

# WARRANTY

Mom's Design Build (Mom's) shall perform all work in a workmanlike manner according to standard building industry practices as set forth, published or accepted by applicable state or national construction trade associations or organizations ("Industry Standards"). Questions of the sufficiency of performance will be resolved by reference to and compliance with the Performance Guidelines (**Section 1 and 2 listed here**).

A copy of Minnesota Statutes Chapter 327A is attached as **Section 3** and has been provided to Customer in compliance with Minnesota Statutes Section 327A.08. Customer acknowledges receipt of the same and agrees this constitutes a written warranty instrument as required by Section 327A.08.

THIS WARRANTY IS NULL AND VOID IF ACCOUNT IS NOT PAID IN FULL AND IN GOOD STANDING.

## SECTION 1. OUTDOOR PERFORMANCE STANDARDS

---

### Plants:

Mom's Design Build warranties all nursery trees, shrubs, and perennials sold and installed by us to be free from disease and healthy at the time of delivery/installation. We will replace any tree, shrub, or perennial that dies for a period of one (1) year after the date of installation at no charge to the Owner (one replacement per plant). We will order the same container size plant as originally placed but cannot guarantee same height of replacement plants due to differences in growing seasons. Spaded-in trees will be under warranty with largest B&B replacement trees available. No credit will be given for smaller tree or plant replacements.

\*\*Transplanted plant material not warranted. New sod and grass seed not warranted.

This warranty is contingent upon proper maintenance by the Owner and does not extend to damage resulting from improper watering, extreme cold, animal damage, salt damage, Owner neglect or other factors beyond Mom's control. These replacements will be made on a one-time basis at the request of the Owner, upon evaluation by Mom's. Use of homeowner's irrigation company (not contracted through Mom's) may void plant warranty, at Mom's discretion.

### Hardscapes:

Mom's Design Build warranties hardscape materials (walls, patios, and steppers only) and workmanship for a period of five years from date of installation. Polymeric sand or other joint materials are not included in warranty. Depending on the product and manufacturer, additional material warranties may apply. Any staining or chipping to the product is not covered under any warranty. Mom's Design Build is not responsible for areas of settlement due to occurrences created by foundation movement, utility trench, gutter insufficiency or natural movement of the earth.

### Appliances, Fire & Water Features, Urns & Garden Ornamentation

Each appliance or feature will come with a manufacturer's warranty. Features made of cast stone carry no warranty from cracking due to winter conditions. Warranty is contingent on proper maintenance. If stated warranty does not cover the cost of labor or parts, Mom's will charge for repairs.

### Water Feature Pumps:

Mom's Design Build warranties parts and labor of water feature pump for a period of (1) year after installation, contingent upon proper care and maintenance of said pump. This warranty supersedes manufacturer's warranty. If the water feature is installed without an auto fill feature, Mom's will charge for any service calls related to water fill levels.

### Exterior Paint:

Exterior paint or stains should not fade during the first year. However, fading over time is normal and the degree of fading is dependent on climactic conditions and the color of paint chosen. Darker paint fades more.

If paint or stain is defective within the first year, Mom's will properly prepare and refinish affected areas, matching color as closely as possible. Where finish deterioration affects the majority of the wall area, the whole area may be refinished.

### Exterior Finish Carpentry:

Joints between exterior trim elements, including siding and masonry, shall not result in open joints in excess of 3/8 inch. In all cases the exterior trim, masonry and siding shall be capable of performing its function to exclude the elements. Mom's will repair open joints for a period of (1) year after substantial completion. Caulking is acceptable.

### **Decorative Beams:**

Natural wood beams will crack and shrink as a normal part of the drying process. This does not alter the structural integrity of the beam and the beam will not be replaced due to this fact. It is generally recommended to leave the cracks in the wood to allow for natural expansion and shrinkage with the temperature changes. Within one year of install, Mom's will fill the cracks over 1/8 inch with caulking at Owner's request.

