



HOME BUILDING AND REMODELING

FROM THE OFFICE OF
MINNESOTA ATTORNEY GENERAL
LORI SWANSON

www.ag.state.mn.us

MINNESOTA ATTORNEY
GENERAL'S OFFICE
445 Minnesota Street
Suite 1400
St. Paul, MN 55101
(651) 296-3353
(800) 657-3787
TTY: (651) 297-7206
TTY: (800) 366-4812
www.ag.state.mn.us

If you are planning to build or have work done on your home, take a moment to first read this handbook. This handbook will give you guidelines for selecting a contractor and writing a home improvement contract, as well as highlight Minnesota's mechanic's lien law.

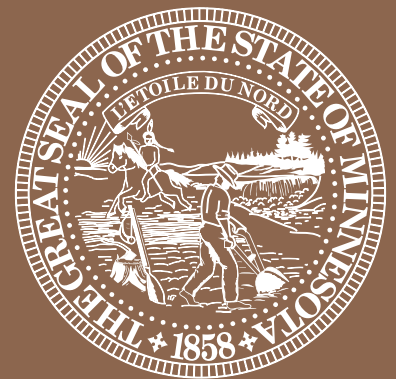
This brochure is intended to be used as a source for general information and is not provided as legal advice.

Home Building and Remodeling is written and published by the Minnesota Attorney General's Office. This handbook is available in alternate formats upon request.

The Minnesota Attorney General's Office values diversity and is an equal opportunity employer.

Table of Contents

Choosing a Contractor	2
Research Your Project	2
Get the Names of Several Contractors	2
Get Bids on Your Job.....	3
Carefully Compare Bids.....	4
Licensed Contractors.....	5
Beware of Con Artists	6
Storm Damage and Insurance Claims	6
Consumer Protections	7
What to Include in Your Contract.....	8
Home Warranties	9
Contractor Recovery Fund	11
Understanding Mechanic’s Liens	12
What Is a Mechanic’s Lien?	12
Contractor Must Be Licensed by the State.....	13
Contractor Must Give You Notice.....	13
Subcontractors Must Give You Notice	13
You Only Have to Pay Once.....	14
Protect Yourself	14
Apportioning Your Payment.....	14
When and Where Liens Are Filed	14
To Enforce a Lien	15
Complainant’s Notice of <i>Lis Pendens</i>	15
Action You Can Take.....	15
Settlement	16
Civil Action	16
Chronology of Events in a Lien Process	16
Resources	17
Glossary	17
Referral Guide	20



Choosing a Contractor

Whether you are planning to build, remodel, repair, or add on, your home improvement project may require the services of a contractor. Home improvement projects can easily cost thousands of dollars, making selection of the right contractor very important.

Although most contractors are reputable professionals, there are some who lack necessary skills or business expertise. **Less reputable contractors may try to sell you items you don't need, may be unqualified to perform the work, or may not be financially viable should a problem arise.**

Research Your Project

The first step to selecting a contractor is to research the project so you will be knowledgeable about what the job involves. Your research should include what has to be done, the best ways to do the work, and the types of materials that may be used and their cost.

You may also wish to contact your local building inspector to find out what building permits and inspections you need and what your legal obligations are regarding permits and inspections.

In some cases you may discover that you have the expertise and time to act as your own contractor. Then, you can hire and direct the necessary subcontractors. While acting as your own contractor may provide substantial savings, it can also require substantial knowledge and commitment on your part. You will need to know exactly what has to be done and when to schedule the various jobs, and you will be obligated to oversee the subcontractors when they are working on your project. Anything that goes wrong may be your responsibility to resolve.

Get the Names of Several Contractors

If you decide to forego acting as your own contractor, your next step is to get the names of several contractors and obtain bids. Although there is no surefire way to obtain a list of reputable contractors, there are some good sources of information to consult.

