

A bill for an act

relating to real property; requiring performance guidelines for certain residential contracts; modifying statutory warranties; requiring notice and opportunity to repair; providing for dispute resolution procedures; requiring a report; amending Minnesota Statutes 2008, sections 302A.781, subdivision 4; 322B.863, subdivision 4; 326B.809; 327A.01, subdivision 7, by adding a subdivision; 327A.02, subdivision 4, by adding subdivisions; 327A.03; Minnesota Statutes 2009 Supplement, section 327A.08; proposing coding for new law in Minnesota Statutes, chapter 327A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 302A.781, subdivision 4, is amended to read:

Subd. 4. **Statutory homeowner warranty claims preserved.** The statutory warranties provided under section 327A.02, and any contribution or indemnity claim arising from the breach of those warranties, are not affected by ~~a~~ the dissolution under this chapter of a vendor or home improvement contractor.

Sec. 2. Minnesota Statutes 2008, section 322B.863, subdivision 4, is amended to read:

Subd. 4. **Statutory homeowner warranty claims preserved.** The statutory warranties provided under section 327A.02, and any contribution or indemnity claim arising from the breach of those warranties, are not affected by ~~a~~ the dissolution under this chapter of a vendor or home improvement contractor.

Sec. 3. Minnesota Statutes 2008, section 326B.809, is amended to read:

326B.809 WRITTEN CONTRACT REQUIRED.

(a) All agreements including proposals, estimates, bids, quotations, contracts, purchase orders, and change orders between a licensee and a customer for the performance of a licensee's services must be in writing and must contain the following:

- (1) a detailed summary of the services to be performed;
- (2) a description of the specific materials to be used or a list of standard features to be included; and
- (3) the total contract price or a description of the basis on which the price will be calculated.

(b) Before entering into an agreement, the licensee shall provide a prospective customer with written performance guidelines for the services to be performed. Performance guidelines also must be included or incorporated by reference in the agreement. All agreements shall be signed and dated by the licensee and customer.

(c) The licensee shall provide to the customer, at no charge, a signed and dated document at the time that the licensee and customer sign and date the document. Documents include agreements, performance guidelines, and mechanic's lien waivers.

Sec. 4. Minnesota Statutes 2008, section 327A.01, subdivision 7, is amended to read:

Subd. 7. **Vendor.** "Vendor" means any person, firm, or corporation ~~which~~ that constructs dwellings ~~for the purpose of sale~~, including the construction of dwellings on land owned by vendees. Vendor does not include a subcontractor or material supplier involved in the construction of a dwelling.

Sec. 5. Minnesota Statutes 2008, section 327A.01, is amended by adding a subdivision to read:

Subd. 12. **Inspection.** "Inspection" means a visual or invasive examination of the alleged property damage.

Sec. 6. Minnesota Statutes 2008, section 327A.02, subdivision 4, is amended to read:

Subd. 4. **Response from vendor or home improvement contractor to notice of claim; right to inspect.** ~~(a) Following notice under section 327A.03, The vendee or owner must allow an inspection and opportunity to for purposes of the preparation of an offer to repair the known alleged loss or damage under subdivision 5. Upon request of the vendee, a court may order the vendor to conduct the inspection. The inspection must be performed and any offer to repair must be made in writing to the vendee by the vendor or home improvement contractor within 30 days of the vendor's receipt of the written notice required under section 327A.03, clause (a), alleging loss or damage~~

the notification under section 327A.03, clause (a). Any damage to property caused as a result of an inspection must be promptly repaired by the inspecting party to restore the property to its pre-inspected condition.

(b) The applicable statute of limitations and statute of repose for an action based on breach of a warranty imposed by this section, or any other action in contract, tort, or other law for any injury to real or personal property or bodily injury or wrongful death arising out of the alleged loss or damage, is tolled from the date the written notice provided by the vendee or owner is postmarked, or if not sent through the mail, received by the vendor or home improvement contractor until the ~~earliest~~ latest of the following:

(1) the date the vendee rejects the vendor's offer to repair of completion of the home warranty dispute resolution process under section 327A.051; or

(2) the date the vendor rejects the vendee's claim in writing;

(3) failure by the vendor to make an offer to repair within the 30-day period described in this subdivision; or

(4) 180 days.

