

Mold & Water Intrusion in Minnesota

Mold, mold laws, mold lawyers, mold issues, wet basement

Mold and water intrusion claims are a great source of litigation in today's modern world. These are also known as construction claims involving wet basements. This litigation has become common with the discovery of the toxic effects and eradication complexities associated with mold, black mold and toxic mold issues. The discovery of mold in a home can have devastating consequences often rendering the home valueless because the potential health issues associated with mold presence.

Therefore, it is important for homeowners to recognize that claims related to mold and water intrusion must be made in a timely fashion. Often the Statutes of Limitations related to construction and mold issues can be unforgiving. As a result, when a home owner first detects that they have a foundation or water intrusion problem, they must act quickly to preserve their claim.

Claims by Minnesota homeowners against builders and material suppliers can generally be divided into two main types of causes of action:

- claims made pursuant to the statutory new home warranty found in Minnesota Statutes Section 327A.01 et seq., and
- non-warranty claims such as negligence and breach of contract.

Individuals faced with construction defects in their homes resulting in water intrusion, wet basements, roof leakage, mold or other damage must be aware of strict time limitations that apply to all legal claims construction defects. As described below, the time limitations for claims based on non-warranty allegations are governed by Minnesota Statutes 541.051, subd. 1, and claims brought under the statutory warranty are governed by Minnesota Statutes Section 541.051 subd. 4.

Homeowners are often under the mistaken belief that ongoing discussions or negotiations with a builder or its insurers regarding resolution of a problem will stop or toll the statute of limitations and provide additional to commence suit. As a general rule, this is not the case. Very strict deadlines must be met to preserve warranty and non-warranty claims. When these deadlines (as discussed below) are not met, homeowners with even major damage to their homes may recover nothing.

THE MINNESOTA HOME WARRANTY:

The statutory warranty for defects in construction in a property is found in Minnesota Statutes Section 327A.02. This statute provides the following warranty for home, or “dwelling” owners:

- Subd. 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 non-compliance 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 non-compliance 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 non-compliance with building standards.

Minnesota Statutes 327A.02 defines “major construction defects” as referenced above in part(c) as follows:

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

This statute creates a new construction warranty for homeowners even where none has been expressly offered by the builder. Homeowners faced with water intrusion claims and other construction defects often bring a lawsuit alleging breach of this warranty, as well as the non-warranty (common law) claims such as negligence and breach of contract. As set forth below, however, additional time restrictions and obligations on the part of the homeowner apply to the process of bringing a breach of statutory warranty claim in Minnesota. Specifically, under Minnesota Statute 327A.03 entitled “Exclusions,” the following obligation is placed on homeowners as a first step in the breach of statutory warranty claim process. In relevant part, the statute reads:

Liability of the vendor (the builder) or the home improvement contractor under 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:

- 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.

In layman's terms, this statute requires that the builder receive a written report or notice within six months after the homeowner should have discovered the loss or damage. A homeowner's failure to meet this initial hurdle will bar a statutory warranty claim and may limit the homeowner to making only a common law claim (e.g., breach of contract or negligence and, as set forth below, provided those claims are commended in a lawsuit prior to two years from the date of discovery of the defect).

It is important to note that even if homeowners provide the "six-month notice" described above, they must still commence a suit within two years after the builder breaches its statutory warranty. The date of the breach of the warranty would generally be the first date upon which the homeowner learned that the builder was unwilling or unable to honor the statutory new home warranties. If a warranty claim is waived or is otherwise not available, the homeowner would be relegated to pursuing only common law negligence and breach of contract claims. In such event, it is generally accepted that homeowners have no legal right of recovery unless they commence a lawsuit within two years of the discovery of the defect (as opposed to two years from the date the warranty was breached). These statutes of limitation are described below.

