




Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800
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August 10, 2007

MEMORANDUM NO. 813

TO: All Pest Control Licensees and Certified Operators

FROM: Michael J. Page, Chief 
Bureau of Entomology and Pest Control

SUBJECT: Termite Contract and Warranty Issues

Please Respond to:
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A number of economic factors have influenced the preventive termite treatment market in recent months. In an effort to remain competitive in the marketplace some licensees have begun issuing termite contracts and warranties without performing a treatment to the structure. In addition, licensees have issued contracts with the intention of assuming another contract by offering the service at a reduced price. These issues, currently the subject of rule development, have resulted in the need to communicate licensee obligations under Chapter 482, Florida Statutes and the Department's Rules, Chapter 5E-14, Florida Administrative Code when issuing such contracts and warranties for the prevention and/or control of termites.

When issuing a WDO protection contract licensees must ensure that the contract issued complies with Chapter 482.227, F.S., and Chapter 5E-14.105, F.A.C. Prior to issuing a WDO protection contract to a consumer the licensee should ascertain whether or not the structure is under an existing contract. This is to ensure compliance with 5E-14.105 (7), F.A.C., which requires that the licensee obtain written consent in letter form from the consumer acknowledging that the consumer understands that they are entering into a second contract for protection from the same WDO. This is also important when performing a treatment for an addition to a structure. Performing a treatment to an addition with an existing contract provided by another licensee may inadvertently result in voiding consumer coverage on a homeowners existing termite contract.

Licensees that enter into contracts for WDO protection without performing an initial treatment should be fully aware that they may not be covered by the provisions of the general liability insurance coverage required by Chapter 482.071(4), F.S., in the event that a claim is made against them. If a repair claim is made against an existing contract and the licensee's coverage is voided due to non-treatment, the licensee is still liable for the repair as required by Chapter 5E-14.105(8), F.A.C., which provides that licensees shall comply with the terms of the contracts they issue.

A similar practice is the offering of a contract at a reduced price to homeowners in an effort to assume existing contracts. Typically these contracts are offered without the performance of a treatment. Unless there has been a legal sale of assets of a company, including existing contracts, a licensee can only issue a new contract to replace the services provided by another licensee. There are no provisions in Chapter 482, F.S. or the Department's Rules for the "take over" or "sign over" of a contract. Advertising in this manner may be considered false and misleading advertising and therefore subject to disciplinary action for misrepresentation or false advertisement with respect to pest control under the provisions of Chapter 482.161(1), F.S. The Department will investigate such cases and can take disciplinary actions against licensees for false or misleading advertisement or misrepresentation with respect to pest control.

As mentioned above, the Department is currently engaged in rulemaking that will affect the practice of issuing WDO contracts without performing inspections or treatments. All licensees are encouraged to attend the next Rule Development Workshop scheduled for September 11, 2007 at the Mid-Florida Research and Education Center in Apopka, Florida.

MJP/bk



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