

# Home Warranty Dispute Resolution

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Minnesota Statutes Chapter 327A has been amended to add a new Section 327A.051, effective January 1, 2011, creating a home warranty dispute resolution process that must be completed before commencing a lawsuit under Minnesota Statutes Chapter 327A, except as otherwise provided in the statute.<sup>1</sup>

## Purpose

Prior to the amendment, the process for resolving a home warranty dispute typically involved giving notice of the claim pursuant to the statute, completion of an inspection, service and filing of a Summons and Complaint, completion of formal discovery, mediation, and finally a settlement or a trial.

The Homeowner Warranty Task Force of the Minnesota Department of Labor and Industry, composed of homeowners, builders, insurance professionals and attorneys, designed the home warranty dispute resolution process to facilitate early resolution of warranty disputes without lengthy and expensive litigation.<sup>2</sup> The statute provides that the purpose of the dispute resolution process is “to assist parties in determining an agreeable scope of repair or other resolution of their dispute.”<sup>3</sup>

## Early Neutral Evaluation Process

The standard process under Minnesota Statutes Section 327A.051 is an early neutral evaluation process. The Commissioner of Labor and Industry will maintain a list of qualified neutrals approved based on their education, training, experience, and potential conflicts of interest. The dispute resolution process will be commenced by submitting an application to the commissioner, who will provide each party with a list of three randomly-selected qualified neutrals within

ten days. If the parties do not agree on a neutral within five days, the vendor or home improvement contractor shall strike one of the neutrals from the list, then the vendee or owner shall strike one of the remaining neutrals from the list, and the remaining neutral shall serve as the qualified neutral for the dispute.

The parties will share the expense of the qualified neutral's billed time equally, unless otherwise agreed. The neutral must identify the neutral's hourly rate to the parties. 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. In addition, the neutral will collect from each party an administrative fee of \$25 and submit those fees to the commissioner.

The qualified neutral must hold a conference with the parties within 30 days after the neutral's selection, except by mutual agreement of the parties. The qualified neutral will select the date for the conference after consulting with the parties. 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.

Within ten days after the conference, the neutral will mail to the parties a nonbinding, written determination, which must include, to the extent possible, findings and recommendations regarding the scope and amount of necessary repairs, if any.

#### Confidentiality

The written determination issued by the qualified neutral and all communications relating to the dispute resolution process, except those between any party and the commissioner, are considered confidential settlement communications. No party may use a written determination issued by the qualified neutral as evidence of liability in subsequent litigation between the parties, and the qualified neutral may not be called to testify regarding the dispute resolution proceedings.

#### Alternative Process

If both parties agree, they may designate an alternative dispute resolution process instead of the early neutral evaluation process established by Minnesota Statutes Section 327A.051. For example, some parties may prefer mediation, in

which the qualified neutral facilitates discussion to help the parties reach their own mutually acceptable resolution of the dispute.

The information in this article is general information and does not constitute legal advice regarding action to be taken in any particular case, which may vary depending on the facts, applicable statutes, governing documents and other variables. If a homeowner or an association has a potential construction defect claim, they should consult with an attorney as soon as possible, because their claims may be subject to applicable statutes of limitation.

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<sup>1</sup> The statute provides that the home warranty dispute resolution process is not required in certain situations, for example, if the vendor or home improvement contractor fails to perform an inspection of alleged defects, fails to make an offer to repair defects or fails to perform agreed-upon repairs, as provided in the statute.

<sup>2</sup> “Early Neutral Evaluation Process Created to Reduce Costly Litigation,” CCLD Review (Minnesota Department of Labor and Industry – Construction Codes and Licensing Division), Summer 2010.

<sup>3</sup> Minn. Stat. § 327A.051, Subd. 1 (2010).