### **Decking:**

Mom's offers a (10) year structural warranty on every deck we build. We will cover any settling, lifting, and shifting of the deck for 10 years. Some materials may be covered by a manufacturer's warranty, which may supersede or enhance Mom's warranty coverage. Each different deck material has its own warranty. Some are listed here:

**CEDAR DECKING:** Cedar decking will split, crack, warp, shrink, and cup over time, and therefore is not covered under any material warranty. Maintenance of cedar decks (washing & staining every year) is recommended to ensure the material will last longest.

**HARDWOOD DECKING** (ex. Ipe, Tigerwood, Cumaru, Mahogany) Your Hardwood Deck is naturally strong, durable, and decay/termite resistant. It generally needs no preservative treatment so can be left in the "raw" to naturally grey over time, or can be coated with the coating stain of your choice. Each hardwood will have their own material warranty, (ask your designer for details) but hardwood is expected to deter pests, rot, and decay for over 20 years.

**ZURI DECKING:** Zuri warrants for a period of (25) years that Zuri decking will not rot, split, crack, warp, twist, blister, flake, peel, delaminate, wear through the protective cap or suffer loss of structural properties due to termites, microbiological growth or other decay. Also, Zuri decking is warrantied for a period of (25) years that it will maintain color fastness without significant shift in color from exposure to ultraviolet radiation from natural sunlight.

**AZEK DECKING:** The Azek warranty guarantees their decking will not crack, cup, warp, split, or experience structural damage from termites or rot for as long as you own the deck. They also have a 30-year fade and stain warranty for all colors of decking.

Mom's does not warrant against and is not responsible for any and all damages occurred by human or animal neglect, any act of God (such as flooding, earthquake, lightning, etc.), environmental conditions (such as air pollution, pollen, etc.) staining from foreign substances (such as dirt, grease, oil, etc.), normal weathering (defined as exposure to sunlight, weather and atmosphere which will cause any colored surface to gradually fade, or accumulate dirt or stains), or extreme soil conditions (decks installed on heavy clay soils or in areas where footings are not properly placed due to underground anomalies).

### **Masonry:**

Mom's (1) year Masonry Warranty includes broken, cracked, or deteriorated joints and loose or cracked stones or bricks (cracks greater than 3/8 inch). Mom's will relay loose bricks or stones, grind out and regrout cracked joints up to one year from install date. Mom's will not be responsible for color variation between old and new mortar. **NOT COVERED** under warranty: Deterioration of joints or masonry surfaces due to over-exposure from water, mold, fungus, fire, collision and/or improper use of structure.

### **Concrete:**

Concrete will crack. Cracks that are 3/16 inch or less (in height or gap) are considered normal and within industry standards. Mom's warranties concrete for (1) year from install date against major cracking (over 3/16 inch) and peeling. Warranty does not cover any peeling from chemical or deicer use. Concrete has a natural variation in color; any repairs are guaranteed to not match exactly.

### **Outdoor Countertops:**

Mom's provides a (1) year warranty against cracking for any outdoor countertop. This warranty does not cover cracks due to collision and/or improper use. Proper sealing and maintenance of your countertops is recommended to ensure performance.

### **Stoops, Steps, & Garage Floors:**

If sitting on a frost footing, stoops, steps, and garage floors should not settle, heave, or separate in excess of 1 inch from the house structures. Water should drain from outdoor stoops and steps. The possibility of minor water standing on stoops for a short period after rain can be anticipated. Mom's will take corrective action to meet these standards for a period of (1) year after install.

### **Low Voltage Lighting:**

Mom's Design Build warranties the low voltage lighting system for workmanship and parts for a period of (1) year (no warranty on bulbs) from date of installation. Depending on the product and manufacturer, additional material warranties may apply.

## **Irrigation:**

Mom's Design Build warranties all irrigation installation materials and labor for a period of (2) years from date of installation when used under normal conditions and maintained by Aqua Engineering, Inc.