~~For purposes of this subdivision, "vendor" includes a home improvement contractor.~~

~~(b)~~ (c) Upon completion of repairs as described in an offer to repair, the vendor must provide the vendee with a list of the repairs made and a notice that the vendee may have a right to pursue a warranty claim under this chapter. Provision of this statement is not an admission of liability. Compliance with this subdivision does not affect any rights of the vendee under this chapter.

Sec. 7. Minnesota Statutes 2008, section 327A.02, is amended by adding a subdivision to read:

Subd. 5. **Right to repair; agreement.** (a) Within 15 days of completion of the inspection required by subdivision 4, the vendor or home improvement contractor must provide to the vendee or owner a written offer to repair. The offer to repair must include, at a minimum:

(1) the scope of the proposed repair work; and

(2) the proposed date on which the repair work would begin and the estimated date of completion.

(b) This subdivision does not prevent the vendee or owner from obtaining the information in paragraph (a) from another contractor or from negotiating with the vendor or home improvement contractor for a different scope of work.

(c) If the parties agree to a scope of work, the vendor or home improvement contractor must perform the repair work in accordance with the offer to repair. If the

parties do not agree to a scope of work, the vendee or owner must submit the matter to the homeowner warranty dispute resolution process under section 327A.051.

(d) Upon completion of repairs described in an offer to repair, the vendor or home improvement contractor must provide the vendee or owner with a written notice that the scope of the work agreed upon has been completed.

Sec. 8. Minnesota Statutes 2008, section 327A.02, is amended by adding a subdivision to read:

Subd. 6. **Failure to perform inspection or repair.** If the vendor or home improvement contractor fails to perform an inspection under subdivision 4 or fails to make an offer to repair or perform agreed upon repairs under subdivision 5, the vendee or owner may commence an action.

Sec. 9. Minnesota Statutes 2008, section 327A.02, is amended by adding a subdivision to read:

Subd. 7. **Processes required before commencement of action.** Except as provided in subdivision 6, a cause of action for which the statute of limitations or statute of repose is tolled under subdivision 4, paragraph (b), must not be commenced in district court until the earlier of:

(1) the completion of the home warranty dispute resolution process under section 327A.051; or

(2) 60 days after the written offer of repair is provided to the vendee or owner.

Sec. 10. Minnesota Statutes 2008, section 327A.03, is amended to read:

327A.03 EXCLUSIONS.

The liability of the vendor or the home improvement contractor under sections 327A.01 to 327A.07 is limited to the specific items set forth in sections 327A.01 to 327A.07 and does not extend to the following:

(a) loss or damage not reported by the vendee or the owner to the vendor or the home improvement contractor in writing within six months after the vendee or the owner discovers or should have discovered the loss or damage; unless the vendee or owner establishes that the vendor or home improvement contractor had actual notice of the loss or damage;

(b) loss or damage caused by defects in design, installation, or materials which the vendee or the owner supplied, installed, or directed to be installed;

(c) secondary loss or damage such as personal injury or property damage;