Start with friends and neighbors who have undertaken similar projects. Direct experience with a contractor and knowing how the contractor performed through a difficult project is often the best recommendation. If your project involves energy conservation, check with your utility company to see if it has a list of contractors with expertise in that area. Hardware, building supply,

Less reputable contractors may try to sell you items you don't need, may be unqualified to perform the work, or may not be financially viable should a problem arise.

and home improvement stores have ongoing business relationships with many contractors. Their recommendations will tell you what their customers are saying, and may also be a clue as to whether the contractor has a good credit standing with the store. Trade associations can also be a good resource since your satisfaction with a contractor will be a reflection on the industry as a whole.

Once you have obtained the names of several contractors, check with the Minnesota Department of Labor and Industry, which is the State agency with the authority to license and regulate a substantial portion of the construction industry in Minnesota. **The Department of Labor and Industry can tell you if a contractor is properly licensed and whether enforcement action has been taken against a contractor.** This should be done to ensure the legitimacy of the contractors that you are considering. Your local building official may also be a source for information about problem contractors.

Next, contact the Better Business Bureau to find out if any complaints have been filed against a contractor. Also, call one or more of the references provided by a contractor you are considering hiring. Former customers will tell you if they were satisfied with the contractor's work, if any problems arose, and if they would change anything if they had the project to do over again. You may also want to look at work the contractor has done on other homes.

Finally, you may wish to search Minnesota court records to see if any contractor you are considering is subject to any outstanding civil judgments or has been involved in lawsuits with its previous customers, subcontractors, or materials suppliers. A contractor's litigation history may be relevant to consider before you enter into a contract with that contractor. The Minnesota court system has a free online service to search court records at pa.courts.state.mn.us.

Contact information for both the Minnesota Department of Labor and Industry and the Better Business Bureau appears at the end of this brochure, beginning on page 20.

Get Bids on Your Job

Next, it is time to get bids on your job. Prior to meeting with each contractor, you should prepare a detailed list of what you envision the scope of work to be, including the types of materials to be used. This will serve as a guide for your discussions with the contractors. This will also minimize any chance of a misunderstanding about what the project entails. Each bid should be similar enough so that you can readily compare them.

**Minnesota Department
of Labor and Industry**
Construction Codes and
Licensing Division
443 Lafayette Road North
St. Paul, MN 55155
(651) 284-5005 or
(800) 657-3944
www.doli.state.mn.us

Get an estimate
in writing.

When meeting with a contractor, be open to ideas or suggestions about your project. Remember, you are hiring a contractor for the contractor's expertise, and any advice you receive can be very valuable. Beware that less reputable contractors may try to sell you items you don't need, or try to persuade you to cut corners and diminish the value of the job so the contractor can submit a lower bid. Emphasize that the contractor must follow State and local building codes.

For any significant home improvement project, you should obtain at least three written bids that detail the scope of the work, the types of materials that will be used, and the total cost of the project. **Regardless of the scope of the project, you should never accept a verbal estimate.** Be wary of a contractor who says that it only works on a "cost-plus" or "time and materials" basis.

Carefully Compare Bids

Once you receive the bids, take time to carefully compare them. Here are some tips to keep in mind:

- Be sure each bid includes everything you want. If a bid contains unwanted or unneeded items, keep these in mind to negotiate with the contractor.
- Remember that the bid is the starting point in your negotiations with the contractor and not necessarily the bottom line.
- Keep in mind that the lowest bid may not necessarily be the best bid, and that an unusually low bid may be cause for alarm. In that case, the contractor may not fully understand the project's scope; may be inexperienced and is underestimating the amount of labor and materials required; may be planning to cut corners by using inferior materials or low-paid, inexperienced workers; or may be looking to get its "foot in the door" only to try to increase the price of the project as it progresses based on allegedly "unforeseen circumstances."
- If you are hiring a contractor who offers "architectural planning" or "structural design," be sure the contractor is licensed by the Board of Architecture.
- **Make sure your contractor has liability insurance.** Ask to see a copy of the contractor's worker's compensation policy. You may be liable if a worker is injured on your property. Check with your insurance agent to find out whether your homeowner's insurance will cover you and to what extent.

