

**Reference Manual for
Residential Building Contractor
and
Residential Remodeler
License Exam**

Contents

Minnesota Rules Chapter 2891.0020 – 2891.0050.....	Residential Building Contractors
Minnesota Statutes Chapter 325E.66.....	Insurance Claims for Residential Contracting Services
Minnesota Statutes Chapter 181.723.....	Construction Contractors (Classification of Workers)
Minnesota Statutes Chapter 326B.701.....	Construction Contractor Registration
Minnesota Statutes Chapter 326B.082.....	CCLD Enforcement
Minnesota Statutes Chapter 326B.802-.89...Residential Construction Trades Licensing & Regulation	
Minnesota Statutes Chapter 327A.....	Statutory Warranties
Minnesota Statutes Chapter 333.....	Assumed Names
Minnesota Statutes Chapter 514.01-.12.....	Mechanic's Liens

Minnesota Administrative Rules

CHAPTER 2891, RESIDENTIAL BUILDING CONTRACTORS

2891.0020 RECORDS.

For the purposes of this license, a licensee shall maintain records showing all plans, contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer, and shall have the records available for inspection by the commissioner during normal business hours. Records must be kept at the licensee's business address.

2891.0040 FRAUDULENT, DECEPTIVE, OR DISHONEST PRACTICES.

Subpart 1. Description. For the purposes of Minnesota Statutes, section 326B.84, subdivision 1, clause (2), the following acts and practices are considered fraudulent, deceptive, or dishonest practices:

- A. misrepresentation of a material fact by the applicant in obtaining a license;
- B. engaging in false, fraudulent, or misleading advertising;
- C. making any material misrepresentation or omission in the procurement of a building contract;
- D. any fraud or dishonesty in the execution of, or in the material alteration of, any contract, mortgage, promissory note, or other document incident to a building transaction;
- E. conducting a building or remodeling contracting business in any name other than the one in which the contractor is licensed, unless the licensee has filed a certificate of assumed name with the secretary of state and provided a copy of the certificate to the commissioner;
- F. contracting or offering to contract while the license is revoked, under suspension, or inactive for any reason;
- G. knowingly contracting for, or performing, a service beyond the scope of the license; or
- H. performing any construction without obtaining applicable local building permits and inspections.

Subp. 2. Nonlimitation of authority. Nothing in this part limits the authority of the commissioner to take action against a licensee for fraudulent, deceptive, or dishonest practices not specifically described in this part.

2891.0050 INCOMPETENT, UNTRUSTWORTHY, OR FINANCIALLY IRRESPONSIBLE PRACTICES.

Subpart 1. **Description.** For the purposes of Minnesota Statutes, section 326B.84, subdivision 1, clause (6), the following acts and practices are considered incompetent, untrustworthy, or financially irresponsible:

A. failure to maintain any required license bond, or Minnesota workers' compensation, liability, or unemployment benefits as required by applicable law;

B. accrual of \$500 or more in delinquent taxes, penalties, or interest, owed to the state, pursuant to Minnesota Statutes, section 270C.72; or

C. diversion of funds paid to a licensee from the purposes for which the funds were intended.

Subp. 2. **Nonlimitation of authority.** Nothing in this part limits the authority of the commissioner to take action against a licensee for incompetent, untrustworthy, or financially irresponsible practices not specifically described in this part.

325E.66 INSURANCE CLAIMS FOR RESIDENTIAL CONTRACTING GOODS AND SERVICES.

Subdivision 1. **Payment or rebate of insurance deductible.** A residential contractor providing home repair or improvement services to be paid by an insured from the proceeds of a property or casualty insurance policy shall not, as an inducement to the sale or provision of goods or services to an insured, advertise or promise to pay, directly or indirectly, all or part of any applicable insurance deductible or offer to compensate an insured for providing any service to the insured. If a residential contractor violates this section, the insurer to whom the insured tendered the claim shall not be obligated to consider the estimate prepared by the residential contractor. The residential contractor must provide a written notification of the requirements of this section with its initial estimate. The adjuster or insurer must provide a written notification of the requirements of this section in the initial estimate relating to the claim.

For purposes of this section, "residential contractor" means a residential roofer, as defined in section 326B.802, subdivision 14; a residential building contractor, as defined in section 326B.802, subdivision 11; and a residential remodeler, as defined in section 326B.802, subdivision 12.

Subd. 2. **Private remedy.** If a residential contractor violates subdivision 1, the insured or the applicable insurer may bring an action against the residential contractor in a court of competent jurisdiction for damages sustained by the insured or insurer as a consequence of the residential contractor's violation.

Subd. 3. **Public enforcement.** The commissioner of labor and industry shall enforce this section under sections 326B.081 to 326B.085.

History: 2010 c 324 s 1; 2011 c 63 s 1; 2012 c 248 s 1; 2018 c 209 s 1

181.723 CONSTRUCTION CONTRACTORS.

Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

(a) "Person" means any individual, limited liability company, limited liability partnership, corporation, partnership, incorporated or unincorporated association, sole proprietorship, joint stock company, or any other legal or commercial entity.

(b) "Department" means the Department of Labor and Industry.

(c) "Commissioner" means the commissioner of labor and industry or a duly designated representative of the commissioner who is either an employee of the Department of Labor and Industry or person working under contract with the Department of Labor and Industry.

(d) "Individual" means a human being.

(e) "Day" means calendar day unless otherwise provided.

(f) "Knowingly" means knew or could have known with the exercise of reasonable diligence.

(g) "Business entity" means a person other than an individual or a sole proprietor.

Subd. 2. **Limited application.** This section only applies to individuals performing public or private sector commercial or residential building construction or improvement services. Building construction and improvement services do not include (1) the manufacture, supply, or sale of products, materials, or merchandise; (2) landscaping services for the maintenance or removal of existing plants, shrubs, trees, and other vegetation, whether or not the services are provided as part of a contract for the building construction or improvement services; and (3) all other landscaping services, unless the other landscaping services are provided as part of a contract for the building construction or improvement services.

Subd. 3. **Employee-employer relationship.** Except as provided in subdivision 4, for purposes of chapters 176, 177, 181A, 182, and 268, as of January 1, 2009, an individual who performs services for a person that are in the course of the person's trade, business, profession, or occupation is an employee of that person and that person is an employer of the individual.

Subd. 4. **Independent contractor.** (a) An individual is an independent contractor and not an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession, or occupation only if the individual:

(1) maintains a separate business with the individual's own office, equipment, materials, and other facilities;

(2)(i) holds or has applied for a federal employer identification number or (ii) has filed business or self-employment income tax returns with the federal Internal Revenue Service if the individual has performed services in the previous year;

(3) is operating under contract to perform the specific services for the person for specific amounts of money and under which the individual controls the means of performing the services;

(4) is incurring the main expenses related to the services that the individual is performing for the person under the contract;

(5) is responsible for the satisfactory completion of the services that the individual has contracted to perform for the person and is liable for a failure to complete the services;

(6) receives compensation from the person for the services performed under the contract on a commission or per-job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under the contract to perform services for the person;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

An individual who is not registered, if required by section 326B.701, is presumed to be an employee of a person for whom the individual performs services in the course of the person's trade, business, profession, or occupation. The person for whom the services were performed may rebut this presumption by showing that the unregistered individual met all nine factors in this paragraph at the time the services were performed.

(b) If an individual is an owner or partial owner of a business entity, the individual is an employee of the person for whom the individual is performing services in the course of the person's trade, business, profession, or occupation, and is not an employee of the business entity in which the individual has an ownership interest, unless:

(1) the business entity meets the nine factors in paragraph (a);

(2) invoices and payments are in the name of the business entity; and

(3) the business entity is registered with the secretary of state, if required.

If the business entity in which the individual has an ownership interest is not registered, if required by section 326B.701, the individual is presumed to be an employee of a person for whom the individual performs services and not an employee of the business entity in which the individual has an ownership interest. The person for whom the services were performed may rebut the presumption by showing that the business entity met the requirements of clauses (1) to (3) at the time the services were performed.

Subd. 4a. MS 2012 [Renumbered 326B.701, subd 2]

Subd. 5. MS 2012 [Renumbered 326B.701, subd 3]

Subd. 5a. MS 2012 [Renumbered 326B.701, subd 4]

Subd. 6. [Repealed, 2012 c 295 art 2 s 13]

Subd. 7. Prohibited activities related to independent contractor status. (a) The prohibited activities in this subdivision are in addition to those prohibited in sections 326B.081 to 326B.085.

(b) An individual shall not hold himself or herself out as an independent contractor unless the individual meets the requirements of subdivision 4.

(c) A person who provides construction services in the course of the person's trade, business, occupation, or profession shall not:

(1) require an individual through coercion, misrepresentation, or fraudulent means to adopt independent contractor status or form a business entity;

(2) knowingly misrepresent or misclassify an individual as an independent contractor.

Subd. 7a. MS 2012 [Renumbered 326B.701, subd 5]

Subd. 8. [Repealed, 2012 c 295 art 2 s 13]

Subd. 8a. MS 2012 [Renumbered 326B.701, subd 6]

Subd. 9. [Repealed, 2012 c 295 art 2 s 13]

Subd. 10. [Repealed, 2012 c 295 art 2 s 13]

Subd. 10a. MS 2012 [Renumbered 326B.701, subd 7]

Subd. 11. [Repealed, 2012 c 295 art 2 s 13]

Subd. 12. [Repealed, 2012 c 295 art 2 s 13]

Subd. 13. **Rulemaking.** The commissioner may, in consultation with the commissioner of revenue and the commissioner of employment and economic development, adopt, amend, suspend, and repeal rules under the rulemaking provisions of chapter 14 that relate to the commissioner's responsibilities under this section. This subdivision is effective May 26, 2007.

Subd. 14. [Repealed, 2012 c 295 art 2 s 13]

Subd. 15. **Notice and review by commissioners of revenue and employment and economic development.** When the commissioner has reason to believe that a person has violated subdivision 7, paragraph (b); or (c), clause (1) or (2), the commissioner must notify the commissioner of revenue and the commissioner of employment and economic development. Upon receipt of notification from the commissioner, the commissioner of revenue must review the information returns required under section 6041A of the Internal Revenue Code. The commissioner of revenue shall also review the submitted certification that is applicable to returns audited or investigated under section 289A.35.

Subd. 16. MS 2012 [Renumbered 326B.701, subd 8]

Subd. 17. [Repealed, 2012 c 295 art 2 s 13]

History: 2007 c 135 art 3 s 15; 2007 c 140 art 8 s 30; art 13 s 4; 2008 c 337 s 2; 2009 c 78 art 6 s 17; 2010 c 347 art 3 s 1; 1Sp2011 c 4 art 3 s 1; 2012 c 295 art 2 s 1-10; 2014 c 305 s 13-17,31

326B.701 CONSTRUCTION CONTRACTOR REGISTRATION.

Subdivision 1. **Definitions.** The following definitions apply to this section:

(a) "Business entity" means a person other than an individual or a sole proprietor.

(b) "Document" or "documents" includes papers; books; records; memoranda; data; contracts; drawings; graphs; charts; photographs; digital, video, and audio recordings; records; accounts; files; statements; letters; e-mails; invoices; bills; notes; and calendars maintained in any form or manner.

Subd. 2. **Applicability; registration requirement.** (a) Persons who perform public or private sector commercial or residential building construction or improvement services as described in subdivision 2 must register with the commissioner as provided in this section. The purpose of registration is to assist the Department of Labor and Industry, the Department of Employment and Economic Development, and the Department of Revenue to enforce laws related to misclassification of employees.

(b) Except as provided in paragraph (c), any person who performs construction services in the state on or after September 15, 2012, must register with the commissioner as provided in this section before performing construction services for another person. The requirements for registration under this section are not a substitute for, and do not relieve a person from complying with, any other law requiring that the person be licensed, registered, or certified.

(c) The registration requirements in this section do not apply to:

(1) a person who, at the time the person is performing the construction services, holds a current license, certificate, or registration under chapter 299M or 326B;

(2) a person who holds a current independent contractor exemption certificate issued under this section that is in effect on September 15, 2012, except that the person must register under this section no later than the date the exemption certificate expires, is revoked, or is canceled;

(3) a person who has given a bond to the state under section 326B.197 or 326B.46;

(4) an employee of the person performing the construction services, if the person was in compliance with laws related to employment of the individual at the time the construction services were performed;

(5) an architect or professional engineer engaging in professional practice as defined in section 326.02, subdivisions 2 and 3;

(6) a school district or technical college governed under chapter 136F;

(7) a person providing construction services on a volunteer basis, including but not limited to Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf; or

(8) a person exempt from licensing under section 326B.805, subdivision 6, clause (5).

Subd. 3. **Registration application.** (a) Persons required to register under this section must submit electronically, in the manner prescribed by the commissioner, a complete application according to paragraphs (b) to (d).

(b) A complete application must include all of the following information about any individual who is registering as an individual or a sole proprietor, or who owns 25 percent or more of a business entity being registered:

(1) the individual's full legal name and title at the applicant's business;

(2) the individual's business address and telephone number;

(3) the percentage of the applicant's business owned by the individual; and

(4) the individual's Social Security number.

(c) A complete application must also include the following information:

(1) the applicant's legal name; assumed name filed with the secretary of state, if any; designated business address; physical address; telephone number; and e-mail address;

(2) the applicant's Minnesota tax identification number, if one is required or has been issued;

(3) the applicant's federal employer identification number, if one is required or has been issued;

(4) evidence of the active status of the applicant's business filings with the secretary of state, if one is required or has been issued;

(5) whether the applicant has any employees at the time the application is filed;

(6) the names of all other persons with an ownership interest in the business entity who are not identified in paragraph (b), and the percentage of the interest owned by each person, except that the names of shareholders with less than ten percent ownership in a publicly traded corporation need not be provided;

(7) information documenting compliance with workers' compensation and unemployment insurance laws;

(8) a certification that the person signing the application has: reviewed it; determined that the information provided is true and accurate; and determined that the person signing is authorized to sign and file the application as an agent of the applicant. The name of the person signing, entered on an electronic application, shall constitute a valid signature of the agent on behalf of the applicant; and

(9) a signed authorization for the Department of Labor and Industry to verify the information provided on or with the application.

(d) A registered person must notify the commissioner within 15 days after there is a change in any of the information on the application as approved. This notification must be provided electronically in the manner prescribed by the commissioner. However, if the business entity structure or legal form of the business entity has changed, the person must submit a new registration application and registration fee, if any, for the new business entity.