## **SECTION 2. INDOOR PERFORMANCE STANDARDS**

---

### **Countertops:**

**LAMINATE:** Countertops fabricated with high-pressure laminate coverings shall not delaminate. Mom's will replace or re-glue delaminated coverings to meet specific criteria within (1) year after install. Mom's will be responsible for chips and cracks only if noted before first occupancy.

**GRANITE:** Granite countertops installed by Mom's are warranted against cracks or defects for (1) year. Every piece of granite is different because it is a natural product.

**CONCRETE:** During the first year after installation, Mom's will repair or replace product if it fails to maintain functional structural integrity for the intended purpose of the product solely due to a manufacturing defect. This applies only to products that have been handled, fabricated, installed and maintained in the manner recommended. Hairline cracks, surface scratches and chips are not included as part of this warranty, nor is structural damage caused by severe impacts or damage stemming from loss of support and/or excessive deflections by the supporting cabinetry or hardware. Mom's shall have sole and final right to determine whether a warranty claim is valid.

### **Cabinets:**

Warpage of Cabinets shall not exceed 1/4 inch as measured from face frame to point of furthest warpage with door or drawer front in closed and adjusted position. In the case of a pair of doors, the front edges of the doors should be adjusted to within 1/8 inch of each other by the hinge adjustments. Mom's will correct, adjust or replace doors or drawer fronts as needed within (1) year of install. NOTE: Cabinets hinges are made to compensate for some door warpage. Doors are adjusted in and out on the hinge side to make a pair of doors line up.

Gaps between cabinets and ceiling or walls shall not exceed 1/4 inch width. Mom's will correct to meet this specification within (1) year of install. Caulking or small molding strips are used.

### **Tile:**

Tile shall not crack or become loose. Mom's will replace cracked tiles and re-secure loose tiles within (1) year of install unless the defects were caused by the Home Owner's action or negligence. Mom's will not be responsible for discontinued patterns or color variations in tile. If there are extra tiles, be sure to save those.

Cracks in grouting of tile joints are commonly due to normal shrinkage conditions. Mom's will repair grouting, if necessary, one time only within (1) year of install. Where the tile meets wood, any cracked grout is normal, and will be repaired with caulking. Mom's will not be responsible for color variations or discontinued colored grout or caulking used. Regrouting of these cracks is a maintenance responsibility of the Home Owner during the remaining life of the home.

### **Interior Finish Carpentry:**

Joints in moldings or joint between moldings and adjacent surface shall not result in open joints exceeding 1/8 inch in width. Some season shrinkage is normal. Hair line cracks in enamel are normal and not covered by warranty. Mom's will repair defective joints, as defined within (1) year of install. Colored putty or caulking is acceptable.

### **Rough Carpentry:**

**FLOOR SQUEAKS:** Floor squeaks and loose sub-floor are often temporary conditions common to new construction. Many times it will fluctuate with the seasons and the amount of humidity in the house. A squeak-proof floor cannot be guaranteed. Mom's will correct the problem for (1) year following substantial completion only if caused by an underlying construction defect.

**EVENNESS OF WOOD FLOORS:** Floors shall not have more than 3/8-inch ridge or depression within any 32-inch measurement when measured parallel to the joists. Allowable floor and ceiling joist deflections are governed by the applicable building code. Wood floors will show some "cupping" at certain seasons. This is normal and will change as the humidity in your home changes. Mom's will correct or repair floors to meet these specifications within (1) year of Substantial Completion.

**BOWING OF WALLS:** All interior and exterior walls have slight variances on their finished surfaces. Bowing of wall should not detract from or blemish the wall's finished surface. Walls should not bow more than 3/8 inch out of line within any 32-inch horizontal or vertical measurement. This is determined with a 36-inch straight edge. Mom's will correct or repair within (1) year of substantial completion.