- 5.1 (d) loss or damage from normal wear and tear;
- 5.2 (e) loss or damage from normal shrinkage caused by drying of the dwelling or the
- 5.3 home improvement within tolerances of building standards;
- 5.4 (f) loss or damage from dampness and condensation due to insufficient ventilation
- 5.5 after occupancy;
- 5.6 (g) loss or damage from negligence, improper maintenance or alteration of the
- 5.7 dwelling or the home improvement by parties other than the vendor or the home
- 5.8 improvement contractor;
- 5.9 (h) loss or damage from changes in grading of the ground around the dwelling or the
- 5.10 home improvement by parties other than the vendor or the home improvement contractor;
- 5.11 (i) landscaping or insect loss or damage;
- 5.12 (j) loss or damage from failure to maintain the dwelling or the home improvement
- 5.13 in good repair;
- 5.14 (k) loss or damage which the vendee or the owner, whenever feasible, has not taken
- 5.15 timely action to minimize;
- 5.16 (l) loss or damage which occurs after the dwelling or the home improvement is
- 5.17 no longer used primarily as a residence;
- 5.18 (m) accidental loss or damage usually described as acts of God, including, but not
- 5.19 limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees,
- 5.20 aircraft and vehicles, flood, and earthquake, except when the loss or damage is caused by
- 5.21 failure to comply with building standards;
- 5.22 (n) loss or damage from soil movement which is compensated by legislation or
- 5.23 covered by insurance;
- 5.24 (o) loss or damage due to soil conditions where construction is done upon lands
- 5.25 owned by the vendee or the owner and obtained by the vendee or owner from a source
- 5.26 independent of the vendor or the home improvement contractor;
- 5.27 (p) in the case of home improvement work, loss or damage due to defects in the
- 5.28 existing structure and systems not caused by the home improvement.

5.29 **Sec. 11. [327A.051] HOME WARRANTY DISPUTE RESOLUTION.**

5.30 **Subdivision 1. Panel of neutrals.** (a) The commissioner of labor and industry shall

5.31 maintain a list of persons who consent to serve as qualified neutrals for purposes of this

5.32 section. The commissioner shall establish application requirements and qualifications for

5.33 qualified neutrals, taking into consideration the education, experience, and training of the

5.34 applicant, potential conflicts of interest, and that the purpose of the process is to assist

5.35 parties in determining an agreeable scope of repair or other resolution of their dispute.

6.1 (b) As a condition of being included on the panel of neutrals identified in this
6.2 section, the commissioner of labor and industry may charge each qualified neutral a fee of
6.3 \$200 per year for the administration of the home warranty dispute resolution process.

6.4 Subd. 2. **Dispute resolution process.** (a) The home warranty dispute resolution
6.5 process required by this section is commenced by written application to the commissioner.
6.6 A request must include the complete current address and full name of the contact person
6.7 for each participating party.

6.8 (b) Within ten days of receiving a written request, the commissioner shall provide
6.9 each party with a written list of three qualified neutrals randomly selected from the panel
6.10 of neutrals established under subdivision 1. The commissioner shall also provide complete
6.11 contact information for each qualified neutral.

6.12 (c) Within five business days after receipt of the list from the commissioner,
6.13 the parties shall mutually select one of the three qualified neutrals identified by the
6.14 commissioner to serve as the qualified neutral for their dispute. If the parties cannot
6.15 mutually agree on a neutral, the vendor or home improvement contractor shall strike one
6.16 of the neutrals from the list, the vendee or owner shall subsequently strike one of the
6.17 remaining neutrals from the list, and the remaining neutral shall serve as the qualified
6.18 neutral for the dispute resolution process. The parties shall notify the selected qualified
6.19 neutral and the commissioner of the selection.

6.20 Subd. 3. **Neutral evaluation; fee.** (a) The qualified neutral selected by the parties
6.21 shall convene, and each party shall attend, an in-person conference of the parties. The
6.22 qualified neutral shall select the date for the conference after consulting the parties.
6.23 The conference must occur no later than 30 days after the neutral's selection, except by
6.24 mutual agreement of the parties. In addition, the neutral shall collect from each party an
6.25 administrative fee of \$25 and shall submit those fees to the commissioner no later than ten
6.26 days after the completion of the conference.

6.27 (b) At least seven days before the conference, each party must provide the
6.28 qualified neutral and the other party with all information and documentation necessary to
6.29 understanding the dispute, or the alleged loss or damages.

6.30 (c) After reviewing the information and documentation provided by the parties and
6.31 after consulting with the parties at the conference, the neutral shall issue to the parties a
6.32 nonbinding, written determination, which must include, to the extent possible, findings
6.33 and recommendations on the scope and amount of repairs necessary, if any. The qualified
6.34 neutral shall mail the determination to each party within ten days after the conference.