(e) The registered person must remain registered while providing construction services for another person. The provisions of sections 326B.091, 326B.094, 326B.095, and 326B.097 apply to this section. A person with an expired registration shall not provide construction services for another person if registration is required under this section. Registration application and expiration time frames are as follows:

(1) all registrations issued on or before December 31, 2015, expire on December 31, 2015;

(2) all registrations issued after December 31, 2015, expire on the following December 31 of each odd-numbered year; and

(3) a person may submit a registration or renewal application starting October 1 of the year the registration expires. If a renewal application is submitted later than December 1 of the expiration year, registration may expire before the department has issued or denied the registration.

Subd. 4. Website. (a) The commissioner shall develop and maintain a website on which applicants for registration can submit a registration application. The website shall be designed to receive and process registration applications and promptly issue registration certificates electronically to successful applicants.

(b) The commissioner shall maintain the certificates of registration on the department's official public website, which shall include the following information:

(1) the registered person's legal business name, including any assumed name, as filed with the secretary of state;

(2) the person's business address designated on the application; and

(3) the effective date of the registration and the expiration date.

Subd. 5. Prohibited activities related to registration. (a) The prohibited activities in this subdivision are in addition to those prohibited in sections 326B.081 to 326B.085.

(b) A person who provides construction services in the course of the person's trade, business, occupation, or profession shall not:

(1) contract with or perform construction services for another person without first being registered if required by this section;

(2) contract with or pay another person to perform construction services if the other person is not registered if required by subdivision 2. All payments to an unregistered person for construction services on a single project site shall be considered a single violation. It is not a violation of this clause:

(i) for a person to contract with or pay an unregistered person if the unregistered person was registered at the time the contract for construction services was entered into; or

(ii) for a homeowner or business to contract with or pay an unregistered person if the homeowner or business is not in the trade, business, profession, or occupation of performing building construction or improvement services; or

(3) be penalized for violations of this subdivision that are committed by another person. This clause applies only to violations of this paragraph.

Subd. 6. Enforcement; remedies; and penalties. (a) Notwithstanding the maximum penalty amount in section 326B.082, subdivisions 7 and 12, the maximum penalty for failure to register is \$2,000, but the commissioner shall forgive the penalty if the person registers within 30 days of the date of the penalty order.

(b) The penalty for contracting with or paying an unregistered person to perform construction services in violation of subdivision 5, paragraph (b), clause (2), shall be as provided in section 326B.082, subdivisions 7 and 12, but the commissioner shall forgive the penalty for the first violation.

Subd. 7. Notice requirement. Notice of a penalty order for failure to register must include a statement that the penalty shall be forgiven if the person registers within 30 days of the date of the penalty order.

Subd. 8. Data classified. Data in applications and any required documentation submitted to the commissioner under this section are private data on individuals or nonpublic data as defined in section 13.02.

Data in registration certificates issued by the commissioner are public data; except that registration information published on the department's website may be accessed for registration verification purposes only. Data that document a revocation or cancellation of a certificate are public data. Upon request of the Department of Revenue or the Department of Employment and Economic Development, the commissioner may release to the requesting department data classified as private or nonpublic under this subdivision or investigative data that are not public under section 13.39 that relate to the issuance or denial of applications or revocations of certificates.

History: 2007 c 135 art 3 s 15; 2010 c 347 art 3 s 1; 1Sp2011 c 4 art 3 s 1; 2012 c 295 art 2 s 3,4,5,7,10; 2014 c 305 s 14,15,17,26,31; 2015 c 54 art 1 s 18

326B.082 ENFORCEMENT.

Subdivision 1. **Remedies available.** The commissioner may enforce all applicable law under this section. The commissioner may use any enforcement provision in this section, including the assessment of monetary penalties, against a person required to have a license, registration, certificate, or permit under the applicable law based on conduct that would provide grounds for action against a licensee, registrant, certificate holder, or permit holder under the applicable law. The use of an enforcement provision in this section shall not preclude the use of any other enforcement provision in this section or otherwise provided by law.

Subd. 2. **Access to information and property; subpoenas.** (a) In order to carry out the purposes of the applicable law, the commissioner may:

(1) administer oaths and affirmations, certify official acts, interview, question, take oral or written statements, and take depositions;

(2) request, examine, take possession of, test, sample, measure, photograph, record, and copy any documents, apparatus, devices, equipment, or materials;

(3) at a time and place indicated by the commissioner, request persons to appear before the commissioner to give testimony and produce documents, apparatus, devices, equipment, or materials;

(4) issue subpoenas to compel persons to appear before the commissioner to give testimony and produce documents, apparatus, devices, equipment, or materials; and

(5) with or without notice, enter without delay upon any property, public or private, for the purpose of taking any action authorized under this subdivision or the applicable law, including obtaining information, remedying violations, or conducting surveys, inspections, or investigations.

(b) Persons requested by the commissioner to give testimony or produce documents, apparatus, devices, equipment, or materials shall respond within the time and in the manner specified by the commissioner. If no time to respond is specified in the request, then a response shall be submitted within 30 days of the commissioner's service of the request.

(c) Upon the refusal or anticipated refusal of a property owner, lessee, property owner's representative, or lessee's representative to permit the commissioner's entry onto property as provided in paragraph (a), the commissioner may apply for an administrative inspection order in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the property is located. The commissioner may anticipate that a property owner or lessee will refuse entry if the property owner, lessee, property owner's representative, or lessee's representative has refused to permit entry on a prior occasion or has informed the commissioner that entry will be refused. Upon showing of administrative probable cause by the commissioner, the district court shall issue an administrative inspection order that compels the property owner or lessee to permit the commissioner to enter the property for the purposes specified in paragraph (a).

(d) Upon the application of the commissioner, a district court shall treat the failure of any person to obey a subpoena lawfully issued by the commissioner under this subdivision as a contempt of court.

Subd. 3. **Service.** Unless otherwise specified, service of a document on a person under this section or section 326B.083 may be by mail, by personal service, or in accordance with any consent to service filed with the commissioner. Service by mail shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 2. Personal service shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 3.

Subd. 4. **Fax transmission.** When this section or section 326B.083 permits a request for reconsideration or request for hearing to be served by fax on the commissioner, the fax shall not exceed 15 pages in length. The request shall be considered timely served if the fax is received by the commissioner, at the fax number identified by the commissioner in the order or notice of violation, no later than 4:30 p.m. central time on the last day permitted for faxing the request. Where the quality or authenticity of the faxed request is at issue, the commissioner may require the original request to be filed. Where the commissioner has not identified quality or authenticity of the faxed request as an issue and the request has been faxed in accordance with this subdivision, the person faxing the request does not need to file the original request with the commissioner.

Subd. 5. **Time computation.** In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.

Subd. 6. **Notices of violation.** (a) The commissioner may issue a notice of violation to any person who the commissioner determines has committed a violation of the applicable law. The notice of violation must state a summary of the facts that constitute the violation and the applicable law violated. The notice of violation may require the person to correct the violation. If correction is required, the notice of violation must state the deadline by which the violation must be corrected.

(b) The commissioner shall issue the notice of violation by:

(1) serving the notice of violation on the property owner or on the person who committed the violation;
or

(2) posting the notice of violation at the location where the violation occurred.

(c) If the person to whom the commissioner has issued the notice of violation believes the notice was issued in error, then the person may request reconsideration of the parts of the notice that the person believes are in error. The request for reconsideration must be in writing and must be served on, faxed, or e-mailed to the commissioner at the address, fax number, or e-mail address specified in the notice of violation by the tenth day after the commissioner issued the notice of violation. The date on which a request for reconsideration is served by mail shall be the postmark date on the envelope in which the request for reconsideration is mailed. If the person does not serve, fax, or e-mail a written request for reconsideration or if the person's written request for reconsideration is not served on or faxed to the commissioner by the tenth day after the commissioner issued the notice of violation, the notice of violation shall become a final order of the commissioner and will not be subject to review by any court or agency. The request for reconsideration must:

(1) specify which parts of the notice of violation the person believes are in error;

(2) explain why the person believes the parts are in error; and

(3) provide documentation to support the request for reconsideration.

The commissioner shall respond in writing to requests for reconsideration made under this paragraph within 15 days after receiving the request. A request for reconsideration does not stay a requirement to correct a violation as set forth in the notice of violation. After reviewing the request for reconsideration, the commissioner may affirm, modify, or rescind the notice of violation. The commissioner's response to a request for reconsideration is final and shall not be reviewed by any court or agency.

Subd. 7. Administrative orders; correction; assessment of monetary penalties. (a) The commissioner may issue an administrative order to any person who the commissioner determines has committed a violation of the applicable law. The commissioner shall issue the administrative order by serving the administrative order on the person. The administrative order may require the person to correct the violation, may require the person to cease and desist from committing the violation, and may assess monetary penalties. The commissioner shall follow the procedures in section 326B.083 when issuing administrative orders. Except as provided in paragraph (b), the commissioner may issue to each person a monetary penalty of up to \$10,000 for each violation of applicable law committed by the person. The commissioner may order that part or all of the monetary penalty will be forgiven if the person to whom the order is issued demonstrates to the commissioner by the 31st day after the order is issued that the person has corrected the violation or has developed a correction plan acceptable to the commissioner.

(b) The commissioner may issue an administrative order for failure to correct a violation by the deadline stated in a final administrative order issued under paragraph (a). Each day after the deadline during which the violation remains uncorrected is a separate violation for purposes of calculating the maximum monetary penalty amount.

(c) Upon the application of the commissioner, a district court shall find the failure of any person to correct a violation as required by a final administrative order issued by the commissioner under this subdivision as a contempt of court.

Subd. 8. Hearings related to administrative orders. (a) Within 30 days after the commissioner issues an administrative order or within 20 days after the commissioner issues the notice under section 326B.083, subdivision 3, paragraph (b), clause (3), the person to whom the administrative order or notice is issued may request an expedited hearing to review the commissioner's order or notice. The request for hearing must be in writing and must be served on, faxed, or e-mailed to the commissioner at the address, fax number, or e-mail address specified in the order or notice. If the person does not request a hearing or if the person's written request for hearing is not served on, faxed, or e-mailed to the commissioner by the 30th day after the commissioner issues the administrative order or the 20th day after the commissioner issues the notice under section 326B.083, subdivision 3, paragraph (b), clause (3), the order will become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. The hearing request must specifically state the reasons for seeking review of the order or notice. The person to whom the order or notice is issued and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order or notice is issued of the time and place of the hearing at least 15 days before the hearing. The expedited hearing must be held within 45 days after a request for hearing has been received by the commissioner unless the parties agree to a later date.

(b) Parties may submit written arguments if permitted by the administrative law judge. All written arguments must be submitted within ten days following the completion of the hearing or the receipt of any late-filed exhibits that the parties and the administrative law judge have agreed should be received into the record, whichever is later. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making findings of fact, conclusions of law, and a recommended order to the commissioner within 30 days following the completion of the hearing, the receipt of late-filed exhibits, or the submission of written arguments, whichever is later.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the department by the Office of Administrative Hearings for the hearing.

(e) If a hearing has been held, the commissioner shall not issue a final order until at least five days after the date of the administrative law judge's report. Any person aggrieved by the administrative law judge's report may, within those five days, serve written comments to the commissioner on the report and the commissioner shall consider and enter the comments in the record. The commissioner's final order shall comply with sections 14.61, subdivision 2, and 14.62, subdivisions 1 and 2a, and may be appealed in the manner provided in sections 14.63 to 14.69.

Subd. 9. Injunctive relief. In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the commissioner has determined a violation of the applicable law has occurred or is about to occur to enjoin the violation. A temporary restraining order and other injunctive relief shall be granted by the district court if the court determines that a person has engaged in or is about to engage in an act, conduct, or practice constituting a violation of the applicable law. The commissioner shall not be required to show irreparable harm.

Subd. 10. Stop orders. (a) If the commissioner determines based on an inspection or investigation that a person has violated or is about to violate the applicable law, the commissioner may issue to the person a stop order requiring the person to cease and desist from committing the violation.

(b) If the commissioner determines that a condition exists on real property that violates the applicable law, the commissioner may issue a stop order to the owner or lessee of the real property to cease and desist from committing the violation and to correct the condition that is in violation.

(c) The commissioner shall issue the stop work order by:

- (1) serving the order on the person who has committed or is about to commit the violation;
- (2) posting the order at the location where the violation was committed or is about to be committed or at the location where the violating condition exists; or
- (3) serving the order on any owner or lessee of the real property where the violating condition exists.

(d) A stop order shall:

(1) describe the act, conduct, or practice committed or about to be committed, or the condition, and include a reference to the applicable law that the act, conduct, practice, or condition violates or would violate; and

(2) provide notice that any person aggrieved by the stop order may request a hearing as provided in paragraph (e).

(e) Within 30 days after the commissioner issues a stop order, any person aggrieved by the order may request an expedited hearing to review the commissioner's action. The request for hearing must be made in writing and must be served on or faxed to the commissioner at the address or fax number specified in the order. If the person does not request a hearing or if the person's written request for hearing is not served on or faxed to the commissioner on or before the 30th day after the commissioner issued the stop order, the order will become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail is the postmark date on the envelope in which the

request for hearing is mailed. The hearing request must specifically state the reasons for seeking review of the order. The person who requested the hearing and the commissioner are the parties to the expedited hearing. The hearing shall be commenced within ten days after the commissioner receives the request for hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The administrative law judge shall issue a report containing findings of fact, conclusions of law, and a recommended order within ten days after the completion of the hearing, the receipt of late-filed exhibits, or the submission of written arguments, whichever is later. Any party aggrieved by the administrative law judge's report shall have five days after the date of the administrative law judge's report to submit written exceptions and argument to the commissioner that the commissioner shall consider and enter in the record. Within 15 days after receiving the administrative law judge's report, the commissioner shall issue an order vacating, modifying, or making permanent the stop order. The commissioner and the person requesting the hearing may by agreement lengthen any time periods described in this paragraph. The Office of Administrative Hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this subdivision.

(f) A stop order issued under this subdivision shall be in effect until it is modified or vacated by the commissioner or an appellate court. The administrative hearing provided by this subdivision and any appellate judicial review as provided in chapter 14 shall constitute the exclusive remedy for any person aggrieved by a stop order.