### **Finished Wood Flooring:**

For (1) year after install, Mom's will repair cracks in excess of 1/8-inch by filling as needed. **Entire wood floors are never removed or replaced because of shrinkage cracks.** It is normal for floors to shrink in the winter and swell up and close during the summer. **All cracks will be measured during normal summer and fall times, NOT during the winter.** A humidifier will often help to reduce the shrinkage that occurs in the winter. (Be careful as to not allow too much moisture to build up on window sashes.) Mom's will require proper humidity is established in your home before repairing of shrinkage cracks.

### **Decorative Interior Solid Wood Beams:**

All solid beams will shrink over time. There is nothing that can be done to prevent this. After shrinking, we will adjust the cracks at the ends of the beams by a) re-taping the drywall and touching up with paint, b) re-caulking, c) adding a molding around the beam at the ends. Solid decorative beams are never replaced due to this inevitable fact.

### **Decorative Stone or Brick on Interior Walls:**

Shrinkage away from walls, ceilings, or cabinets is common. Mom's will caulk all cracks exceeding 1/8 inch for a period of (1) year after install. Chips and cracks on surfaces of bathtubs and kitchen sinks can occur when the surface is hit with sharp or heavy objects. Mom's will not be responsible for repairs unless damage has been reported to Mom's prior to first occupancy.

### **Masonry Warranty:**

Mom's (1) year Masonry Warranty includes broken, cracked, or deteriorated joints and loose or cracked stones or bricks (cracks greater than 3/8-inch). Mom's will relay loose bricks or stones, grind out and re-grout cracked joints up to one year from install date. Mom's will not be responsible for color variation between old and new mortar. **NOT COVERED** under warranty: Deterioration of joints or masonry surfaces due to over-exposure from water, mold, fungus, fire, collision and/or improper use of structure.

### **Doors & Windows:**

**WARPAGE OF INTERIOR PASSAGE AND CLOSET DOORS:** Interior doors (full openings) should not warp in excess of National Woodwork Manufacturers Association Standards (1/4-inch, measured diagonally from corner to corner.) Mom's will correct, adjust or replace and refinish defective doors to match existing doors as close as possible within one year of the install date.

**SHRINKAGE OF INSERT PANELS:** Panels will shrink and expand and may expose unpainted surface. Mom's will stain or paint this line within one year of install. The whole door is **NOT** refinished.

**SPLIT IN DOOR PANEL:** Split panels should not allow light to be visible through the door. If light is visible, Mom's will fill the split with colored filler and paint or stain (if necessary) as closely as possible within one year of install. The entire door is **NOT** replaced or refinished.

### **Poured Concrete:**

Concrete will crack. For the duration of (1) year after substantial completion, Mom's will warranty the following items.

**FOUNDATION WALLS:** Shrinkage cracks are not unusual in concrete foundation walls. Mom's will repair cracks greater than 1/8-inch in width. The structural integrity of the wall is not affected because of the extensive steel reinforcement used in poured walls. Mom's will fill cracks with epoxy or butyl type filler.

**BASEMENT FLOORS:** Minor cracks in concrete basement floors are normal. Mom's will repair cracks exceeding 3/16-inch in width or 1/8-inch in vertical displacement by surface patching or caulking.

**GARAGE SLABS:** Mom's will repair cracks in garage slabs in excess of 1/4-inch in width or 1/4-inch in vertical displacement by surface patching or caulking.

### **Gypsum Wallboard:**

Interior finished wallboard (drywall) shall be free from damage (dents and gouges) at the time of install. Blemishes readily noticeable when viewed under normal lighting conditions from a normal viewing position are unacceptable. Slight "imperfections" such as nail pops, seam lines, and cracks not exceeding 1/8-inch in width are common in drywall installations and are considered acceptable. Nail or screw "pops" are not repaired unless the plaster coating cracks. All repair spots are touched up with paint. Entire walls are not repainted; only the repaired spots are touched up.

