, etc. Don't do this more than one or twice a year. And if you do it twice, make the contest different in each time period, spring might be overall sales while fall might be replacement sales and installations. ▲

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