(g) Upon the application of the commissioner, a district court shall find the failure of any person to comply with a final stop order lawfully issued by the commissioner under this subdivision as a contempt of court.

Subd. 11. Licensing orders; grounds; reapplication. (a) The commissioner may deny an application for a permit, license, registration, or certificate if the applicant does not meet or fails to maintain the minimum qualifications for holding the permit, license, registration, or certificate, or has any unresolved violations or unpaid fees or monetary penalties related to the activity for which the permit, license, registration, or certificate has been applied for or was issued.

(b) The commissioner may deny, suspend, limit, place conditions on, or revoke a person's permit, license, registration, or certificate, or censure the person holding or acting as qualifying person for the permit, license, registration, or certificate, if the commissioner finds that the person:

- (1) committed one or more violations of the applicable law;
- (2) submitted false or misleading information to the state in connection with activities for which the permit, license, registration, or certificate was issued, or in connection with the application for the permit, license, registration, or certificate;
- (3) allowed the alteration or use of the person's own permit, license, registration, or certificate by another person;
- (4) within the previous five years, was convicted of a crime in connection with activities for which the permit, license, registration, or certificate was issued;
- (5) violated: (i) a final administrative order issued under subdivision 7, (ii) a final stop order issued under subdivision 10, (iii) injunctive relief issued under subdivision 9, or (iv) a consent order or final order of the commissioner;
- (6) failed to cooperate with a commissioner's request to give testimony, to produce documents, things, apparatus, devices, equipment, or materials, or to access property under subdivision 2;

(7) retaliated in any manner against any employee or person who is questioned by, cooperates with, or provides information to the commissioner or an employee or agent authorized by the commissioner who seeks access to property or things under subdivision 2;

(8) engaged in any fraudulent, deceptive, or dishonest act or practice; or

(9) performed work in connection with the permit, license, registration, or certificate or conducted the person's affairs in a manner that demonstrates incompetence, untrustworthiness, or financial irresponsibility.

(c) If the commissioner revokes or denies a person's permit, license, registration, or certificate under paragraph (b), the person is prohibited from reapplying for the same type of permit, license, registration, or certificate for at least two years after the effective date of the revocation or denial. The commissioner may, as a condition of reapplication, require the person to obtain a bond or comply with additional reasonable conditions the commissioner considers necessary to protect the public.

(d) If a permit, license, registration, or certificate expires, or is surrendered, withdrawn, or terminated, or otherwise becomes ineffective, the commissioner may institute a proceeding under this subdivision within two years after the permit, license, registration, or certificate was last effective and enter a revocation or suspension order as of the last date on which the permit, license, registration, or certificate was in effect.

Subd. 12. Issuance of licensing orders; hearings related to licensing orders. (a) If the commissioner determines that a permit, license, registration, or certificate should be conditioned, limited, suspended, revoked, or denied under subdivision 11, or that the permit holder, licensee, registrant, or certificate holder should be censured under subdivision 11, then the commissioner shall issue to the person an order denying, conditioning, limiting, suspending, or revoking the person's permit, license, registration, or certificate, or censuring the permit holder, licensee, registrant, or certificate holder.

(b) Any order issued under paragraph (a) may include an assessment of monetary penalties and may require the person to cease and desist from committing the violation or committing the act, conduct, or practice set out in subdivision 11, paragraph (b). The monetary penalty may be up to \$10,000 for each violation or act, conduct, or practice committed by the person. The procedures in section 326B.083 must be followed when issuing orders under paragraph (a).

(c) The permit holder, licensee, registrant, certificate holder, or applicant to whom the commissioner issues an order under paragraph (a) shall have 30 days after issuance of the order to request a hearing. The request for hearing must be in writing and must be served on, faxed, or e-mailed to the commissioner at the address, fax number, or e-mail address specified in the order by the 30th day after issuance of the order. If the person does not request a hearing or if the person's written request for hearing is not served on, faxed, or e-mailed to the commissioner by the 30th day after issuance of the order, the order shall become a final order of the commissioner and will not be subject to review by any court or agency. The date on which a request for hearing is served by mail shall be the postmark date on the envelope in which the request for hearing is mailed. If the person submits to the commissioner a timely request for hearing, the order is stayed unless the commissioner summarily suspends the license, registration, certificate, or permit under subdivision 13, and a contested case hearing shall be held in accordance with chapter 14.

Subd. 13. Summary suspension. In any case where the commissioner has issued an order to revoke, suspend, or deny a license, registration, certificate, or permit under subdivisions 11, paragraph (b), and 12, the commissioner may summarily suspend the person's permit, license, registration, or certificate before the order becomes final. The commissioner shall issue a summary suspension order when the safety of life or property is threatened or to prevent the commission of fraudulent, deceptive, untrustworthy, or dishonest acts against the public. The summary suspension shall not affect the deadline for submitting a request for

hearing under subdivision 12. If the commissioner summarily suspends a person's permit, license, registration, or certificate, a timely request for hearing submitted under subdivision 12 shall also be considered a timely request for hearing on continuation of the summary suspension. If the commissioner summarily suspends a person's permit, license, registration, or certificate under this subdivision and the person submits a timely request for a hearing, then a hearing on continuation of the summary suspension must be held within ten days after the commissioner receives the request for hearing unless the parties agree to a later date.

Subd. 14. Plan for assessing penalties. The commissioner may prepare a plan for assessing penalties in orders issued under subdivision 7 or 12. The commissioner shall provide a 30-day period for public comment on any such plan. Penalties assessed by the commissioner in accordance with the plan shall be presumed reasonable.

Subd. 15. Effect on other laws. Nothing in this section shall be construed to limit the application of other state or federal laws, including specifically but not exclusively section 270C.72, that require suspension of, revocation of, denial of, or refusal to renew a permit, license, registration, or certificate issued by the commissioner.

Subd. 16. Misdemeanor penalties. Except as otherwise provided by law, a person who violates an applicable law is guilty of a misdemeanor.

Subd. 17. Revocation and suspension of license. If a person fails to pay a penalty owed under this section or section 326B.083, the commissioner may revoke, suspend, or deny any or all licenses, permits, certificates, and registrations issued by the department.

History: 2007 c 140 art 3 s 2; 2008 c 337 s 42-46; 2009 c 86 art 1 s 58; 2010 c 183 s 1; 2013 c 85 art 2 s 5; 2015 c 54 art 1 s 2; 1Sp2019 c 7 art 9 s 4-6

326B.802 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to sections 326B.802 to 326B.885.

Subd. 2. **Affiliate.** An "affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 3. **Gross annual receipts.** "Gross annual receipts" means the total amount derived from residential contracting or remodeling activities, regardless of where the activities are performed, and must not be reduced by cost of goods sold, expenses, losses, or any other amount.

Subd. 4. **Lessee.** "Lessee" means one who rents or leases residential real estate pursuant to a written lease agreement of at least one year's duration.

Subd. 5. **Licensee.** "Licensee" means a residential building contractor, residential remodeler, manufactured home installer, or residential roofer licensed under sections 326B.802 to 326B.885.

Subd. 6. **Manufactured home.** "Manufactured home" has the meaning given it in section 327.31, subdivision 6.

Subd. 7. **Manufactured home installer.** "Manufactured home installer" has the meaning given it in section 327.31, subdivision 11.

Subd. 8. **Mechanical contractor.** "Mechanical contractor" means a person, sole proprietor, partnership, joint venture, corporation, or other organization which is in the business of erection, installation, alteration, repair, relocation, replacement, addition to, use, or maintenance of any heating, ventilating, cooling, process piping, plumbing, fire protection, or refrigeration systems, incinerators, or other miscellaneous heat-producing appliance, piping, or equipment or appliances associated with those systems.

Subd. 9. **Owner.** "Owner," when used in connection with real property, means a person who has any legal or equitable interest in the real property.

Subd. 10. **Qualifying person.** "Qualifying person" means the individual who fulfills the examination and education requirements for licensure on behalf of the licensee.

Subd. 11. **Residential building contractor.** "Residential building contractor" means a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate.

Subd. 12. **Residential remodeler.** "Residential remodeler" means a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section.

Subd. 13. **Residential real estate.** "Residential real estate" means a new or existing building constructed for habitation by one to four families, and includes detached garages.

Subd. 14. **Residential roofer.** "Residential roofer" means a person in the business of contracting, or offering to contract with an owner, to complete work on residential real estate in roof coverings, roof sheathing, roof weatherproofing and insulation, and repair of roof systems, but not construction of new roof systems.

Subd. 15. **Special skill.** "Special skill" means one of the following eight categories:

(a) **Excavation.** Excavation includes work in any of the following areas:

- (1) excavation;
- (2) trenching;
- (3) grading; and
- (4) site grading.

(b) **Masonry and concrete.** Masonry and concrete includes work in any of the following areas:

- (1) drain systems;
- (2) poured walls;
- (3) slabs and poured-in-place footings;
- (4) masonry walls;
- (5) masonry fireplaces;
- (6) masonry veneer; and
- (7) water resistance and waterproofing.

(c) **Carpentry.** Carpentry includes work in any of the following areas:

- (1) rough framing;
- (2) finish carpentry;
- (3) doors, windows, and skylights;
- (4) porches and decks, excluding footings;
- (5) wood foundations; and
- (6) drywall installation, excluding taping and finishing.

(d) **Interior finishing.** Interior finishing includes work in any of the following areas:

- (1) floor covering;
- (2) wood floors;
- (3) cabinet and counter top installation;
- (4) insulation and vapor barriers;
- (5) interior or exterior painting;
- (6) ceramic, marble, and quarry tile;
- (7) ornamental guardrail and installation of prefabricated stairs; and
- (8) wallpapering.

(e) **Exterior finishing.** Exterior finishing includes work in any of the following areas:

- (1) siding;
- (2) soffit, fascia, and trim;
- (3) exterior plaster and stucco;
- (4) painting; and
- (5) rain carrying systems, including gutters and down spouts.

(f) **Drywall and plaster.** Drywall and plaster includes work in any of the following areas:

- (1) installation;
- (2) taping;
- (3) finishing;
- (4) interior plaster;
- (5) painting; and
- (6) wallpapering.

(g) **Residential roofing.** Residential roofing includes work in any of the following areas:

- (1) roof coverings;
- (2) roof sheathing;
- (3) roof weatherproofing and insulation; and
- (4) repair of roof support system, but not construction of new roof support system.

(h) **General installation specialties.** Installation includes work in any of the following areas:

- (1) garage doors and openers;
- (2) pools, spas, and hot tubs;
- (3) fireplaces and wood stoves;
- (4) asphalt paving and seal coating; and
- (5) ornamental guardrail and prefabricated stairs.

Subd. 16. **Specialty contractor.** "Specialty contractor" means a person in the business of contracting or offering to contract to build or improve residential real estate by providing only one special skill as defined in this section.

Subd. 17. **Garage.** "Garage" means a structure attached to or in reasonable proximity to a dwelling, which is used or intended to be used primarily for the protection or storage of automobiles or other personal vehicles owned or driven by the occupants of the dwelling.

History: 1991 c 306 s 7; 1993 c 9 s 1-3; 1993 c 145 s 2-4; 1993 c 245 s 2-13; 1993 c 366 s 18; 1995 c 169 s 1,2; 1997 c 222 s 45,46; 1999 c 137 s 6; 2007 c 140 art 8 s 2-7,30; art 13 s 4

326B.805 LICENSING REQUIREMENTS.

Subdivision 1. **Persons required to be licensed.** A person who meets the definition of a residential building contractor as defined in section 326B.802, subdivision 11, must be licensed as a residential building contractor by the commissioner. A person who meets the definition of a residential remodeler as defined in section 326B.802, subdivision 12, must be licensed by the commissioner as a residential remodeler or residential building contractor. A person who meets the definition of a residential roofer as defined in section 326B.802, subdivision 14, must be licensed by the commissioner as a residential roofer, residential building contractor, or residential remodeler. A person who meets the definition of a manufactured home installer as defined in section 327.31, subdivision 11, must be licensed as a manufactured home installer by the commissioner.

Subd. 1a. **Pre-1978 structures.** A licensee performing renovation defined by Code of Federal Regulations, title 40, section 745.83, on a residential structure constructed prior to 1978 must comply with section 326B.106, subdivision 14.

Subd. 2. **Persons who may be licensed.** A person who meets the definition of a specialty contractor as defined in section 326B.802, subdivision 16, may be licensed by the commissioner as a residential building contractor or residential remodeler.

Subd. 3. **Prohibition.** Except as provided in subdivision 6, no persons required to be licensed by subdivision 1 may act or hold themselves out as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer for compensation without a license issued by the commissioner.

Subd. 4. **Licensing criteria.** The examination and education requirements for licensure under sections 326B.805 to 326B.885 must be fulfilled by a qualifying person designated by the potential licensee. If the qualifying person is a managing employee, the qualifying person must be an employee who is regularly employed by the licensee and is actively engaged in the business of residential contracting or residential remodeling on behalf of the licensee. For a sole proprietorship, the qualifying person must be the proprietor or managing employee. For a partnership, the qualifying person must be a general partner or managing employee. For a limited liability company, the qualifying person must be a chief manager or managing employee. For a corporation, the qualifying person must be an owner, officer, or managing employee. A qualifying person for a corporation or limited liability company may act as the qualifying person for more than one corporation or limited liability company if there is common ownership of at least 25 percent among each of the licensed corporations or limited liability companies for which the person acts in the capacity of qualifying person.

Subd. 5. **Required information.** (a) Each licensee or applicant for licensure shall provide to the commissioner a current street address and telephone number where the licensee resides, and a street address and telephone number where the licensee's business is physically located. A post office box address is not sufficient to satisfy this requirement. Each licensee or applicant for licensure must notify the commissioner in writing of any change in the required information within 15 days of the change.

(b) Each licensee or applicant for licensure must notify the commissioner in writing upon any change in control, ownership, officers or directors, personal name, business name, license name, or qualifying person, within 15 days of the change.

(c) Each licensee or applicant for licensure must notify the commissioner in writing if the licensee or applicant for licensure is found to be a judgment debtor based upon conduct requiring licensure pursuant to sections 326B.802 to 326B.885 within 15 days of the finding.

(d) Each licensee or applicant for licensure must notify the commissioner in writing within 15 days of filing a petition for bankruptcy.