### **Plumbing System:**

**LEAKS:** No valve or faucet shall leak due to defects in workmanship and materials. Mom's will repair or replace the leaking faucet or valve during the (1) year warranty. Many fixtures have their own manufacturers warranty that will enhance this.

## SECTION 3. MN STATUTES CHAPTER 327A. HOUSING; STATUTORY WARRANTIES

---

### 327A.01 DEFINITIONS.

---

Subdivision 1. **Scope.** As used in sections [327A.01](#) to [327A.07](#), the terms in this section shall have the meanings assigned to them.

Subd. 2. **Building standards.** "Building standards" means the materials and installation standards of the State Building Code, adopted by the commissioner of labor and industry pursuant to sections [326B.101](#) to [326B.194](#), in effect at the time of the construction or remodeling.

Subd. 3. **Dwelling.** "Dwelling" means a new building, not previously occupied, constructed for the purpose of habitation; but does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the dwelling, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

Subd. 4. **Initial vendee.** "Initial vendee" means a person who first contracts to purchase a dwelling from a vendor for the purpose of habitation and not for resale in the ordinary course of trade.

Subd. 5. **Major construction defect.** "Major construction defect" means actual damage to the load-bearing portion of the dwelling or the home improvement, including damage due to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes. "Major construction defect" does not include damage due to movement of the soil caused by flood, earthquake or other natural disaster.

Subd. 6. **Vendee.** "Vendee" means any purchaser of a dwelling and includes the initial vendee and any subsequent purchasers.

Subd. 7. **Vendor.** "Vendor" means any person, firm, or corporation that constructs dwellings, 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.

Subd. 8. **Warranty date.** "Warranty date" means the date from and after which the statutory warranties provided in section [327A.02](#) shall be effective, and is the earliest of:

- (a) the date of the initial vendee's first occupancy of the dwelling; or
- (b) the date on which the initial vendee takes legal or equitable title in the dwelling.

In the case of a home improvement, the warranty date is the date on which the home improvement work was completed.

Subd. 9. **Home improvement.** "Home improvement" means the repairing, remodeling, altering, converting or modernizing of, or adding to a residential building. For the purpose of this definition, residential building does not include appurtenant recreational facilities, detached garages, driveways, walkways, patios, boundary walls, retaining walls not necessary for the structural stability of the building, landscaping, fences, nonpermanent construction materials, off-site improvements, and all other similar items.

Subd. 10. **Home improvement contractor.** "Home improvement contractor" means a person who is engaged in the business of home improvement either full time or part time, and who holds out to the public as having knowledge or skill peculiar to the business of home improvement.

Subd. 11. **Owner.** "Owner" means any person who owns a residential building on which home improvement work is performed, and includes any subsequent owner of the residential building.

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

**History:** [1977 c 65 s 1](#); [1981 c 119 s 1-5](#); [1986 c 444](#); [2001 c 207 s 8](#); [1Sp2003 c 8 art 1 s 12](#); [2007 c 140 art 4 s 61](#); [art 12 s 12](#); [art 13 s 4](#); [2010 c 343 s 4,5](#)

### 327A.02 STATUTORY WARRANTIES.

---

Subdivision 1. **Warranties by vendors.** In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:

(a) during the one-year period from and after the warranty date the dwelling shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards;

(b) during the two-year period from and after the warranty date, the dwelling shall be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards; and

(c) during the ten-year period from and after the warranty date, the dwelling shall be free from major construction defects due to noncompliance with building standards.

**Subd. 2. Warranties to survive passage of title.** The statutory warranties provided in this section shall survive the passing of legal or equitable title in the dwelling to the vendee.

**Subd. 2a. Remedies unaffected by corporate dissolution.** The statutory warranties provided in this section are not affected by the dissolution of a vendor or home improvement contractor that is a corporation or limited liability company.

