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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 420

February 2, 2009
Authored by Laine, Simon and Scalze
The bill was read for the first time and referred to the Committee on Commerce and Labor
March 19, 2009
Committee Recommendation and Adoption of Report:
To Pass as Amended and re-referred to the Committee on Civil Justice
March 25, 2009
Committee Recommendation and Adoption of Report:
To Pass
Read Second Time
May 11, 2009
Calendar For The Day
Amended
Read Third Time as Amended
Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

A bill for an act

relating to real estate; requiring that existing statutory implied residential construction warranties be made as express warranties and be provided to the buyer in writing; prohibiting waivers of the warranty; amending Minnesota Statutes 2008, sections 327A.04; 327A.06; 327A.07; 327A.08.

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

Section 1. Minnesota Statutes 2008, section 327A.04, is amended to read:

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.07~~ 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.07~~ 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 ~~statutory~~ 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 ~~statutory~~ 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.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to contracts entered into on or after that date.

Sec. 2. Minnesota Statutes 2008, section 327A.06, is amended to read:

327A.06 OTHER WARRANTIES.

The ~~statutory~~ 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.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to construction of dwellings or home improvements completed on or after that date.

Sec. 3. Minnesota Statutes 2008, section 327A.07, is amended to read:

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 ~~statutory~~ warranties set forth in section 327A.02.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to contracts entered into on or after that date.

Sec. 4. Minnesota Statutes 2008, section 327A.08, is amended to read:

327A.08 LIMITATIONS.

Notwithstanding any other provision of sections 327A.01 to ~~327A.07~~ 327A.08:

(a) the terms of the home improvement warranties required by sections 327A.01 to ~~327A.07~~ 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.07~~ 327A.08 shall not include products or materials installed that are already covered by implied or written warranty; and

(c) the ~~home improvement~~ warranties required by sections 327A.01 to ~~327A.07 are intended to be implied warranties imposing an affirmative obligation upon home improvement contractors, and sections 327A.01 to 327A.07 do not require that~~ 327A.08 must be set forth as written warranty instruments and must be ~~created~~ included as part of the construction contract and conveyed 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.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to contracts entered into on or after that date.