(e) Each licensee or applicant for licensure must notify the commissioner in writing within ten days if the licensee or applicant for licensure has been found guilty of a felony, gross misdemeanor, misdemeanor, or any comparable offense related to residential contracting, including convictions of fraud, misrepresentation, misuse of funds, theft, criminal sexual conduct, assault, burglary, conversion of funds, or theft of proceeds in this or any other state or any other United States jurisdiction.

Subd. 6. **Exemptions.** The license requirement does not apply to:

- (1) an employee of a licensee performing work for the licensee;
- (2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;
- (3) an owner of residential real estate who builds or improves any structure on residential real estate, if the building or improving is performed by the owner's bona fide employees or by individual owners personally. This exemption does not apply to an owner who constructs or improves property for purposes of speculation if the building or improving is performed by the owner's bona fide employees or by individual owners personally. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if the contractor or remodeler constructs or improves more than one property within any 24-month period;
- (4) an architect or professional engineer engaging in professional practice as defined by section 326.02, subdivisions 2 and 3;
- (5) a person whose total gross annual receipts for performing specialty skills for which licensure would be required under this section do not exceed \$15,000;
- (6) a mechanical contractor;
- (7) a plumber, electrician, or other person whose profession is otherwise subject to statewide licensing, when engaged in the activity which is the subject of that licensure;
- (8) specialty contractors who provide only one special skill as defined in section 326B.802;
- (9) a school district, or a technical college governed under chapter 136F; and
- (10) Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf.

To qualify for the exemption in clause (5), a person must obtain a certificate of exemption from licensure from the commissioner. A certificate of exemption will be issued upon the applicant's filing with the commissioner, an affidavit stating that the applicant does not expect to exceed \$15,000 in gross annual receipts derived from performing services which require licensure under this section during the calendar year in which the affidavit is received. For the purposes of calculating fees under section 326B.092, a certificate of exemption is an entry level license. To renew the exemption in clause (5), the applicant must file an affidavit stating that the applicant did not exceed \$15,000 in gross annual receipts during the past calendar year. If a person, operating under the exemption in clause (5), exceeds \$15,000 in gross receipts during any calendar year, the person must immediately surrender the certificate of exemption and apply for the appropriate license. The person must remain licensed until such time as the person's gross annual receipts

during a calendar year fall below \$15,000. The person may then apply for an exemption for the next calendar year.

History: 1991 c 306 s 8; 1993 c 245 s 14,15; 1995 c 169 s 3; 1996 c 395 s 18; 1997 c 222 s 47; 2007 c 140 art 8 s 8,30; art 13 s 4; 2008 c 337 s 36; 2010 c 321 s 3; 2010 c 347 art 3 s 42,76; 2010 c 385 s 6; 2011 c 2 s 3

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.

History: 2007 c 140 art 8 s 25; 2010 c 343 s 3

326B.81 RESIDENTIAL ROOFERS.

Residential roofers are subject to all of the requirements of sections 326B.802 to 326B.885, except the recovery fund in section 326B.89.

History: 1993 c 145 s 5; 1993 c 366 s 19; 2007 c 140 art 8 s 10,30; art 13 s 4

326B.811 RESIDENTIAL ROOFING CONTRACT; RIGHT TO CANCEL.

Subdivision 1. **Required.** A person who has entered into a written contract with a residential building contractor, residential remodeler, or residential roofer to provide goods and services to be paid by the insured from the proceeds of a property or casualty insurance policy has the right to cancel the contract within 72 hours after the insured has been notified by the insurer that the claim has been denied. Cancellation is evidenced by the insured giving written notice of cancellation to the contractor at the address stated in the contract. Notice of cancellation, if given by mail, is effective upon deposit in a mailbox, properly addressed to the contractor and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

Subd. 2. **Writing required; notice of right to cancel; notice of cancellation.** (a) Before entering a contract referred to in subdivision 1, the contractor must:

(1) furnish the insured with a statement in boldface type of a minimum size of ten points, in substantially the following form:

"You may cancel this contract at any time within 72 hours after you have been notified that your insurer has denied your claim to pay for the goods and services to be provided under this contract. See attached notice of cancellation form for an explanation of this right."; and

(2) furnish each insured a fully completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract and easily detachable, and which shall contain in boldface type of a minimum size of ten points the following information and statements:

"NOTICE OF CANCELLATION

If your insurer denies your claim to pay for goods and services to be provided under this contract, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (name of contractor) at (address of contractor's place of business) at any time within 72 hours after you have been notified that your claim has been denied. If you cancel, any payments made by you under the contract will be returned within ten business days following receipt by the contractor of your cancellation notice.

I HEREBY CANCEL THIS TRANSACTION.

.....

(date)

.....

(Insured's signature)"

Subd. 3. **Return of payments; compensation.** Within ten days after a contract referred to in subdivision 1 has been canceled, the contractor must tender to the insured any payments made by the insured and any note or other evidence of indebtedness. However, if the contractor has performed any emergency services, the contractor is entitled to compensation for such services.

Subd. 4. **Definition.** For the purposes of this section, "contractor" means a residential building contractor who is providing roofing services, a residential remodeler who is providing roofing services, or a residential roofer.

History: 2010 c 324 s 2; 2011 c 63 s 2; 2015 c 54 art 1 s 19

326B.814 REHABILITATION OF CRIMINAL OFFENDERS.

Chapter 364 does not apply to an applicant for a license or to a licensee where the underlying conduct on which the conviction is based would be grounds for denial, censure, suspension, or revocation of the license.

History: 2007 c 140 art 8 s 26

326B.815 FEES.

Subdivision 1. **Fees.** (a) For the purposes of calculating fees under section 326B.092, an initial or renewed residential contractor, residential remodeler, or residential roofer license is a business license. Notwithstanding section 326B.092, the licensing fee for manufactured home installers under section 327B.041 is \$180 for a three-year period.

(b) All initial and renewal licenses, except for manufactured home installer licenses, shall be effective for two years and shall expire on March 31 of the year after the year in which the application is made.

(c) The commissioner shall in a manner determined by the commissioner, without the need for any rulemaking under chapter 14, phase in the renewal of residential contractor, residential remodeler, and residential roofer licenses from one year to two years. By June 30, 2011, all renewed residential contractor, residential remodeler, and residential roofer licenses shall be two-year licenses.

Subd. 2. **Local surcharge.** A local government unit may place a surcharge in an amount no greater than \$5 on each land use, zoning, or building permit that requires a licensed residential building contractor, residential remodeler, residential roofer, or manufactured home installer for the purpose of license verification. The local government may verify a license by telephone, facsimile or electronic communication. A local government unit shall not issue a land use, zoning, or building permit unless the required license has been verified and is current.

History: 1991 c 306 s 10; 1993 c 245 s 17; 1996 c 305 art 3 s 34; 1997 c 200 art 1 s 72; 1999 c 223 art 2 s 46; 1999 c 250 art 3 s 28; 2007 c 140 art 8 s 11,30; art 13 s 4; 2008 c 337 s 37; 2009 c 78 art 5 s 20; 2010 c 347 art 3 s 43,76; 2010 c 385 s 6; 1Sp2019 c 1 art 6 s 2

326B.821 CONTINUING EDUCATION; HOURS.

Subdivision 1. **Purpose.** The purpose of this section is to establish standards for residential building contractor continuing education.

Subd. 2. **Hours.** A qualifying person of a licensee must provide proof of completion of 14 hours of continuing education per two-year licensure period.

Credit may not be earned if the licensee has previously obtained credit for the same course as either a student or instructor during the same licensing period.

Subd. 3. [Repealed, 1Sp2011 c 4 art 3 s 59]

Subd. 4. MS 2010 [Renumbered 326B.0981, subd 17]

Subd. 5. MS 2010 [Renumbered 326B.0981, subd 3]

Subd. 5a. MS 2010 [Renumbered 326B.0981, subd 4]

Subd. 6. MS 2010 [Renumbered 326B.0981, subd 5]

Subd. 7. MS 2010 [Renumbered 326B.0981, subd 6]

Subd. 8. MS 2010 [Renumbered 326B.099, subd 1]

Subd. 9. MS 2010 [Renumbered 326B.099, subd 2]

Subd. 10. MS 2010 [Renumbered 326B.099, subd 3]

Subd. 11. MS 2010 [Renumbered 326B.099, subd 4]

Subd. 12. MS 2010 [Renumbered 326B.0981, subd 7]

Subd. 13. MS 2010 [Renumbered 326B.0981, subd 8]

Subd. 14. MS 2010 [Renumbered 326B.0981, subd 9]

Subd. 15. MS 2010 [Renumbered 326B.0981, subd 10]

Subd. 16. MS 2010 [Renumbered 326B.0981, subd 11]

Subd. 17. MS 2010 [Renumbered 326B.099, subd 5]

Subd. 18. MS 2010 [Renumbered 326B.0981, subd 12]

Subd. 19. MS 2010 [Renumbered 326B.0981, subd 13]

Subd. 20. MS 2010 [Renumbered 326B.0981, subd 14]

Subd. 21. **Residential building contractor, remodeler, and roofer education.** (a) Each licensee must, during each continuing education reporting period, complete and report one hour of continuing education relating to energy codes or energy conservation measures applicable to residential buildings and one hour of business management strategies applicable to residential construction businesses.

(b) Immediately following the adoption date of a new residential code, the commissioner may prescribe that up to seven of the required 14 hours of continuing education credit per licensure period include education hours specifically designated to instruct licensees on new or existing State Building Code provisions.

Subd. 22. MS 2010 [Renumbered 326B.0981, subd 2]

Subd. 23. MS 2010 [Renumbered 326B.0981, subd 15]

Subd. 24. MS 2010 [Renumbered 326B.0981, subd 16]

History: 1991 c 306 s 11; 1992 c 522 s 23; 1992 c 595 s 25; 1992 c 597 s 17; 1993 c 245 s 18; 1996 c 439 art 4 s 2; 2007 c 140 art 8 s 12,30; art 13 s 4; 2008 c 322 s 6; 2008 c 337 s 38; 2009 c 78 art 5 s 21; 2010 c 260 s 1; 1Sp2011 c 4 art 3 s 31-47,58; 1Sp2019 c 7 art 9 s 11

326B.825 LOSS OF QUALIFYING PERSON.

Upon the departure or disqualification of a licensee's qualifying person because of death, disability, retirement, position change, or other reason, the licensee must notify the commissioner within 15 business days. The licensee shall have 120 days from the departure of the qualifying person to obtain a new qualifying person. Failure to secure a new qualifying person within 120 days will, with or without notice, result in the automatic termination of the license.

History: 1991 c 306 s 12; 1993 c 245 s 20; 2007 c 140 art 8 s 13,30; art 13 s 4

326B.83 APPLICATION AND EXAMINATION.

Subdivision 1. **Form.** (a) An applicant for a license under sections 326B.802 to 326B.885 must submit an application, under oath and accompanied by the fees required by section 326B.092, on a form prescribed by the commissioner.

(b) If one of the categories in the application does not apply, the applicant must identify the category and state the reason the category does not apply. The commissioner may refuse to issue a license if the application is not complete or contains unsatisfactory information.

Subd. 2. **Contents.** Each application must include the following information regarding the applicant:

- (1) Minnesota workers' compensation insurance certificate;
- (2) employment insurance account number;
- (3) certificate of liability insurance;
- (4) type of license requested;
- (5) name, current address, and telephone number where the applicant resides;
- (6) name and address of the applicant's qualifying person, if other than applicant;

(7) if the applicant is a sole proprietorship, the name and address of the sole proprietor; if the applicant is a partnership, the name and address of each partner; if the applicant is a limited liability company, the name and address of each governor and manager; if the applicant is a corporation, the name and address of each of the corporate officers, directors, and all shareholders holding more than ten percent of the outstanding stock in the corporation;

(8) name and address of the applicant's agent in this state authorized to receive service of process, and a consent to service of process as required by section 326B.855;

(9) current street address and telephone number where the business is physically located;

(10) whether the applicant, any employee, or qualifying person has ever been licensed in this or any other state and has had a professional or vocational license reprimanded, censured, limited, conditioned, refused, suspended, or revoked, or has been the subject of any administrative action;

(11) whether the applicant, qualifying person, or any of the applicant's corporate or partnership directors, limited liability company governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the share of the corporation that have been issued, or all members holding more than ten percent of the voting power of the membership interests that have been issued, has been convicted of a crime that either related directly to the business for which the license is sought or involved fraud, misrepresentation, or misuse of funds; has suffered a judgment in a civil action involving fraud, misrepresentation, construction defect, negligence, breach of contract, or conversion of funds within the ten years prior to the submission of the application; or has had any government license or permit reprimanded, censured, limited, conditioned, suspended, or revoked as a result of an action brought by a federal, state, or local governmental unit or agency in this or any other state;

(12) the applicant's and qualifying person's business history for the past five years and whether the applicant, a managing employee, or qualifying person has ever filed for bankruptcy or protection from creditors or has any unsatisfied judgments against the applicant, employee, or qualifying person;

(13) where the applicant is a firm, partnership, sole proprietorship, limited liability company, corporation, or association, whether there has been a sale or transfer of the business or other change in ownership, control, or name in the last five years and the details thereof, and the names and addresses of all prior, predecessor, subsidiary, affiliated, parent, or related entities, and whether each such entity, or its owners, officers, directors, members or shareholders holding more than ten percent of the stock, or an employee has ever taken or been subject to an action that is subject to clause (10), (11), or (12) in the last ten years; and

(14) whether the qualifying person is the qualifying person for more than one licensee.

For purposes of this subdivision, "applicant" includes employees who exercise management or policy control over the residential contracting, residential remodeling, residential roofing, or manufactured home installation activities in the state of Minnesota, including affiliates, partners, directors, governors, officers, limited or general partners, managers, all shareholders holding more than ten percent of the shares that have been issued, a shareholder holding more than ten percent of the voting power of the shares that have been issued, or all members holding more than ten percent of the membership interests that have been issued or more than ten percent of the voting power of the membership interests that have been issued.

The commissioner may require further information as the commissioner deems appropriate to administer the provisions and further the purposes of this chapter.

Subd. 3. **Examination.** (a) Each qualifying person must pass a written examination for the type of license requested. The commissioner may establish the examination qualifications, including related education experience and education, the examination procedure, and the examination for each licensing group. The examination must include at a minimum the following areas:

(1) appropriate knowledge of technical terms commonly used and the knowledge of reference materials and code books to be used for technical information; and

(2) understanding of the general principles of business management and other pertinent state laws.