**Subd. 3. Home improvement warranties.** (a) In a sale or in a contract for the sale of home improvement work involving major structural changes or additions to a residential building, the home improvement contractor shall warrant to the owner that:

(1) during the one-year period from and after the warranty date the home improvement shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards; and

(2) during the ten-year period from and after the warranty date the home improvement shall be free from major construction defects due to noncompliance with building standards.

(b) In a sale or in a contract for the sale of home improvement work involving the installation of plumbing, electrical, heating or cooling systems, the home improvement contractor shall warrant to the owner that, during the two-year period from and after the warranty date, the home improvement shall be free from defects caused by the faulty installation of the system or systems due to noncompliance with building standards.

(c) In a sale or in a contract for the sale of any home improvement work not covered by paragraph (a) or (b), the home improvement contractor shall warrant to the owner that, during the one-year period from and after the warranty date, the home improvement shall be free from defects caused by faulty workmanship or defective materials due to noncompliance with building standards.

**Subd. 4. Response from vendor or home improvement contractor to notice of claim; right to inspect.**

(a) The vendee or owner must allow an inspection for purposes of the preparation of an offer to repair the alleged loss or damage under subdivision 5. The inspection must be performed by the vendor or home improvement contractor within 30 days of 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 latest of the following:

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

(2) 180 days.

(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.

**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.

**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.

**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.

**History:** [1977 c 65 s 2](#); [1981 c 119 s 6](#); [2001 c 207 s 9,10](#); [2006 c 202 s 5,6](#); [2010 c 343 s 6-9](#)

### **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;

(d) loss or damage from normal wear and tear;

(e) loss or damage from normal shrinkage caused by drying of the dwelling or the home improvement within tolerances of building standards;

(f) loss or damage from dampness and condensation due to insufficient ventilation after occupancy;

(g) loss or damage from negligence, improper maintenance or alteration of the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(h) loss or damage from changes in grading of the ground around the dwelling or the home improvement by parties other than the vendor or the home improvement contractor;

(i) landscaping or insect loss or damage;

(j) loss or damage from failure to maintain the dwelling or the home improvement in good repair;

(k) loss or damage which the vendee or the owner, whenever feasible, has not taken timely action to minimize;

(l) loss or damage which occurs after the dwelling or the home improvement is no longer used primarily as a residence;

(m) accidental loss or damage usually described as acts of God, including, but not limited to: fire, explosion, smoke, water escape, windstorm, hail or lightning, falling trees, aircraft and vehicles, flood, and earthquake, except when the loss or damage is caused by failure to comply with building standards;

(n) loss or damage from soil movement which is compensated by legislation or covered by insurance;

(o) loss or damage due to soil conditions where construction is done upon lands owned by the vendee or the owner and obtained by the vendee or owner from a source independent of the vendor or the home improvement contractor;

(p) in the case of home improvement work, loss or damage due to defects in the existing structure and systems not caused by the home improvement.

**History:** [1977 c 65 s 3](#); [1981 c 119 s 7](#); [1986 c 444](#); [2010 c 343 s 10](#)



## **327A.04 WAIVER AND MODIFICATION LIMITED.**

---

Subdivision 1. **Waiver.** Except as provided in subdivisions 2 and 3, the provisions of sections [327A.01](#) to [327A.08](#) cannot be waived or modified by contract or otherwise. Any agreement which purports to waive or modify the provisions of sections [327A.01](#) to [327A.08](#), except as provided in subdivisions 2 and 3 of this section, shall be void.

Subd. 2. **Modification.** At any time after a contract for the sale of a dwelling is entered into by and between a vendor and a vendee or a contract for home improvement work is entered into by and between a home improvement contractor and an owner, any of the warranties provided for in section [327A.02](#) may be excluded or modified only by a written instrument, printed in boldface type of a minimum size of ten points, which is signed by the vendee or the owner and which sets forth in detail the warranty involved, the consent of the vendee or the owner, and the terms of the new agreement contained in the writing. No exclusion or modification shall be effective unless the vendor or the home improvement contractor provides substitute express warranties offering substantially the same protections to the vendee or the owner as the statutory warranties set forth in section [327A.02](#). Any modification or exclusion agreed to by vendee and vendor or the owner and home improvement contractor pursuant to this subdivision shall not require the approval of the commissioner of labor and industry pursuant to section [327A.07](#).

