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### Air Conditioning Contractors of America

Greater New York  
Chapter  
123 South Street,  
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Oyster Bay, NY  
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# Greater New York Contractors' NEWS



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FEBRUARY 2015

## President's Message



**Marc Soffler**

As the holiday season is behind us, it's time to put to action our New Year resolutions. The onset of the cold weather offers many of us the opportunity to concentrate on making improvement to the way our business's function. Perhaps it's reviewing internal procedures, updating our customer service skills, or investigating new computer software. Working on these items now will allow us to be better prepared for the upcoming season.

I would like to take this opportunity to welcome all of the new members to the board of directors for this year and to thank Al Trudil and the previous board for the many contributions they

*Turn to President's Message on page 3*

Join Us on

Thursday, February 12, 2015

### First Look at 2015 Rebate Programs

By John Franceschina

Manager of Efficiency Programs  
For PSEG Long Island

#### Discussion Topics:

- The 2015 Customer Rebate Schedule
- Rebates for Residential & Commercial Air Conditioning Equipment
- Financial Incentives



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Register Online at [www.accany.org](http://www.accany.org).

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**PRESIDENT'S MESSAGE** *Continued from page 1*

made to this organization.

I'm excited to work with the new board and I see a tremendous amount of enthusiasm for the upcoming year. Our goal is to provide informative and entertaining content for our members and continue to demonstrate the many benefits of being a member of ACCA.

Our January meeting occurred for the first time at Vivaldi's in Douglaston. In addition to the excellent food, this location will be more convenient to our members, and come the spring, offer a beautiful view of the Long Island Sound. Special thanks to our speakers Jay Hochheiser and Adam Goldberg from Hochheiser and Duetsch.

— Marc Soffler

Kevin Cirincione  
President

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**Committees**

- |                               |                         |                    |
|-------------------------------|-------------------------|--------------------|
| <i>Advertising/Newsletter</i> | <i>Golf Outing</i>      | <i>Scholarship</i> |
| Anthony Carbone               | Ken Ellert              | John Ottaviano     |
| Donald Gumbrecht & Co.        | <i>Holiday Party</i>    | <i>Trade Show</i>  |
| <i>Baseball Outing</i>        | Anthony Carbone         | Rich Staiano       |
| Scott Berger                  | <i>Membership</i>       | Steve Bergman      |
| Nick Terran                   | Ron Nathan              | <i>Web Page</i>    |
| <i>Casino Night</i>           | <i>Political Action</i> | Roy Bernheimer     |
| Jim Carlson                   | Anthony Carbone         |                    |

Greater New York Contractors' News is printed monthly by the Greater New York Chapter of ACCA. Questions should be directed to the appropriate director or committee member for assistance. While this newsletter is designed to provide accurate and authoritative information on the subjects covered, the Association is not engaged in rendering legal, accounting, or other professional or

technical advice. Accordingly, the Association cannot warrant the accuracy of the information contained in this newsletter and disclaims any and all liability which may result from publication of or reliance on the information provided herein. If legal advice or other expert assistance or advice is required, the services of a competent, professional person should be sought.

## Editor's Notes

by Anthony N. Carbone

Towards the end of the year, many residential contractors gather their tear sheets and invoices for advertising expenses that were incurred during the year. The strategies change as the seasons change and the opportunities arise such as inside back covers or front pages that others had committed to, but declined. The transformation of the advertising strategy changes as circumstances change, such as cold weather spells, summer heat, utility power outages.

The manufacturers have become much more strict with logo adherence and the content of the ad, leaving little room for creativity. Many prefer that contractors use pre-fabricated ad slicks. A new term that is now used is "pre-approval" prior to advertising.

The most annoying aspect to co-op advertising from manufacturers is the fact that there are many hurdles placed in front of the contractors, making it an administrative nightmare to submit and receive approval for advertising their product. I think it is counter-productive for manufacturers not to allow more latitude to contractors that are willing to front the money and commit to advertising. Many of these mom and pop contractor shops have no plan to spend money on advertising.

Through the year, large manufacturers will have training classes to create awareness that advertising pays. The contractors sit through these classes explaining wonderful opportunities to evolve your company into a marketing aware, proactive operation.

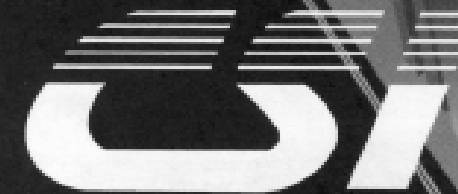
But I, personally, found a resistance from some manufacturers to cooperate in the refund process. These are earned accrued coop dollars. Hurdles, time constraints, obstacles....many contractors opt to not bother with advertising and leave behind the accrued amounts provided. Don't manufacturers understand the value of creative advertising and company specific strengths that sell equipment? I'm not sure they do.... If you are experiencing this exact situation, please alert me.... Let's find a solution to this practice and share your experience. — **Anthony N. Carbone**



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## New Opportunity: Wood Floors and Humidity Control

By Janis Rozenbergs

While wood floors are built to withstand the abuse of foot traffic and furniture, humidity is an invisible enemy that can quickly wreak havoc on even the best surfaces. The amount of moisture in the air has drastic — and costly — effects on a hardwood floor.

