

Recent Amendments to Minnesota and Wisconsin Construction Warranty Laws Give Homebuilders the Opportunity to Repair Defects Without Litigation

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The substantial rise in new housing construction in the past several years has resulted in an increase in homeowner lawsuits against their builders for breach of statutory housing warranties. This increase in litigation was made possible, in part, by state statutes which provided litigation against the builder as the sole remedy for remedying housing defects.

To rectify this situation, several states – including both Minnesota and Wisconsin – have enacted “right to cure” statutes which provide a means for the homeowner to notify the builder and allow a time period in which to cure the defects without first resorting to litigation.

Minnesota refers to its statute as a “Notice and Opportunity to Repair” law and it is codified at Minnesota Statutes Section 327A.02, Subd. 4. Made effective as of August 1, 2006, the new statute provides that, once the homeowner gives notice of the defect to the builder under Minnesota Statutes Section 327A.03, the homeowner must allow the builder to inspect to home and an opportunity to repair the defect. The builder has thirty (30) days in which to make an offer to repair the alleged loss or damage. If, however, the homeowner’s claim cannot be resolved, the homeowner may then proceed with litigation under the applicable warranty statutes.

Wisconsin enacted a similar law in 2006 as well. Wisconsin’s statute, codified at Wisconsin Statutes Section 895.07, requires a homeowner to provide notice to the builder at least ninety (90) days prior to commencing suit against the builder. Once the notice describing the claim is received by the builder, the builder has fifteen (15) days to respond in one of five (5) ways: (i) reject the claim in writing; (ii) offer to remedy the defect at no cost; (iii) settle the claim by paying money; (iv) make a written offer which is a combination of repair and payment of money; or (v) make a proposal to inspect the dwelling (note that an inspection is not granted as a matter of right as is the case with Minnesota’s statute). The homeowner then has fifteen (15) days to accept or reject whatever offer the builder makes and, if no resolution can be achieved, the homeowner can then proceed with litigation under Wisconsin’s warranty statutes.

With court dockets backlogged due to the high number of cases these days, the idea behind right to cure statutes – i.e., that some claims may be ripe for resolution outside of litigation -- and the mechanisms provided in such statutes are a positive development.