(b) Each examination must be designed for the specified type of license requested.

Subd. 4. **Exemption.** A general retailer whose primary business is not being a residential building contractor, residential remodeler, residential roofer, or manufactured home installer, and who has completed a license examination meeting or exceeding Minnesota's examination requirements in another state is exempt from subdivision 3 and sections 326B.0981, 326B.099, 326B.821, and 326B.825.

Subd. 5. **Additional licensing requirements.** As an alternative to denying an application for licensure pursuant to section 326B.84, the commissioner may, as a condition of licensure and based upon information received pursuant to subdivision 2, clauses (10) to (12), or a finding pursuant to section 326B.84, clauses (1) to (9), impose additional insurance, bonding, reporting, record keeping, and other requirements on the applicant as are reasonable to protect the public.

Subd. 6. **License.** A nonresident of Minnesota may be licensed as a residential building contractor, residential remodeler, residential roofer, or manufactured home installer upon compliance with all the provisions of sections 326B.092 to 326B.098 and 326B.802 to 326B.885.

History: 1991 c 306 s 13; 1993 c 245 s 21-24; 1999 c 137 s 7; 2007 c 140 art 8 s 14,30; art 13 s 4; 2010 c 347 art 3 s 44-46,76; 2010 c 385 s 6; 1Sp2011 c 4 art 3 s 58

326B.835 LOCAL LICENSES.

Subdivision 1. **Local license prohibited.** Except as provided in subdivision 2, a political subdivision may not require a person licensed under sections 326B.802 to 326B.885 to also be licensed or pay a registration or other fee related to licensure under any ordinance, law, rule, or regulation of the political subdivision. This section does not prohibit charges for building permits or other charges not directly related to licensure.

Subd. 2. **Exception.** This section does not prohibit a political subdivision from requiring licensure or certification under any ordinance, law, rule, or regulation of the political subdivision for persons who engage in the installation of an on-site sewage treatment system.

History: 1991 c 306 s 14; 1993 c 245 s 25; 2001 c 207 s 7; 2007 c 140 art 8 s 15,30; art 13 s 4

326B.84 GROUNDS FOR SANCTIONS.

The commissioner may use any enforcement provision in section 326B.082 against an applicant for, qualifying person of, or holder of a license or certificate of exemption, or any individual or entity who is required by law to hold a license or certificate of exemption, if the individual, entity, applicant, licensee, certificate of exemption holder, qualifying person, or owner, officer, member, managing employee, or affiliate of the applicant, licensee, or certificate of exemption holder:

(1) has filed an application for licensure or a certificate of exemption which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(2) has engaged in a fraudulent, deceptive, or dishonest practice;

(3) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business;

(4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;

(5) has violated or failed to comply with any provision of sections 326B.802 to 326B.885, any rule or order under sections 326B.802 to 326B.885, or any other law, rule, or order related to the duties and responsibilities entrusted to the commissioner;

(6) has been convicted of a violation of the State Building Code or has refused to comply with a correction order issued by a certified building official, or in local jurisdictions that have not adopted the State Building Code has refused to correct a violation of the State Building Code when the violation has been documented by a certified building official;

(7) has failed to use the proceeds of any payment made to the licensee for the construction of, or any improvement to, residential real estate, as defined in section 326B.802, subdivision 13, for the payment of labor, skill, material, and machinery contributed to the construction or improvement, knowing that the cost of any labor performed, or skill, material, or machinery furnished for the improvement remains unpaid;

(8) has not furnished to the person making payment either a valid lien waiver as to any unpaid labor performed, or skill, material, or machinery furnished for an improvement, or a payment bond in the basic amount of the contract price for the improvement conditioned for the prompt payment to any person or persons entitled to payment;

(9) has engaged in an act or practice that results in compensation to an aggrieved owner or lessee from the contractor recovery fund pursuant to section 326B.89, unless:

(i) the applicant or licensee has repaid the fund twice the amount paid from the fund, plus interest at the rate of 12 percent per year; and

(ii) the applicant or licensee has obtained a surety bond in the amount of at least \$40,000, issued by an insurer authorized to transact business in this state;

(10) has engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit or arbitration arising out of their activities as a licensee or certificate of exemption holder under this chapter;

(11) has had a judgment entered against them for failure to make payments to employees, subcontractors, or suppliers, that the licensee has failed to satisfy and all appeals of the judgment have been exhausted or the period for appeal has expired;

(12) if unlicensed, has obtained a building permit by the fraudulent use of a fictitious license number or the license number of another, or, if licensed, has knowingly allowed an unlicensed person to use the licensee's license number for the purpose of fraudulently obtaining a building permit; or has applied for or obtained a building permit for an unlicensed person;

(13) has made use of a forged mechanic's lien waiver under chapter 514;

(14) has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises;

(15) has engaged in an act or practice whether or not the act or practice directly involves the business for which the person is licensed, that demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the commissioner; or

(16) has failed to comply with requests for information, documents, or other requests from the department within the time specified in the request or, if no time is specified, within 30 days of the mailing of the request by the department.

History: 1991 c 306 s 15; 1993 c 245 s 26,27; 1995 c 169 s 4; 1996 c 439 art 4 s 3,4; 2001 c 208 s 22; 2007 c 140 art 8 s 16,30; art 13 s 4; 2008 c 277 art 1 s 71; 2010 c 183 s 18; 2010 c 280 s 28; 2015 c 54 art 1 s 20; 1Sp2019 c 7 art 9 s 12

(6) has been convicted of a violation of the State Building Code or has refused to comply with a correction order issued by a certified building official, or in local jurisdictions that have not adopted the State Building Code has refused to correct a violation of the State Building Code when the violation has been documented by a certified building official;

(7) has failed to use the proceeds of any payment made to the licensee for the construction of, or any improvement to, residential real estate, as defined in section 326B.802, subdivision 13, for the payment of labor, skill, material, and machinery contributed to the construction or improvement, knowing that the cost of any labor performed, or skill, material, or machinery furnished for the improvement remains unpaid;

(8) has not furnished to the person making payment either a valid lien waiver as to any unpaid labor performed, or skill, material, or machinery furnished for an improvement, or a payment bond in the basic amount of the contract price for the improvement conditioned for the prompt payment to any person or persons entitled to payment;

(9) has engaged in an act or practice that results in compensation to an aggrieved owner or lessee from the contractor recovery fund pursuant to section 326B.89, unless:

(i) the applicant or licensee has repaid the fund twice the amount paid from the fund, plus interest at the rate of 12 percent per year; and

(ii) the applicant or licensee has obtained a surety bond in the amount of at least \$40,000, issued by an insurer authorized to transact business in this state;

(10) has engaged in bad faith, unreasonable delays, or frivolous claims in defense of a civil lawsuit or arbitration arising out of their activities as a licensee or certificate of exemption holder under this chapter;

(11) has had a judgment entered against them for failure to make payments to employees, subcontractors, or suppliers, that the licensee has failed to satisfy and all appeals of the judgment have been exhausted or the period for appeal has expired;

(12) if unlicensed, has obtained a building permit by the fraudulent use of a fictitious license number or the license number of another, or, if licensed, has knowingly allowed an unlicensed person to use the licensee's license number for the purpose of fraudulently obtaining a building permit; or has applied for or obtained a building permit for an unlicensed person;

(13) has made use of a forged mechanic's lien waiver under chapter 514;

(14) has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises;

(15) has engaged in an act or practice whether or not the act or practice directly involves the business for which the person is licensed, that demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the license granted by the commissioner; or

(16) has failed to comply with requests for information, documents, or other requests from the department within the time specified in the request or, if no time is specified, within 30 days of the mailing of the request by the department.

History: 1991 c 306 s 15; 1993 c 245 s 26,27; 1995 c 169 s 4; 1996 c 439 art 4 s 3,4; 2001 c 208 s 22; 2007 c 140 art 8 s 16,30; art 13 s 4; 2008 c 277 art 1 s 71; 2010 c 183 s 18; 2010 c 280 s 28; 2015 c 54 art 1 s 20; 1Sp2019 c 7 art 9 s 12

326B.845 PENALTIES.

Subdivision 1. **Gross misdemeanor.** An individual who violates an order of the commissioner or is the manager, officer, or director of a person who violates an order issued by the commissioner is guilty of a gross misdemeanor.

Subd. 2. **Lien rights.** An unlicensed person who knowingly violates sections 326B.802 to 326B.885 has no right to claim a lien under section 514.01 and the lien is void. Nothing in this section affects the lien rights of material suppliers and licensed contractors to the extent provided by law.

History: 1991 c 306 s 16; 1993 c 245 s 28,29; 1999 c 137 s 8; 2007 c 140 art 8 s 17,30; art 13 s 4

326B.85 BUILDING PERMIT CONDITIONED ON LICENSURE; NOTICE OF PERMIT APPLICATION.

Subdivision 1. **Building permit.** A political subdivision shall not issue a building permit to an unlicensed person who is required to be licensed under sections 326B.802 to 326B.885. A political subdivision that issues zoning or land use permits in lieu of a building permit shall not issue those permits to an unlicensed person who is required to be licensed under sections 326B.802 to 326B.885. The political subdivision shall report the person applying for the permit to the commissioner who may bring an action against the person.

Subd. 2. **Notice of building permit application.** A political subdivision shall notify the department when an application for a building permit involving the construction of new residential real estate has been received from an unlicensed person by submitting a copy of the application to the department within two business days of receipt of the application. The political subdivision may submit a copy of the building permit application by facsimile, United States mail, or electronic communication.

History: 1993 c 245 s 30; 1997 c 222 s 49; 1998 c 254 art 1 s 86; 2007 c 140 art 8 s 18,30; art 13 s 4

326B.855 SERVICE OF PROCESS.

Subdivision 1. **Procedure.** Every applicant for licensure or certificate of exemption under sections 326B.802 to 326B.885 shall irrevocably consent to the appointment of the commissioner and successors in office to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or a successor, executor, or administrator which arises under sections 326B.802 to 326B.885 or any rule or order thereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service under this section shall be made in compliance with subdivision 3.

Subd. 2. **Service on commissioner.** (a) When a person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 326B.802 to 326B.885, or any rule or order under those sections, and the person has not consented to service of process under subdivision 1, that conduct is equivalent to an appointment of the commissioner and successors in office as the person's agent to receive service of process in any noncriminal suit, action, or proceeding against the person that is based on that conduct and is brought under sections 326B.802 to 326B.885, or any rule or order under those sections, with the same force and validity as if served personally on the person consenting to the appointment of the commissioner and successors in office. Service under this section shall be made in compliance with subdivision 3.

(b) Subdivision 3 applies in all other cases in which a person, including a nonresident of this state, has filed a consent to service of process. This paragraph supersedes any inconsistent provision of law.

(c) Subdivision 3 applies in all cases in which service of process is allowed to be made on the commissioner.

Subd. 3. **How made.** Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless:

(1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and

(2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

History: 1991 c 306 s 17; 1993 c 245 s 31; 2007 c 140 art 8 s 19,30; art 13 s 4; 2008 c 337 s 39

326B.86 BOND; INSURANCE.

Subdivision 1. **Bond.** (a) Licensed manufactured home installers and licensed residential roofers must give and maintain a bond to the state. The bond must comply with section 326B.0921.

(b) A licensed residential roofer must post a bond with a penal sum of at least \$15,000.

(c) A licensed manufactured home installer must post a bond with a penal sum of at least \$2,500.

Bonds issued under sections 326B.802 to 326B.885 are not state bonds or contracts for purposes of sections 8.05 and 16C.05, subdivision 2.

Subd. 2. **Insurance.** Each licensee shall have and maintain in effect commercial general liability insurance, which includes premises and operations insurance and products and completed operations insurance, with limits of at least \$100,000 per occurrence, \$300,000 aggregate limit for bodily injury, and property damage insurance with limits of at least \$25,000 or a policy with a single limit for bodily injury and property damage of \$300,000 per occurrence and \$300,000 aggregate limits. The insurance must be written by an insurer licensed to do business in this state. Each licensee shall maintain on file with the commissioner a certificate evidencing the insurance. In the event of a policy cancellation, the insurer shall send written notice to the commissioner at the same time that a cancellation request is received from or a notice is sent to the insured. The commissioner may increase the minimum amount of insurance required for any licensee or class of licensees if the commissioner considers it to be in the public interest and necessary to protect the interests of Minnesota consumers.

History: 1991 c 306 s 18; 1993 c 245 s 32; 1999 c 137 s 9; 2007 c 9 s 1; 2007 c 140 art 8 s 20,30; art 13 s 4; 2008 c 322 s 7; 2008 c 337 s 40,65; 2009 c 78 art 5 s 22; 2010 c 347 art 3 s 47,76; 2010 c 384 s 90; 2010 c 385 s 6; 2015 c 54 art 1 s 21

326B.87 LICENSE NUMBER; ADVERTISING.

Subdivision 1. **License number must be displayed.** The license number of a licensee must be placed on all building permits and building permit applications made to or issued by the state or a political subdivision. In jurisdictions that have not adopted the State Building Code, the license number must be placed on the site plan review or zoning permit. License numbers must be on all business cards and all contracts to perform work for which a license is required.

Subd. 2. **Advertising.** The license number of a licensee must appear in any advertising by that licensee including but not limited to signs, vehicles, business cards, published display ads, flyers, brochures, websites, and Internet ads.

Subd. 3. **Contracts.** Contracts entered into by a licensee must state that the person is licensed and must state the license number.

History: 1991 c 306 s 19; 1995 c 169 s 5; 2007 c 140 art 8 s 21,30; art 13 s 4

326B.875 DISCLOSURES.

If a licensee sells or offers to sell residential property, constructed by the licensee, which is or has been occupied by the licensee, the licensee must, prior to entering into a binding purchase agreement, provide to the buyer a written disclosure which states that any claims that arise as a result of the licensee's construction of the property: (1) will not be covered under the statutory warranty established by chapter 327A, and (2) if the licensee has occupied the residential property for one year or more, will not be eligible for reimbursement from the contractor's recovery fund.

History: 1993 c 245 s 33; 2007 c 140 art 8 s 30; art 13 s 4

326B.88 PUBLIC EDUCATION.