Too little humidity and floors will crack and shrink. Too much, and they will cup and curl.

While wood floors often come with a warranty, damage from improper environmental conditions is not covered. For this reason, homeowners and installers are beginning to understand the importance of maintaining proper humidity levels in the home before, during and after installation.

### A Growing Problem

Regardless of where a wood floor is installed, humidity control is necessary. Protecting a wood floor means controlling humidity so that it always stays within the manufacturer's recommended levels. While individual manufacturers vary slightly on their

recommendations, RH levels generally fall between 35 and 50 percent, with temperature ranges of 60F to 80F.

Wood floors have grown in popularity and prevalence in recent years, and unfortunately damage rates have grown in tandem. Poor humidity control is costing the flooring industry and its customers big bucks.

Experts in the flooring industry have stated a billion dollars a year is lost in the industry on failed floors, and 98 to 99 percent of that is because of poor RH control.

And it's not just traditional wood floors that are at risk. Laminate wood, engineered wood and other flooring options can also buckle, warp, peak, and even become a medium for mold growth.

### Optimum Solutions

Hardwood floors are a major investment and consumers are learning the hard way that moisture control is essential to protecting them. Where they need added direction is in their understanding of what type of indoor RH problems they have and the options available to mitigate them.

Long before owning a wood floor, most people already knew that water and wood don't mix. What they may not realize is that low RH levels in the air inside can cause just as much destruction. For most homeowners, reducing humidity in the summer will protect against some damage, but issues such as seasonal gaps and dry cupping — results of RH levels that are too low — also need to be addressed.

In most cases, damage is a result of too much moisture at one point in the year and too little at another. Flooring retailers, contractors and homeowners don't understand what low RH can do to a wood floor — just like people, wood floors need normal

living conditions to function properly.

Dry-cupping is most common with prefinished and engineered wood floors. Each year the problem begins around October and ramps up in January or February. While many people may believe low RH is only a problem in the desert, it's a seasonal issue in most of the U.S., with the exception of parts of the Gulf States.

In the arid western states, low RH is the main problem faced by wood floor customers and installers. While evaporative humidifiers are popular across much of the country, they need the air flow from a furnace to distribute moisture throughout the house. Since homeowners in the desert don't run a furnace, it's difficult to supply buildings with the immense amount of humidity needed to reach the coveted 35 to 50 percent RH range.

For these areas, the best solution is a steam humidifier. With steam, moisture can be introduced to the air year-round, even when there is a need to cool the home.

### Year-Round Humidity Control

Treating only one aspect of poor RH in the home does not solve the problem. The majority of homeowners will face indoor air conditions that create subpar RH levels at both the high and low end of the acceptable range. The main goal in protecting wood floors is maintaining and controlling RH continually, year-round.

HVACR contractors can now offer their customers whole-home solutions for combating different humidity issues across the

country and throughout the year. An important aspect of helping customers protect their floors will be the ability to explain that humidity is a two-headed problem and that they can control it effectively.

Most contractors talk to homeowners about humidity control from a comfort or health standpoint, and that's all good. It's just as important that they provide the proper guidance in terms of protection of their home and furnishings. •

### About the Author

Janis Rozenbergs is Humidifier and Dehumidifier Product Manager at Aprilaire, a Division of Research Products Corporation. He can be reached at [janis.rozenbergs@](mailto:janis.rozenbergs@)

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## People & The Workplace

By Alan B. Pearl,  
Portnoy, Messinger, Pearl & Associates, Inc., Syosset, NY  
516-921-3400, Fax 516-921-6774 e-mail: ABPearl@pmpHR.com, Website: www.pmpHR.com

### Working While on FMLA Leave

It is a fairly common situation, an employee says they are suffering from a serious health condition and requests leave under the Family Medical Leave Act or FMLA. After granting the leave you find out the employee is performing a similar job at another company. The question is whether you can lawfully terminate this employee or whether they retain the protections of the FMLA.

It seems obvious that an employee that claims they are unable to work due to a serious health condition should lose the protections of the Act if they work while on leave. However, this is not necessarily the case. Of course if the leave was fraudulently requested, that is sufficient grounds for termination. But the issue of whether working while on leave by itself causes the employee to lose the protections of the law hinges on whether your company has a policy prohibiting outside employment. According to FMLA regulations:

“If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was fraudulently obtained.”

In other words if your company does not have a policy prohibiting outside employment, an employee's leave is still protected even if they work somewhere else while on leave. This issue once again highlights the importance of having a well drafted employee handbook.