6.35 (d) The parties shall share the expense of the qualified neutral's billed time equally,
6.36 unless otherwise agreed. The neutral's billed time for evaluation of documents, meeting

with the parties, and issuing a written determination must not exceed six hours, unless agreed to in writing by both parties. The neutral must identify the neutral's hourly rate to the parties.

Subd. 4. Alternative process. If both parties agree, the parties may designate an alternative dispute resolution process in lieu of participating in the home warranty dispute resolution process established by this section. If the parties agree to an alternative dispute resolution process, they shall provide written notice of the agreement and a description of the selected process to the commissioner as soon as practicable, but no later than the date the parties are required to select a neutral under subdivision 2.

Subd. 5. Effect on future proceedings. (a) The written determination issued by the qualified neutral and all communications relating to the home warranty dispute resolution process, except those between any party and the commissioner, are deemed confidential settlement communications pursuant to Rule 408 of the Minnesota Rules of Evidence.

(b) No party may use the written offer of repair provided by a vendor or home improvement contractor, a counteroffer to repair, or a written determination issued by the qualified neutral as evidence of liability in subsequent litigation between the parties. The qualified neutral may not be called to testify regarding the dispute resolution proceedings.

(c) Any amount paid by a party for the services of a qualified neutral under this section is deemed a taxable cost of the prevailing party in a subsequent litigation involving the same subject matter.

Subd. 6. Noncompliance with timelines; effect. Failure to strictly comply with the timelines in this section shall not be grounds for dismissal of any claim brought under section 327A.05, provided that the parties establish good faith effort in complying with this section.

Sec. 12. Minnesota Statutes 2009 Supplement, section 327A.08, is amended to read:

327A.08 LIMITATIONS.

Notwithstanding any other provision of sections 327A.01 to 327A.08:

(a) the terms of the home improvement warranties required by sections 327A.01 to 327A.08 commence upon completion of the home improvement and the term shall not be required to be renewed or extended if the home improvement contractor performs additional improvements required by warranty;

(b) the home improvement warranties required by sections 327A.01 to 327A.08 shall not include products or materials installed that are already covered by implied or written warranty; and

(c) the warranties required by sections 327A.01 to 327A.08 must be set forth as written warranty instruments and must be included as part of the construction contract ~~and~~. The warranties and the exclusions under section 327A.03, the right to inspect and offer to repair under section 327A.02, subdivisions 4 and 5, and the home warranty dispute resolution process under section 327A.051 must be conveyed in writing to the owner.

Failure to comply with this paragraph is a violation of section 326B.84.

(d) If the warranties required by sections 327A.01 to 327A.08 are not provided to the owner in writing as required by paragraph (c), they are implied statutory warranties that have the same effect as if the vendor or home improvement contractor had complied with paragraph (c).

(e) The owner's right under this section to receive the written warranty required under this section may not be waived or modified by contract or otherwise. Any agreement that purports to waive or modify the right to the written warranty required under this section is void.

(f) This section does not limit the ability of the vendor or home improvement contractor and the owner to enter into the agreements permitted under section 327A.04, subdivisions 2 and 3.

Sec. 13. REPORT.

By February 1, 2014, the commissioner of labor and industry shall report to the chairs and ranking minority members of the committees of the legislature with jurisdiction over civil law matters on the number of dispute resolution cases established under Minnesota Statutes, section 327A.051, and, to the extent possible, identify the number of cases that used the home warranty dispute process and the number that used an alternative dispute resolution process under subdivision 4 of that section.

Sec. 14. EFFECTIVE DATE; APPLICATION.

Sections 1 and 2 and 4 to 11 are effective January 1, 2011, and apply to notices of claims given and actions commenced on or after that date. Sections 3 and 12 are effective January 1, 2011, and apply to contracts entered into on or after that date.

Sections 1 to 12 do not revive claims already barred or extend any applicable statute of limitations or repose.