The commissioner may develop materials and programs to educate the public concerning licensure requirements. The commissioner may develop materials for reporting unlicensed contracting activity. The commissioner shall provide information in other languages.

History: 1991 c 306 s 20; 2007 c 140 art 8 s 22,30; art 13 s 4

326B.885 LICENSE RENEWAL.

Subdivision 1. **Renewal.** A licensee whose fully completed renewal application has been properly and timely filed and who has not received a notice of denial of renewal is considered to have been approved for renewal and may continue to transact business whether or not the renewed license has been received. Applications are timely if received by March 1 of the renewal year. Applications must be made on a form approved by the commissioner. An application for renewal that does not contain all of the information requested is an incomplete application and will not be processed.

Subd. 2. **Renewal period.** (a) A residential contractor, residential remodeler, and residential roofer license shall have a renewal period of two years. The commissioner shall in a manner determined by the commissioner, without the need for any rulemaking under chapter 14, phase in the renewal of residential contractor, residential remodeler, and residential roofer licenses from one year to two years. By June 30, 2011, all renewed residential contractor, residential remodeler, and residential roofer licenses shall be two-year licenses.

(b) A manufactured home installer's license shall have a renewal period of three years, effective for all renewals and new licenses issued after December 31, 2008.

Subd. 3. [Repealed, 2010 c 347 art 3 s 75]

Subd. 4. [Repealed, 2010 c 347 art 3 s 75]

History: 1991 c 306 s 21; 1993 c 245 s 34,35; 2007 c 140 art 8 s 23,30; art 13 s 4; 2008 c 337 s 41; 2009 c 78 art 5 s 23

326B.89 CONTRACTOR RECOVERY FUND.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Gross annual receipts" means the total amount derived from residential contracting or residential remodeling activities, regardless of where the activities are performed, and must not be reduced by costs of goods sold, expenses, losses, or any other amount.

(c) "Licensee" means a person licensed as a residential contractor or residential remodeler.

(d) "Residential real estate" means a new or existing building constructed for habitation by one to four families, and includes detached garages intended for storage of vehicles associated with the residential real estate.

(e) "Fund" means the contractor recovery fund.

(f) "Owner" when used in connection with real property, means a person who has any legal or equitable interest in real property and includes a condominium or townhome association that owns common property located in a condominium building or townhome building or an associated detached garage. Owner does not include any real estate developer or any owner using, or intending to use, the property for a business purpose and not as owner-occupied residential real estate.

Subd. 2. **Generally.** The contractor recovery fund is created in the state treasury and shall be administered by the commissioner for the purposes described in this section. Any interest or profit accruing from investment of money in the fund shall be credited to the contractor recovery fund.

Subd. 3. **Fund fees.** In addition to any other fees, a person who applies for or renews a license under sections 326B.802 to 326B.885 shall pay a fee to the fund. The person shall pay, in addition to the appropriate application or renewal fee, the following additional fee that shall be deposited in the fund. The amount of the fee shall be based on the person's gross annual receipts for the person's most recent fiscal year preceding the application or renewal, on the following scale:

Fee	Gross Annual Receipts
\$320	under \$1,000,000
\$420	\$1,000,000 to \$5,000,000
\$520	over \$5,000,000

Subd. 4. **Purpose of fund.** The purpose of this fund is to:

- (1) compensate owners or lessees of residential real estate who meet the requirements of this section;
- (2) reimburse the department for all legal and administrative expenses, disbursements, and costs, including staffing costs, incurred in administering and defending the fund;
- (3) pay for educational or research projects in the field of residential contracting to further the purposes of sections 326B.801 to 326B.825; and
- (4) provide information to the public on residential contracting issues.

Subd. 5. **Payment limitations.** The commissioner shall not pay compensation from the fund to an owner or a lessee in an amount greater than \$75,000 per licensee. The commissioner shall not pay compensation from the fund to owners and lessees in an amount that totals more than \$300,000 per licensee. The commissioner shall only pay compensation from the fund for a final judgment that is based on a contract directly between the licensee and the homeowner or lessee that was entered into prior to the cause of action and that requires licensure as a residential building contractor or residential remodeler.

Subd. 6. **Verified application.** To be eligible for compensation from the fund, an owner or lessee shall serve on the commissioner a verified application for compensation on a form approved by the commissioner. The application shall verify the following information:

- (1) the specific grounds upon which the owner or lessee seeks to recover from the fund;
- (2) that the owner or the lessee has obtained a final judgment in a court of competent jurisdiction against a licensee licensed under section 326B.83;
- (3) that the final judgment was obtained against the licensee on the grounds of fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance that arose directly out of a contract directly between the licensee and the homeowner or lessee that was entered into prior to the cause of action and that occurred when the licensee was licensed and performing any of the special skills enumerated under section 326B.802, subdivision 15;
- (4) the amount of the owner's or the lessee's actual and direct out-of-pocket loss on the owner's residential real estate, on residential real estate leased by the lessee, or on new residential real estate that has never been occupied or that was occupied by the licensee for less than one year prior to purchase by the owner;
- (5) that the residential real estate is located in Minnesota;
- (6) that the owner or the lessee is not the spouse of the licensee or the personal representative of the licensee;
- (7) the amount of the final judgment, any amount paid in satisfaction of the final judgment, and the amount owing on the final judgment as of the date of the verified application;
- (8) that the owner or lessee has diligently pursued remedies against all the judgment debtors and all other persons liable to the judgment debtor in the contract for which the owner or lessee seeks recovery from the fund; and
- (9) that the verified application is being served within two years after the judgment became final.

The verified application must include documents evidencing the amount of the owner's or the lessee's actual and direct out-of-pocket loss. The owner's and the lessee's actual and direct out-of-pocket loss shall not include any attorney fees, litigation costs or fees, interest on the loss, and interest on the final judgment obtained as a result of the loss or any costs not directly related to the value difference between what was contracted for and what was provided. Any amount paid in satisfaction of the final judgment shall be applied to the owner's or lessee's actual and direct out-of-pocket loss. An owner or lessee may serve a verified application regardless of whether the final judgment has been discharged by a bankruptcy court. A judgment issued by a court is final if all proceedings on the judgment have either been pursued and concluded or been forgone, including all reviews and appeals. For purposes of this section, owners who are joint tenants or tenants in common are deemed to be a single owner. For purposes of this section, owners and lessees eligible for payment of compensation from the fund shall not include government agencies, political subdivisions, financial institutions, and any other entity that purchases, guarantees, or insures a loan secured by real estate.

Subd. 7. Commissioner review. The commissioner shall within 120 days after receipt of the complete verified application:

(1) enter into an agreement with an owner or a lessee that resolves the verified application for compensation from the fund; or

(2) issue an order to the owner or the lessee accepting, modifying, or denying the verified application for compensation from the fund.

Upon receipt of an order issued under clause (2), the owner or the lessee shall have 30 days to serve upon the commissioner a written request for a hearing. If the owner or the lessee does not serve upon the commissioner a timely written request for hearing, the order issued under clause (2) shall become a final order of the commissioner that may not be reviewed by any court or agency. The commissioner shall order compensation from the fund only if the owner or the lessee has filed a verified application that complies with subdivision 6 and if the commissioner determines based on review of the application that compensation should be paid from the fund. The commissioner shall not be bound by any prior settlement, compromise, or stipulation between the owner or the lessee and the licensee.

Subd. 8. Administrative hearing. If an owner or a lessee timely serves a request for hearing under subdivision 7, the commissioner shall request that an administrative law judge be assigned and that a hearing be conducted under the contested case provisions of chapter 14 within 45 days after the commissioner received the request for hearing, unless the parties agree to a later date. The commissioner must notify the owner or lessee of the time and place of the hearing at least 15 days before the hearing. Upon petition of the commissioner, the administrative law judge shall continue the hearing up to 60 days and upon a showing of good cause may continue the hearing for such additional period as the administrative law judge deems appropriate.

At the hearing the owner or the lessee shall have the burden of proving by substantial evidence under subdivision 6, clauses (1) to (8). Whenever an applicant's judgment is by default, stipulation, or consent, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving the cause of action for fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance. Otherwise, the judgment shall create a rebuttable presumption of the fraudulent, deceptive, or dishonest practices, conversion of funds, or failure of performance. This presumption affects the burden of producing evidence.

The administrative law judge shall issue findings of fact, conclusions of law, and order. If the administrative law judge finds that compensation should be paid to the owner or the lessee, the administrative law judge shall order the commissioner to make payment from the fund of the amount it finds to be payable pursuant to the provisions of and in accordance with the limitations contained in this section. The order of the administrative law judge shall constitute the final decision of the agency in the contested case. The commissioner or the owner or lessee may seek judicial review of the administrative law judge's findings of fact, conclusions of law, and order in accordance with sections 14.63 to 14.69.

Subd. 9. Satisfaction of applications for compensation. The commissioner shall pay compensation from the fund to an owner or a lessee pursuant to the terms of an agreement that has been entered into under subdivision 7, clause (1), or pursuant to a final order that has been issued under subdivision 7, clause (2), or subdivision 8 by December 1 of the fiscal year following the fiscal year during which the agreement was entered into or during which the order became final, subject to the limitations of this section. At the end of each fiscal year the commissioner shall calculate the amount of compensation to be paid from the fund pursuant to agreements that have been entered into under subdivision 7, clause (1), and final orders that have

been issued under subdivision 7, clause (2), or subdivision 8. If the calculated amount exceeds the amount available for payment, then the commissioner shall allocate the amount available among the owners and the lessees in the ratio that the amount agreed to or ordered to be paid to each owner or lessee bears to the amount calculated. The commissioner shall mail notice of the allocation to all owners and lessees not less than 45 days following the end of the fiscal year. Any compensation paid by the commissioner in accordance with this subdivision shall be deemed to satisfy and extinguish any right to compensation from the fund based upon the verified application of the owner or lessee.

Subd. 10. Right of subrogation. Notwithstanding subdivisions 1 to 9 and 11 to 16, the commissioner shall not pay compensation from the fund to an owner or lessee unless and until the owner or lessee executes an assignment to the commissioner of all rights, title, and interest in the final judgment in the amount of the compensation to be paid under an agreement under subdivision 7, clause (1), or a final order issued under subdivision 7, clause (2), or subdivision 8. If the commissioner pays compensation from the fund to an owner or a lessee pursuant to an agreement under subdivision 7, clause (1), or a final order issued under subdivision 7, clause (2), or subdivision 8, then the commissioner shall be subrogated to all of the rights, title, and interest in the owner's or lessee's final judgment in the amount of compensation paid from the fund. The commissioner shall deposit in the fund money recovered under this subdivision.

Subd. 11. Effect of section on commissioner's authority. Nothing contained in this section shall limit the authority of the commissioner to take disciplinary action against a licensee under the provisions of this chapter. A licensee's repayment in full of obligations to the fund shall not nullify or modify the effect of any other disciplinary proceeding brought under the provisions of this chapter.

Subd. 12. Limitation. Notwithstanding subdivision 5, nothing may obligate the fund for claims brought by:

- (1) insurers or sureties under subrogation or similar theories; or
- (2) owners of residential property where the contracting activity complained of was the result of a contract entered into with a prior owner, unless the claim is brought and judgment is rendered for breach of the statutory warranty set forth in chapter 327A.

Subd. 13. Condominiums or townhouses. (a) For purposes of this section, the terms "owner" and "lessee" of residential real estate include the following, regardless of the number of residential units per building:

- (1) an owner or lessee of an apartment as defined in and governed by chapter 515;
- (2) an owner or lessee of a unit in a common interest community created under or governed by chapter 515B;
- (3) an owner or lessee of a unit in a planned community or cooperative created prior to June 1, 1994, that has not elected to be governed by chapter 515B;
- (4) an association or master association, as defined in chapter 515B, that owns or leases the common elements of a common interest community; and
- (5) a homeowners association that owns or leases the common elements in a planned community or cooperative created prior to June 1, 1994, that has not elected to be governed by chapter 515B.

(b) For purposes of this subdivision, "common elements" means common areas and facilities as defined in chapter 515 and common elements as defined in chapter 515B.

Subd. 14. [Repealed, 2017 c 94 art 2 s 19]

Subd. 15. **Appropriation.** Money in the fund is appropriated to the commissioner for the purposes of this section.

Subd. 16. **Additional assessment.** If the balance in the fund is at any time less than the commissioner determines is necessary to carry out the purposes of this section, every licensee, when renewing a license, shall pay, in addition to the annual renewal fee and the fee set forth in subdivision 3, an assessment not to exceed \$200. The commissioner shall set the amount of assessment based on a reasonable determination of the amount that is necessary to restore a balance in the fund adequate to carry out the purposes of this section.

Subd. 17. **Recovery of payments.** If the commissioner pays compensation from the fund on the basis of any false or misleading information provided to the commissioner in connection with the application for compensation, then, upon the application of the commissioner, a district court shall order the owner or lessee to repay to the fund all such compensation paid from the fund. In addition, the state may be allowed an amount determined by the court to be the reasonable value of all or part of the litigation expenses, including attorney fees, incurred by the state. The commissioner shall deposit in the fund money recovered under this subdivision.

Subd. 18. **Payment of penalty.** If an owner or lessee violates section 326B.084 in connection with an application for compensation from the fund, and if the commissioner issues to the owner or lessee an administrative order under section 326B.082, subdivision 7, for that violation of section 326B.084, then the commissioner shall deposit in the fund all penalties paid pursuant to the administrative order.

History: 2007 c 135 art 3 s 29; 2007 c 140 art 8 s 28,30; art 13 s 4; 2008 c 337 s 49-52; 2009 c 78 art 5 s 24,25; 2010 c 280 s 29-37; 1Sp2011 c 4 art 3 s 49,50; 2013 c 85 art 2 s 35; 2017 c 94 art 2 s 15,16

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 preinspected 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.

History: 1977 c 65 s 6; 2009 c 91 s 2

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

333.001 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 333.001 to 333.06, the following terms shall have the meanings given, unless the context clearly indicates that a different meaning is intended.

Subd. 2. **Person.** "Person" means one or more natural persons; a limited liability company, whether domestic or foreign; a registered limited liability partnership, whether domestic or foreign; a partnership; a limited partnership; a corporation, including a foreign, domestic, or nonprofit corporation; a trust; or any other business organization.