Subd. 3. **Exception.** If a major construction defect is discovered prior to the sale of a dwelling, the warranty set forth in section [327A.02, subdivision 1](#), clause (c) may be waived for the defect identified in the waiver instrument, after full oral disclosure of the specific defect, by an instrument which sets forth in detail: the specific defect; the difference between the value of the dwelling without the defect and the value of the dwelling with the defect, as determined and attested to by an independent appraiser, contractor, insurance adjuster, engineer or any other similarly knowledgeable person selected by the vendee; the price reduction; the date the construction was completed; the legal description of the dwelling; the consent of the vendee to the waiver; and the signatures of the vendee, the vendor, and two witnesses.

A single waiver agreed to pursuant to this subdivision may not apply to more than one major construction defect in a dwelling.

The waiver shall not be effective unless recorded with the county recorder or registrar of titles who shall file the waiver for record.

**History:** [1977 c 65 s 4](#); [1981 c 119 s 8](#); [2005 c 4 s 61](#); [2008 c 337 s 59](#); [2009 c 91 s 1](#)

## **327A.05 REMEDIES.**

---

Subdivision 1. **New home warranties.** Upon breach of any warranty imposed by section [327A.02, subdivision 1](#), the vendee shall have a cause of action against the vendor for damages arising out of the breach, or for specific performance. Damages shall be limited to:

- (a) the amount necessary to remedy the defect or breach; or
- (b) the difference between the value of the dwelling without the defect and the value of the dwelling with the defect.

Subd. 2. **Home improvement warranty.** Upon breach of any warranty imposed by section [327A.02, subdivision 3](#), the owner shall have a cause of action against the home improvement contractor for damages arising out of the breach, or for specific performance. Damages shall be limited to the amount necessary to remedy the defect or breach.

**History:** [1977 c 65 s 5](#); [1981 c 119 s 9](#)

## **327A.051 HOME WARRANTY DISPUTE RESOLUTION.**

---

Subdivision 1. **Panel of neutrals.** (a) The commissioner of labor and industry shall maintain a list of persons who consent to serve as qualified neutrals for purposes of this section. The commissioner shall establish application requirements and qualifications for qualified neutrals, taking into consideration the education, experience, and training of the applicant, potential conflicts of interest, and that the purpose of the process is to assist parties in determining an agreeable scope of repair or other resolution of their dispute.

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



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

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

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

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

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

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

(d) The parties shall share the expense of the qualified neutral's billed time equally, 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.

**History:** [2010 c 343 s 11](#)

## **327A.06 OTHER WARRANTIES.**

The warranties provided for in section [327A.02](#) shall be in addition to all other warranties imposed by law or agreement. The remedies provided in section [327A.05](#) shall not be construed as limiting the remedies in any action not predicated upon breach of the statutory warranties imposed by section [327A.02](#).

### **327A.07 VARIATIONS.**

---

The commissioner of labor and industry may approve pursuant to sections 14.05 to 14.28, variations from the provisions of sections 327A.02 and 327A.03 if the warranty program of the vendor or the home improvement contractor requesting the variation offers at least substantially the same protections to the vendee or owner as provided by the warranties set forth in section 327A.02.

History: 1977 c 65 s 7; 1981 c 119 s 10; 1982 c 424 s 130; 1995 c 233 art 2 s 56; 2008 c 337 s 60; 2009 c 91 s 3

### **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. 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.

History: 1981 c 119 s 11; 1997 c 7 art 1 s 126; 2009 c 91 s 4; 2010 c 343 s 12

Contractor License #BC638384