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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. 3386

March 4, 2010

Authored by Swails, Obermueller, Zellers, Sterner, Juhnke and others

The bill was read for the first time and referred to the Committee on Commerce and Labor

March 15, 2010

By motion, recalled and re-referred to the Committee on Civil Justice

A bill for an act

1.1
1.2 relating to real property; requiring performance guidelines for certain residential
1.3 contracts; modifying statutory warranties; requiring notice and opportunity to
1.4 repair; providing for dispute resolution procedures; amending Minnesota Statutes
1.5 2008, sections 326B.809; 327A.01, subdivision 7, by adding a subdivision;
1.6 327A.02, subdivision 4, by adding subdivisions.

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

1.8 Section 1. Minnesota Statutes 2008, section 326B.809, is amended to read:

1.9 **326B.809 WRITTEN CONTRACT REQUIRED.**

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

1.13 (1) a detailed summary of the services to be performed;

1.14 (2) a description of the specific materials to be used or a list of standard features
1.15 to be included; and

1.16 (3) the total contract price or a description of the basis on which the price will
1.17 be calculated.

1.18 (b) Before entering into an agreement, the licensee shall provide a prospective
1.19 customer with written performance guidelines for the services to be performed.

1.20 Performance guidelines also must be included or incorporated by reference in the
1.21 agreement. All agreements shall be signed and dated by the licensee and customer.

1.22 (c) The licensee shall provide to the customer, at no charge, a signed and dated
1.23 document at the time that the licensee and customer sign and date the document.

1.24 Documents include agreements, performance guidelines, and mechanic's lien waivers.

2.1 Sec. 2. Minnesota Statutes 2008, section 327A.01, subdivision 7, is amended to read:

2.2 Subd. 7. **Vendor.** "Vendor" means any person, firm, or corporation ~~which~~ that
 2.3 constructs dwellings ~~for the purpose of sale~~, including the construction of dwellings on
 2.4 land owned by vendees.

2.5 Sec. 3. Minnesota Statutes 2008, section 327A.01, is amended by adding a subdivision
 2.6 to read:

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

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

2.10 Subd. 4. **Response from vendor or home improvement contractor to notice of**
 2.11 **claim; right to inspect.** ~~(a) Following notice under section 327A.03, The vendee or~~
 2.12 ~~owner must allow an inspection and opportunity to~~ for purposes of the preparation of an
 2.13 offer to repair the known alleged loss or damage under subdivision 5. Upon request of the
 2.14 ~~vendee, a court may order the vendor to conduct the inspection. The inspection must be~~
 2.15 ~~performed and any offer to repair must be made in writing to the vendee by the vendor~~
 2.16 or home improvement contractor or their designee within 30 days of the vendor's receipt
 2.17 of the written notice required under section 327A.03, clause (a), alleging loss or damage
 2.18 the notification under section 327A.03, clause (a). Any damage to property caused as a
 2.19 result of an inspection must be promptly patched or repaired by the inspecting party
 2.20 to prevent further damage to the property.

2.21 (b) The applicable statute of limitations for an action based on breach of a warranty
 2.22 imposed by section 327A.02, or any other action in contract, tort, or other law for any
 2.23 injury to real or personal property or bodily injury or wrongful death arising out of the
 2.24 alleged loss or damage, is tolled from the date the written notice provided by the vendee
 2.25 or owner is postmarked, or if not sent through the mail, received by the vendor or home
 2.26 improvement contractor until the earliest of the following:

2.27 ~~(1) the date the vendee rejects the vendor's offer to repair~~ of completion of the
 2.28 prelitigation process; or

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

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

2.32 ~~(4) 180 days.~~

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

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

3.6 Sec. 5. Minnesota Statutes 2008, section 327A.02, is amended by adding a subdivision
 3.7 to read:

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

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

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

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

3.18 (c) If the parties agree to a scope of work, the vendor or home improvement
 3.19 contractor must perform the repair work in accordance with the offer to repair. If the
 3.20 parties do not agree to a scope of work, the vendee or owner must submit the matter to the
 3.21 homeowner warranty dispute resolution process under section 327A.051.

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

3.25 Sec. 6. Minnesota Statutes 2008, section 327A.02, is amended by adding a subdivision
 3.26 to read:

3.27 Subd. 6. **Failure to perform inspection or repair.** If the vendor or home
 3.28 improvement contractor fails to perform an inspection under subdivision 4 or make an
 3.29 offer to repair and perform agreed upon repairs under subdivision 5, the vendee or owner
 3.30 may commence an action for breach of the warranty.

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

4.1 Subd. 7. **Processes required before commencement of action.** Except as provided
4.2 in subdivision 6, a cause of action for which the statute of limitations is tolled under
4.3 subdivision 4, paragraph (b), must not be commenced until expiration of the tolling period.

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

4.6 Subd. 8. **Effect of certain actions.** (a) This section does not make an insurer that
4.7 pays for repair work under this section a vendor or home improvement contractor.

4.8 (b) This section does not make a subcontractor or material supplier retained by the
4.9 vendor or vendor's insurer a home improvement contractor.

4.10 (c) A vendor does not become a home improvement contractor by complying with
4.11 its obligations under this section.

4.12 Sec. 9. **HOMEOWNER WARRANTY DISPUTE RESOLUTION.**

4.13 A homeowner warranty dispute resolution process for resolving disputes based on
4.14 an alleged breach of a warranty imposed by Minnesota Statutes, section 327A.02, or
4.15 any other action in contract, tort, or other law for any injury to real or personal property
4.16 or bodily injury or wrongful death arising out of the alleged loss or damage, should be
4.17 established based on the final report of the housing warranty task force.

4.18 Sec. 10. **EFFECTIVE DATE; APPLICATION.**

4.19 Sections 1 to 8 are effective August 1, 2010, and apply to notices of claims given
4.20 and actions commenced on or after that date.

4.21 Sections 1 to 8 do not revive claims already barred or extend any applicable statute
4.22 of limitations or repose.