Subd. 3. **True name.** "True name" means the true full name of the natural person, if a proprietorship; the true full name of each partner, if a partnership; the full corporate name as stated in its articles, if a corporation; the full name of the limited liability company as stated in its articles of organization or certificate of authority; the full name of the limited partnership, if a limited partnership; the full name of the registered limited liability partnership; the true full name of at least one trustee, if a trust; or the true full name of at least one beneficial owner, if any other form of business organization.

Subd. 4. **Address.** "Address" means the full residential address of each natural person, trustee or beneficial owner, limited liability company, whether domestic or foreign, registered limited liability partnership, whether domestic or foreign, or corporation, included in subdivision 3, and the address of the principal place in Minnesota where the business is conducted or transacted.

Subd. 5. **Executed.** "Executed" means signed.

Subd. 6. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by the organizational documents, bylaws, agreements, or by a resolution approved by the ultimately responsible managing entity for the business organization.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

Subd. 7. **Filed with the secretary of state.** "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word "Filed" and the month, day, and year of filing, record the document in the Office of the Secretary of State, and return a document to the person who delivered it for filing.

History: 1978 c 698 s 3; 1982 c 496 s 6,7; 1984 c 618 s 37,38; 1992 c 517 art 1 s 32; 1995 c 128 art 3 s 21; 1997 c 10 art 4 s 19-21

333.01 COMMERCIAL ASSUMED NAMES.

Subdivision 1. **Certificate.** No person shall hereafter carry on or conduct or transact a commercial business in this state under any designation, name, or style, which does not set forth the true name of every person interested in such business unless such person shall file in the Office of the Secretary of State, a certificate setting forth the name and business address under which the business is conducted or transacted, or is to be conducted or transacted, and the true name of each person conducting or transacting the same, with the address of such person. The name of the business must not include any of the following phrases or their abbreviations: corporation, incorporated, limited, chartered, professional association, cooperative, limited partnership, limited liability company, professional limited liability company, limited liability partnership, or professional limited liability partnership, except to the extent that an entity filing a certificate would be authorized to use the phrase or abbreviation. The certificate shall be executed by one of the persons conducting, or intending to conduct, the business. The certificate shall be published after it has been filed with the secretary of state in a qualified newspaper in the county in which the person has a principal or registered office for two successive issues.

Subd. 2. **Intentional misrepresentation prohibited.** No person shall use an assumed or fictitious name in the conduct of its business to intentionally misrepresent its geographic origin or location.

History: (7346) 1911 c 271 s 1; 1959 c 658 s 1; 1978 c 698 s 2; 1984 c 618 s 39; 1988 c 682 s 43; 1995 c 128 art 3 s 22; 1997 c 222 s 53; 1999 c 133 s 7

333.02 FILING OF CERTIFICATE.

Persons conducting or transacting any business under any designation, name, or style referred to in section 333.01 shall, before commencing such business, file such certificate and shall publish the certificate in the manner prescribed in section 333.01.

History: (7347) 1911 c 271 s 2; 1959 c 658 s 2; 1984 c 618 s 40

333.035 AMENDMENT OF CERTIFICATE.

Within 60 days after the occurrence of any event which makes any statement in the last previous certificate filed incorrect, an amended certificate shall be filed and the amended certificate shall be published by the person conducting the business in the same manner as provided by section 333.01. If the amendment is made only to comply with a change in the law that occurred since the previous date of filing, publication is not required.

History: 1978 c 698 s 4; 1984 c 618 s 41; 1997 c 137 s 14

333.055 TERM OF CERTIFICATE.

Subdivision 1. **Application and renewal.** Filing of a certificate hereunder shall be effective upon filing and shall remain in effect as long as an annual renewal for the certificate is filed in each calendar year following the calendar year in which the original filing was filed. The certificate expires in the calendar year following a calendar year in which the annual renewal was not filed. Notice of the annual renewal requirement must be provided to the person or entity submitting the certificate at the time of the original filing.

Assumed name certificates on file with the secretary of state on September 5, 2011, are exempt from the renewal requirements of this section until the expiration of the original ten-year term.

Subd. 2. **Reinstatement.** Any assumed name certificate that expires as a result of failing to file the annual renewal, and any assumed name certificate filed prior to September 5, 2011, that expires because of the expiration of the original or renewed ten-year term, may be reinstated by filing the annual renewal with the \$25 reinstatement fee.

Subd. 2a. **Annual renewal; contents.** The annual renewal filed under subdivision 1 must include the assumed name and the address of the principal place of business.

Subd. 3. **Fees.** The secretary of state shall charge and collect a fee of \$30 for each filing submitted with respect to an assumed name except for the annual renewal, for which no fee will be charged.

Subd. 4. **Secretary of state duties.** The secretary of state shall accept for filing all certificates and renewals thereof which comply with the provisions of sections 333.001 to 333.06 and which are accompanied by the prescribed fees, notwithstanding the fact that the assumed name disclosed therein may not be distinguishable from one or more other assumed names already filed with the secretary of state. The secretary of state shall not accept for filing a certificate that discloses an assumed name that is not distinguishable from a corporate, limited liability company, limited liability partnership, cooperative, or limited partnership name in use or reserved in this state by another or a trade or service mark registered with the secretary of state, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuser of the kind required by section 302A.115, subdivision 1, clause (d). The secretary of state shall determine whether a name is distinguishable from another name for purposes of this subdivision.

History: 1978 c 698 s 6; 1980 c 396 s 1; 1980 c 509 s 129; 1981 c 270 s 137; 1983 c 301 s 190; 1984 c 618 s 42; 1987 c 404 s 173; 1988 c 682 s 44,45; 1989 c 292 s 17; 1989 c 335 art 1 s 210; 1995 c 128 art 3 s 23; 2002 c 311 art 4 s 4; 2009 c 101 art 2 s 85; 2013 c 110 s 8

333.06 PLEADING FAILURE TO FILE CERTIFICATE; COSTS.

If any person conducting a business contrary to the terms of sections 333.001 to 333.06 shall, prior to the filing of the certificate therein prescribed, commence a civil action, including an action to recover possession of real property in any court of this state on account of any contract made by, or transaction had on behalf of the business, the defendant may plead such failure in abatement of the action; and all proceedings had in the action shall thereupon be stayed until the certificate provided for by sections 333.001 to 333.06 is duly filed, and if the defendant prevails in the action, the defendant shall also be entitled to tax \$250 costs, in addition to such other statutory costs as may be allowed by law, and, if the defendant does not prevail in the action, the defendant shall be entitled to deduct \$250 from the judgment otherwise recoverable therein and if a judgment for money is not otherwise recoverable therein, the defendant shall be entitled to tax \$250 costs. If such a person defends against a civil action, the plaintiff shall be entitled to tax \$250 costs, regardless of which party prevails upon the merits.

History: (7352) 1911 c 271 s 7; 1959 c 658 s 5; 1978 c 698 s 7; 1984 c 618 s 43; 1986 c 444; 1988 c 682 s 46

333.065 PENALTY FOR VIOLATION.

A person who violates any provision of sections 333.01 to 333.06 is subject to the penalties and remedies provided in section 8.31.

The relief provided in this section is in addition to the remedies or penalties otherwise available.

History: 1997 c 222 s 54

514.01 MECHANICS, LABORERS AND MATERIAL SUPPLIERS.

Whoever performs engineering or land surveying services with respect to real estate, or contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated, whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, that is to say, for the erection, alteration, repair, or removal of any building, fixture, bridge, wharf, fence, or other structure thereon, or for grading, filling in, or excavating the same, or for clearing, grubbing, or first breaking, or for furnishing and placing soil or sod, or for furnishing and planting of trees, shrubs, or plant materials, or for labor performed in placing soil or sod, or for labor performed in planting trees, shrubs, or plant materials, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street, or alley upon which the same abuts.

History: (8490) RL s 3505; 1917 c 285 s 1; 1921 c 229 s 1; 1925 c 274 s 1; 1973 c 247 s 1; 1974 c 381 s 1; 1986 c.444

514.011 NOTICE.

Subdivision 1. **Contractors.** Every person who enters into a contract with the owner for the improvement of real property and who has contracted or will contract with any subcontractors or material suppliers to provide labor, skill or materials for the improvement shall include in any written contract with the owner the notice required in this subdivision and shall provide the owner with a copy of the written contract. If no written contract for the improvement is entered into, the notice must be prepared separately and delivered personally or by certified mail to the owner or the owner's authorized agent within ten days after the work of improvement is agreed upon. The notice, whether included in a written contract or separately given, must be in at least 10-point bold type, if printed, or in capital letters, if typewritten and must state as follows:

"(a) Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.

(b) Under Minnesota law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice."

A person who fails to provide the notice shall not have the lien and remedy provided by this chapter.

The notice required by this subdivision is not required of any person who is an owner of the improved real estate, to any corporate contractor of which the owner of the improved real estate is an officer or controlling shareholder, to any contractor who is an officer or controlling shareholder of a corporation which is the owner of the improved real estate, or to any corporate contractor managed or controlled by substantially the same persons who manage or control a corporation which is the owner of the improved real estate.

Subd. 2. **Subcontractor to give notice.** (a) Every person who contributes to the improvement of real property so as to be entitled to a lien pursuant to section 514.01, except a party under direct contract with the owner must, as a necessary prerequisite to the validity of any claim or lien, cause to be given to the owner or the owner's authorized agent, either by personal delivery or by certified mail, not later than 45 days after the lien claimant has first furnished labor, skill or materials for the improvement, a written notice in at least 10-point bold type, if printed, or in capital letters, if typewritten, which shall state:

"This notice is to advise you of your rights under Minnesota law in connection with the improvement to your property.

Any person or company supplying labor or materials for this improvement may file a lien against your property if that person or company is not paid for the contributions.

We

(name and address of subcontractor)

have been hired by your contractor

(name of your contractor)

to provide or for

(type of service)

(material)

this improvement.

To the best of our knowledge, we estimate our charges will be

(value of service or material)

If we are not paid by your contractor, we can file a claim against your property for the price of our services.

You have the right to pay us directly and deduct this amount from the contract price, or withhold the amount due us from your contractor until 120 days after completion of the improvement unless your contractor gives you a lien waiver signed by me (us).

We may not file a lien if you paid your contractor in full before receiving this notice."

(b) A person entitled to a lien does not lose the right to the lien for failure to strictly comply with this subdivision if a good faith effort is made to comply, unless the owner or another lien claimant proves damage as a direct result of the failure to comply.

Subd. 3. Material suppliers, may request information. A contractor who contracts with any subcontractors or material suppliers to provide labor, skill or materials for the improvement shall upon request provide the subcontractor or material supplier with the name and address of the owner within 10 days of the initial request. Any contractor who fails to supply the information requested pursuant to this subdivision, is liable for any actual damages sustained or expenses incurred by the subcontractor or material supplier because of the contractor's failure to provide the information, plus reasonable attorney fees and costs.

Subd. 4. [Repealed, 1981 c 213 s 4]

Subd. 4a. Exceptions; same ownership. The notice required by this section shall not be required to be given where the contractor is managed or controlled by substantially the same persons who manage or control the owner of the improved real estate.

Subd. 4b. Exceptions; multiple dwelling. The notice required by this section shall not be required to be given in connection with an improvement to real property consisting of or providing more than four family units when the improvement is wholly residential in character.

Subd. 4c. **Exceptions; nonagricultural and nonresidential real estate.** The notice required by this section shall not be required to be given in connection with an improvement to real property which is not in agricultural use and which is wholly or partially nonresidential in use if the work or improvement:

- (a) is to provide or add more than 5,000 total usable square feet of floor space; or
- (b) is an improvement to real property where the existing property contains more than 5,000 total usable square feet of floor space; or
- (c) is an improvement to real property which contains more than 5,000 square feet and does not involve the construction of a new building or an addition to or the improvement of an existing building.

For the purposes of this subdivision, "agricultural use" shall have the meaning given to it in section 473H.02, subdivision 3.

For the purposes of clause (c), improvements include, but are not limited to, clearing, excavating, grading, filling in, landscaping, well digging, drilling or repairing, paving, surfacing or striping parking lots, digging or repairing a ditch, drain, or reservoir.

Subd. 5. **Owner defined.** For the purposes of this section, "owner" means the owner of any legal or equitable interest in real property whose interest in the property (1) is known to one who contributes to the improvement of the real property, or (2) has been recorded or filed for record if registered land, and who enters into a contract for the improvement of the real property.

Subd. 6. [Repealed, 1989 c 160 s 4]

History: 1973 c 247 s 2; 1978 c 703 s 1-4; 1981 c 213 s 1-3; 1982 c 424 s 132; 1982 c 433 s 1,2; 1983 c 296 s 1,2; 1986 c 444; 1989 c 160 s 1-3

514.02 NONPAYMENT FOR IMPROVEMENT; PENALTIES AND REMEDIES.

Subdivision 1. **Proceeds of payments; acts constituting theft.** (a) Proceeds of payments received by a person contributing to an improvement to real estate within the meaning of section 514.01 shall be held in trust by that person for the benefit of those persons who furnished the labor, skill, material, or machinery contributing to the improvement. Proceeds of the payment are not subject to garnishment, execution, levy, or attachment. Nothing contained in this subdivision shall require money to be placed in a separate account and not commingled with other money of the person receiving payment or create a fiduciary liability or tort liability on the part of any person receiving payment or entitle any person to an award of punitive damages among persons contributing to an improvement to real estate under section 514.01 for a violation of this subdivision.

(b) If a person fails to use the proceeds of a payment made to that person for the improvement, for the payment for labor, skill, material, and machinery contributed to the improvement, knowing that the cost of the labor performed, or skill, material, or machinery furnished remains unpaid, and who has not furnished the person making such payment either a valid lien waiver under section 514.07, or a payment bond in the basic amount of the contract price for the improvement, conditioned for the prompt payment to any person entitled thereto for the performance of labor or the furnishing of skill, material, or machinery for the improvement, shall be guilty of theft of the proceeds of the payment and is punishable under section 609.52. For an improvement to residential real estate made by a person licensed, or who should be licensed, under section 326B.805, a shareholder, officer, director, or agent of a corporation who is responsible for the theft shall be guilty of theft of the proceeds.

(c) The penalties and remedies provided in this section do not apply to a third party who receives a payment in the ordinary course of business.

(d) For purposes of this section, "residential real estate" has the meaning given in section 326B.802.