THE STATUTE OF LIMITATIONS FOR DEFECTS IN CONSTRUCTION

The statute of limitations for making a legal claim (a lawsuit) for defects in the construction or repairs of a home is set forth in Minnesota Statute 541.051. For non-warranty claims, under Minn. Stat. 541.051, subd. 1, homeowners must commence an action within two years from the "date of discovery of the injury" or their claims may be barred. The definition of "discovery" is discussed below. To bring a warranty action (often done simultaneously with a non-warranty action if the common law statute of limitations has not lapsed), the homeowners must first satisfy their "notice" obligation discussed above and notify the builder in writing of their warranty claim before six months has passed from the discovery of the structural defect. Once the homeowners learn that the builder is unwilling or unable to honor the warranty (typically in response to the "notice"), a two-year clock begins under Minn. Stat. 541.051, subd. 4, and if the suit is not commenced within that time period, homeowners have no legal right of recovery for the damage to their homes.

Homeowners should be aware that the statute of limitations for a warranty claim and the statute of limitations for a non-warranty claim (despite both being “two-year statutes of limitations”) can actually lapse at different times. For example, if homeowners discover a defect in their home on January 1, their two-year statute of limitations for non-warranty claims begins to run immediately. If five months later they send a letter to their builder providing notice of a warranty claim and the builder informs them two months later that it will not honor the warranty, the statute of limitations for the warranty claim will not expire until two years after the homeowners learn of (“discover”) this breach of warranty, which in this case would be 27 months from the date the defect was discovered but only two years from the date the breach of the warranty was discovered. This is important for homeowners who are involved in claims that have been delayed by the builder or the builder’s insurers. Under the scenario described above, a homeowner could be limited to only a warranty claim. The loss of choices and causes of actions (types of claims a homeowner can make) may reduce their options for recovery. In addition, the statutory warranty has many exceptions to recovery which support the conclusion that there may be a great risk in allowing the statute of limitations for non-warranty claims to lapse.

Builders often have good intentions in engaging in ongoing discussions regarding the resolution of a claim. However, once they inform their insurers of the claim. The focus is often shifted to creating a statute of limitations defense. These insurers will often seek out the homeowners and interview them, focusing the questioning on the subject of “date of discovery” (the date the statute of limitations clock began to run), and have little interest in any substance regarding the scope of the defect or how the water infiltration has affected the homeowners’ lives. Homeowners should be aware that after discovery of the problem, the two-year clock for non-warranty claims is running pursuant to Minn. Stat. 541.051. Extreme caution should be exercised when responding to questions from builders or their insurers which begin “[W]hen did you first notice...” Except in the rare circumstances described below, the only way to stop the statute of limitations clock is to commence a lawsuit.

The statute of limitations for home defect cases (Minnesota Statutes 541.051) states (in relevant party) the following:

- 541.051. Limitation of action for damages based on services or construction to improve real property.

- Except where fraud is involved, no action by any person in contract, tort or otherwise, to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of any improvement to real property, nor any action for contribution or indemnity for damages sustained on account of any injury, shall be brought against any person performing or furnishing the design, planning, supervision, materials or observation of construction or construction of the improvement to the real property or against the owner of the real property more than two years after the discovery of the injury [emphasis added] or, in the case of an action for contribution or indemnity, accrual of the cause of action, nor, in any event shall such a cause of action accrue more than ten years after substantial completion of the construction. Date of substantial completion shall be determined by the date when the construction is sufficiently completed so that the owner or the owner's representative can occupy or use the improvement for the intended purpose.

Courts have generally interpreted this paragraph to mean that a homeowner must bring a lawsuit for defective construction within two years after the date of the discovery of the defect in construction, and no more than 10 years after the completion of the construction itself.

As of August 1, 2004, subdivision 4 of this statute (Minn. Stat. 541.051) states:

- Subd. 4. Applicability. For the purposes of actions based on breach of the statutory warranties set forth in section 327A.02, or to actions based on breach of an express written warranty, such actions shall be brought within two years of the discovery of the breach. In the case of an action under section 327A.05, which accrues during the ninth or tenth year after the warranty date, as defined in section 327A.01, subdivision 8, an action may be brought within two years of the discovery of the breach, but in no event may an action under Section 327A.05 be brought more than 12 years after the effective warranty date.

Under this section the clock for warranty claims begins to run open discovery of the breach of warranty and not upon discovery of the injury.

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