### Oral Employment Agreements, Are They Enforceable?

Under New York law oral contracts are enforceable unless they cannot by their terms be fully performed within one year of their making. Hence, New York courts have consistently held that oral employment agreements that lack a fixed duration are enforceable, since they could be theoretically terminated by either party within one year of their making. New York is an employment at-will state, meaning that absent an agreement to the contrary, an employee can be terminated at any time with or without cause. Thus, by their terms an at-will employment agreement, can be terminated within one year. Based on this logic, New York courts have held that oral employment agreements for commissions are enforceable.

In some cases employers have been required to pay bonuses or other compensation that were orally promised. Therefore, employers must be careful about discussions with employees and should always put employment agreements

in writing. If there is a written employment agreement any oral agreements will be deemed unenforceable. Therefore to avoid claims for unpaid bonuses, commissions, or any other oral promises employers should consider written employment agreements, or clauses in employee handbooks that require all agreements pertaining to compensation be in writing.

### Conflicting NLRB Decisions in “No Gossip” Rule Cases

For the past few years the NLRB has been on a crusade against handbook language that restricts employee protected speech. The National Labor Relations Act forbids employers from interfering with employees engaging in “protected concerted activities.” For decades the definition of protected concerted activities has been limited to union organizing, which was the original intent of the NLRA. In the last decade the NLRB has expanded the Act's reach into non-union workforces. Under the current interpretation by the NLRB protected concerted activities means any speech amongst employees concerning wages, hours, or terms or conditions of employment. Any workplace rule that could conceivably restrict these protected concerted activities has been deemed unlawful.

Therefore the Board has repeatedly stricken policies forbidding “workplace gossip” as this could have the effect of restricting employees' ability to discuss hours, wages, and terms or conditions of employment. However, in a recent case, *Casino San Pablo*, the Board found the employers anti-gossip policy to be lawful. The Board reasoned that gossip is defined as “chatty talk or rumors or reports of an intimate nature” and thus a ban on such chatter would not interfere with employee rights. This by no means indicates that the Board has reversed its stance on anti-gossip policies. The majority in the case includes a Republican nominee and a democratic nominee who will leaving the Board shortly. This case most likely represents an anomaly given the plethora of cases invalidating no gossip clauses.

Since the Board has invalidated a wide variety of handbook policies relating to solicitation, distribution and emails in the workplace, we advise that employers periodically update their employee handbooks to ensure compliance with labor regulations.

If you need an update or review of your employee handbook or need assistance with any other labor or employment matter please contact me at [ABPearl@pmpHR.com](mailto:ABPearl@pmpHR.com) or (516) 921-3400. •

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## Statement From Stuart S. Zisholtz, Esq.

### Time Frames For Filing a Mechanic's Lien or Payment Bond

I hate repeating some of my previous topics, but unfortunately there has been some confusion about the time frames associated with filing a mechanic's liens and commencing a payment bond claim. Some members believe they have time to file a mechanic's lien on a project when, in fact, their time expired. Some members believe the lien lasts for two years and can continuously be renewed. Finally, some members are completely lost on the time frames for filing the lien.

As a result, I was requested by a to once again publish the time frames associated with filing a mechanic's lien or bringing a claim under a payment bond.

Below are the various time frames associated with each procedure. Do not, however, wait for the last day to file your lien. The longer you wait to file the lien, the more likely payment was made to the general contractor. Once the general contractor has been paid by the owner, your lien is worthless.

Furthermore, many payment bonds contain strict requirements that notices be served on various parties within a specific time frame. Once that time frame expires, your right to recover may be jeopardized.

Time frames associated with filing a mechanic's lien or bringing a claim under a payment bond:	
<b>Private Improvement projects:</b>	
One family (also two family suggested)	4 months from date of last item of labor or material
Commercial and more than one family	8 months last item of labor and materials
Duration of Lien	1 year
<b>Renewal:</b>	
One Family Dwelling	Court Order
More than one family and commercial, first year renewal	Notice of Renewal
<b>Public Improvement projects:</b>	
Lien	30 days after completion and acceptance of job
Duration	1 year
Renewal	Notice of Renewal
<b>Payment Bond Notice:</b>	
Notice Directed to any two of Owner, Bonding Company or Contractor	Usually 90 days from completion of your work
Time for Commencement of Action	Usually 1 year
If you have a Direct Contract with the principal	Usually no notice required
Time for Commencement of Action	Usually 1 sometimes 2 years

### NEVER LET YOUR LIEN TIME RUN OUT!!!

For a free copy of a pamphlet pertaining to mechanic's liens or payment bond claims, please contact me or the Association.

*Stuart S. Zisholtz is a partner in the law firm of Zisholtz & Zisholtz, Mineola, New York, a general practice firm specializing in Construction Law and Mechanic's Liens. He is also a member of the Greater New York Chapter, ACCA. He can be reached at 516-741-2200. •*

### Contractor Comfort Index 71 in December; Up 4 from 2013



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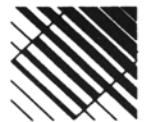
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