Subd. 1a. **Civil action.** A person injured by a violation of subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney fees, and receive other relief as determined by the court, including, without limitation, equitable tracing. A civil action under this subdivision may be brought:

(1) against the person who committed the theft under subdivision 1; and

(2) for an improvement to residential real estate made by a person licensed, or who should be licensed, under section 326B.805, against a shareholder, officer, director, or agent of a corporation who is not responsible for the theft but who knowingly receives proceeds of the payment as salary, dividend, loan repayment, capital distribution, or otherwise.

Subd. 2. **Notice of nonpayment.** Notice of nonpayment of the cost of labor, skill, material, and machinery contributing to the improvement of the real estate to the person paid for such improvement may be given by the person who made payment for such improvement, or by any person furnishing the labor, skill, material, or machinery contributing to the improvement and who has not been paid for the contribution. Notice may be given in any reasonable manner. Notice shall be in writing and in any terms that identify the real estate improved and the nonpayment complained of.

Subd. 3. **Proof of knowledge of nonpayment.** Proof that such person failed to pay for labor performed, or skill, material, or machinery furnished within 15 days after receiving notice that the cost of such labor performed, or skill, material, or machinery furnished remains unpaid will be sufficient to sustain a finding that the proceeds of such payment were used for a purpose other than the payment for labor, skill, material, and machinery for such improvement, knowing that the costs of labor performed, or skill, material, or machinery furnished remains unpaid, unless the person;

(1) Establishes that all proceeds received from the person making such payment have been applied to the cost of labor, skill, material, or machinery furnished for the improvement; or

(2) Within 15 days after receiving notice shall give a bond or make a deposit with the court administrator of district court, in an amount and form approved by a judge of district court, to hold harmless the owner or person having the improvement made from any claim for payment of anyone furnishing labor, skill, material, or machinery for such improvement.

History: (8491) 1915 c 105 s 1; 1965 c 35 s 9; 1971 c 914 s 1; 1984 c 628 art 3 s 11; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2000 c 430 s 1,2; 2007 c 140 art 8 s 30; art 13 s 4

514.03 EXTENT AND AMOUNT OF LIEN.

Subdivision 1. **Notice not required.** With respect to any contract or improvement as to which notice is not required by section 514.011, the lien shall be as follows:

(a) If the contribution is made under a contract with the owner and for an agreed price, the lien as against the owner shall be for the sum agreed upon.

(b) In all other cases, it shall be for the reasonable value of the work done, and of the skill, material, and machinery furnished.

Subd. 2. **Notice required.** With respect to any contract or improvement as to which notice is required by section 514.011, the lien shall be as follows:

(a) If the contribution is made under a contract with the owner and for an agreed price, the lien as against the owner shall be for the sum agreed upon;

(b) In all other cases, it shall be for the reasonable value of the work done, and of the skill, material, and machinery furnished. Provided, however:

(c) The total sum of all liens, whether the contribution is made under a contract with the owner or otherwise, shall not exceed the total of said contract price plus the contract price or reasonable value of any additional contract or contracts between the owner and the contractor or additional work ordered by the owner, less the total of the following:

(i) Payments made by the owner or the owner's agent to the contractor prior to receiving any notice prescribed by section 514.011, subdivision 2;

(ii) Payments made by the owner or the owner's agent to discharge any lien claims as authorized by section 514.07; and

(iii) Payments made by the owner or the owner's agent pursuant to presentation of valid lien waivers from persons or companies contributing to the improvement who have previously given the notice required by section 514.011, subdivision 2.

Subd. 3. **All title, interest.** The lien shall extend to all the interest and title of the owner in and to the premises improved, not exceeding 80 acres, except in the case of homesteaded agricultural land as used in section 273.13, subdivision 23, where the lien shall be limited to 40 acres.

History: (8492) *RL s 3506; 1973 c 247 s 3; 1976 c 32 s 1; 1Sp1985 c 14 art 4 s 96; 1986 c 444*

514.05 WHEN LIEN ATTACHES; NOTICE.

Subdivision 1. **Generally.** All liens, as against the owner of the land, shall attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement, and shall be preferred to any mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof. As against a bona fide purchaser, mortgagee, or encumbrancer without actual or record notice, no lien shall attach prior to the actual and visible beginning of the improvement on the ground, but a person having a contract for the furnishing of labor, skill, material, or machinery for the improvement, may file for record with the county recorder of the county within which the premises are situated, or, if claimed under section 514.04, with the secretary of state, a brief statement of the nature of the contract, which statement shall be notice of that person's lien only.

Subd. 2. **Exception.** Visible staking, engineering, land surveying, and soil testing services do not constitute the actual and visible beginning of the improvement on the ground referred to in this section. This subdivision does not affect the validity of the liens of a person or the notice provision provided in this chapter and affects only the determination of when the actual and visible beginning of the improvement on the ground, as the term is used in subdivision 1, has commenced.

History: (8494) *RL s 3508; 1973 c 247 s 4; 1974 c 381 s 2; 1976 c 181 s 2; 1986 c 444; 1987 c 95 s 1*

514.07 PAYMENTS WITHHELD; LIEN WAIVERS.

The owner may withhold from the owner's contractor as much of the contract price as may be necessary to meet the demands of all persons, other than the contractor, having a lien upon the premises for labor, skill, or material furnished for the improvement, and for which the contractor is liable. The owner may pay and discharge all these liens and deduct the cost of them from the contract price. No owner shall be required to pay the owner's contractor until the expiration of 120 days from the completion of the improvement, except to the extent that the contractor furnishes to the owner waivers of claims for mechanics' liens signed by persons who furnished labor, skill or material for the improvement and who have given the notice required by section 514.011, subdivision 2. The owner, within 15 days after the completion of the contract, may require any person having a lien hereunder, by written request therefor, to furnish to the owner an itemized and verified account of the person's lien claim, the amount of it, and the person's name and address. No action or other proceeding may be commenced for the enforcement of the lien until ten days after the statement is furnished. The word "owner," as used in this section, includes any person interested in the premises other than as a lienor.

History: (8496) *RL s 3510; 1973 c 247 s 5; 1983 c 296 s 3; 1986 c 444*

514.08 STATEMENT; NOTICE; NECESSITY FOR RECORDING; CONTENTS.

Subdivision 1. **Notice required.** The lien ceases at the end of 120 days after doing the last of the work, or furnishing the last item of skill, material, or machinery, unless within this period:

(1) a statement of the claim is filed for record with the county recorder or, if registered land, with the registrar of titles of the county in which the improved premises are situated, or, if the claim is made under section 514.04, with the secretary of state; and

(2) a copy of the statement is served personally or by certified mail on the owner or the owner's authorized agent or the person who entered into the contract with the contractor.

Subd. 2. **Statement by lien claimant; requirements.** Such statement shall be made by or at the instance of the lien claimant, be verified by the oath of some person shown by such verification to have knowledge of the facts stated, and shall set forth:

(1) a notice of intention to claim and hold a lien, and the amount thereof;

(2) that such amount is due and owing to the claimant for labor performed, or for skill, material, or machinery furnished, and for what improvement the same was done or supplied;

(3) the names of the claimant, and of the person for or to whom performed or furnished;

(4) the dates when the first and last items of the claimant's contribution to the improvement were made;

(5) a description of the premises to be charged, identifying the same with reasonable certainty;

(6) the name of the owner thereof at the time of making such statement, according to the best information then had;

(7) the post office address of the claimant. (The failure to insert such post office address shall not invalidate the lien statement);

(8) that claimant acknowledges that a copy of the statement must be served personally or by certified mail within the 120-day period provided in this section on the owner, the owner's authorized agent or the person who entered into the contract with the contractor as provided herein; and

(9) that notice as required by section 514.011, subdivision 2, if any, was given.

When the claimant files the notice, the Social Security number of an individual owner or the Internal Revenue Service taxpayer identification number for an owner other than an individual is not required.

History: (8497) *RL s 3511; 1921 c 521 s 1; 1973 c 247 s 6; 1976 c 181 s 2; 1983 c 296 s 4; 1986 c 444; 1992 c 463 s 28; 1995 c 5 s 1; 1997 c 137 s 18*

514.09 TWO OR MORE BUILDINGS.

A lienholder who has contributed to the erection, alteration, removal, or repair of two or more buildings or other improvements situated upon or removed to one lot, or upon or to adjoining lots, under or pursuant to the purposes of one general contract with the owner, may file one statement for the entire claim, embracing the whole area so improved; or, if so electing, the lienholder may apportion the demand between the several improvements, and assert a lien for a proportionate part upon each, and upon the ground appurtenant to each, respectively.

History: (8498) *RL s 3512; 1986 c 444*

514.10 FORECLOSURE OF LIENS.

Such liens may be enforced by action in the district court of the county in which the improved premises or some part thereof are situated, or, if claimed under section 514.04, of any county through or into which the railway or other line extends, which action shall be begun and conducted in the same manner as actions for the foreclosure of mortgages upon real estate, except as herein otherwise provided, but the owner or any person or party having an interest in or lien upon the property against which a lien has been filed under the provisions of this chapter may bring an action to remove the lien in the nature of an action to determine adverse claims and subject to all the provisions of law regarding actions to determine adverse claims.

When an action has been brought, either by the lien claimant to enforce the lien or by the owner, person or party having an interest in or a lien upon the property against which a lien claim has been filed to determine adverse claims, as provided herein, application may be made at any time after such action has been commenced by any of the persons or parties above mentioned to have the property affected by any such lien, released from the lien by giving ten days' notice, or such other and shorter notice as the court may order and direct, to the lien claimant, or the lien claimant's attorney, of intention to apply to the district court for the release of such lien and of the time and place of hearing. Upon a hearing upon an application the court shall fix a sum of money or an amount of a bond from a surety listed on the United States Department of Treasury Circular 570 made payable upon the entry of judgment as provided in this section to be deposited by the applicant with the court administrator of the district court, which sum shall not be less than the aggregate amount of, (1) the amount claimed in the lien statement, (2) \$18 for every \$100 or fraction thereof, to cover interest, (3) the probable disbursements in an action to enforce the claim for which the lien statement was filed, (4) an amount not less than double the amount of attorneys' fees allowed upon the foreclosure under section 582.01, to cover any allowance the court may make upon the trial for costs and attorneys' fees in the action or upon appeal. Upon making a deposit in the amount so fixed in the order of court, an order shall be made by the court releasing the premises described in the statement thereof from the effect of such lien. The lien claimant shall have the same right of lien against such money or bond deposit as against the property released. The order releasing the lien may be filed in the office of the county recorder or registrar of titles, if registered land, of the county in which the lien statement is recorded or filed, and thereupon the premises affected shall be released therefrom. The court shall by the same order discharge any notice of *lis pendens* filed in any action in which such lien may be asserted if it appears that all mechanics' liens filed or recorded against the property covered by the *lis pendens* have been released.

After the release of the property affected, the judgment ordered in any action either to enforce such lien or determine adverse claims and remove such lien, in the event that the lien is established, shall provide that it be paid, and it shall be paid without further proceedings out of the deposit made as provided herein. The judgment of the district court establishing a lien, unless a written notice of intention to appeal therefrom is served on the court administrator of the district court within 30 days from the entry of such judgment, shall be authority to such court administrator to pay the amount specified in such judgment to the persons entitled thereto, or their attorney of record in the action from the amount of money on deposit or to allow the claimant to collect on the bond that has been deposited. The balance of the deposit of money or bond, if any, shall be returned to the depositor. If the lien was not a valid and enforceable one, the judgment shall direct the return of the whole deposit to the depositor unless the claimant obtains judgment against such depositor personally and in such case the judgment shall be paid as hereinbefore specified.

History: (8499) *RL s 3513*; 1921 *c 521 s 2*; 1976 *c 181 s 2*; 1986 *c 444*; 1Sp1986 *c 3 art 1 s 82*; 2006 *c 221 s 6*

514.11 COMMENCEMENT OF ACTION; PROCEEDINGS.

The action may be commenced by any lienholder who has filed a lien statement for record and served a copy thereof on the owner pursuant to section 514.08, and all other such lienholders shall be made defendants therein. The summons shall state that the complaint has been filed with the court administrator and shall be of no effect unless such complaint be in fact so filed. It shall contain a notice that the action is brought to foreclose a lien, giving the amount thereof, and a brief description of the premises affected, and of the improvement out of which the lien arose, and shall require each defendant to file an answer to the complaint with the court administrator within 20 days after service on the defendant. Such answer, in addition to all other matters proper to be pleaded, shall set up any lien claimed by the defendant, and demand the enforcement thereof. No copies of such complaint or answer need be served on any party, upon demand or otherwise, and all averments of the answer shall be taken as denied without further pleading.

History: (8500) *RL s 3514; 1973 c 247 s 7; 1986 c 444; 1Sp1986 c 3 art 1 s 82*

514.12 NOTICE OF LIS PENDENS.

Subdivision 1. **Recording.** At the beginning of the action the plaintiff shall file for record with the county recorder or, if registered land, with the registrar of titles of the county in which it is brought, and of the several counties if the lien be claimed under section 514.04, a notice of the pendency thereof, embracing therein a copy of the summons, omitting the caption.

Subd. 2. **One action for all.** After such filing, no other action shall be commenced for the enforcement of any lien arising from the improvement described, but all such lienholders shall intervene in the original action by answer, as provided in section 514.11. Any such lienholder not named as a defendant may answer the complaint and be admitted as a party. If more than one action shall be commenced in good faith, all shall be consolidated and tried as one, under such order of the court as may best protect the rights of all parties concerned.

Subd. 3. **One-year limitation.** No lien shall be enforced in any case unless the holder thereof shall assert the same, either by filing a complaint or answer with the court administrator, within one year after the date of the last item of the claim as set forth in the recorded lien statement; and, no person shall be bound by any judgment in such action unless made a party thereto within the year; and, as to a bona fide purchaser, mortgagee, or encumbrancer without notice, the absence from the record of a notice of lis pendens of an action after the expiration of the year in which the lien could be so asserted shall be conclusive evidence that the lien may no longer be enforced and, in the case of registered land, the registrar of titles shall refrain from carrying forward to new certificates of title the memorials of lien statements when no such notice of lis pendens has been registered within the period.

History: (8501) *RL s 3515; 1933 c 362 s 1; 1945 c 4 s 1; 1975 c 116 s 1; 1976 c 181 s 2; 1986 c 444; 1990 c 575 s 6; 1995 c 5 s 2*