Licensed Contractors

Residential building contractors, remodelers, and roofers who contract with an owner to build or remodel a house (including buildings that house up to four families) must have a license to operate in Minnesota. This licensing requirement even applies to persons that you hire when you are acting as your own “general contractor.” But there are exceptions to this rule, including: contractors that make less than \$15,000 annually and obtain a certificate of exemption, specialty contractors that provide only one “special skill,” and homeowners doing work on their own homes. A contractor who does not need a State license may still be required to have a city license. If you have questions about whether a contractor must be licensed, call the Minnesota Department of Labor and Industry.

Licensed contractors must list their license number on their contracts and in any advertising, including signs, vehicles, business cards, published advertisements, flyers, brochures, and websites. Licensed contractors must also maintain commercial general liability insurance, including 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.

If you hire an unlicensed contractor, even one that is legally exempt from licensing requirements, be aware that you may have less protection if something goes wrong. Unlicensed contractors might not carry liability or property insurance that licensed contractors are required to have, and you will not have access to the Contractor Recovery Fund if you obtain a judgment against an unlicensed contractor.

The Contractor Recovery Fund compensates people who have suffered losses due to a licensed contractor’s fraudulent, deceptive, or dishonest practices; misuse of funds; or failure to do the work the contractor was hired to do. Beware that nothing may obligate the fund more than \$75,000 per claimant, nor more than \$150,000 per licensed contractor. (For more information, see page 11.)

If a licensed residential building contractor sells you a home that the contractor built and occupied prior to sale, the contractor must provide you with a written disclosure that the statutory warranties are inapplicable and that you will not be eligible for reimbursement from the Contractor Recovery Fund if the contractor occupied the home for one year or more.

If you hire an unlicensed contractor, you may have less protection if something goes wrong.

Listen to your instincts.
If you have an uneasy
feeling, just say “no”
and don’t sign anything.

Beware of Con Artists

Here are some possible tip-offs to “fly-by-night” home improvement scams.

Be wary of working with contractors who do the following:

- Arrive at your home unsolicited or in an unmarked truck or van.
- Claim, “We’ve just done a job nearby and have material left over, so we can do the job for half the price.”
- Can only provide a post office box address, with no street address (and even a street address should be checked), or a telephone number that is just an answering service.
- Use high-pressure sales tactics.
- Refuse to give you a written estimate or contract.
- Request that you obtain any necessary permits.
- Refuse to provide their license number (if they are required to be licensed).
- Require full or substantial payment before work begins.

Listen to your instincts. If you have an uneasy feeling, just say “no” and don’t sign anything. Con artists can be persuasive: the longer you allow them to talk to you, the greater the opportunity they see to sweet talk you into making a decision you might regret. Don’t continue to engage with a salesperson whom you have already turned down.

Storm Damage and Insurance Claims

If your home sustains storm damage from hail, winds, tornadoes or the like, your homeowner’s insurance policy may provide coverage to repair your home. Typical coverage under a standard homeowner’s insurance policy includes the following:

- The amount of money it will pay to fix your home, including any upgrades that are required by local codes when the damage is repaired.
- Reasonable expenses you paid to live elsewhere while your home is fixed.
- The amount of money it will pay to remove debris from your home.
- Personal property such as furniture and clothing is usually covered, but limits vary by disaster. The standard policy contains actual cash value coverage on personal property.

Your mortgage provider (called a “mortgagee”) may become involved when your home sustains damage covered by insurance. This is because, as a condition of issuing any mortgage, most mortgagees require the homeowner to maintain hazard insurance on the property and to list the mortgagee as a “loss payee” on the policy. The result is that any payment for damage to

the property is made payable to both the homeowner and the mortgagee. Generally, the security interest that the mortgagee holds in the property authorizes the mortgagee to oversee repairs and disburse insurance proceeds to ensure that the work is performed so that the property is returned to its pre-storm value.

If you need to rebuild or repair your home as a result of a storm, watch out for unlicensed or fraudulent home repair contractors who make promises that they can't deliver, and may even grab your insurance or emergency relief money and run. Be careful, because if a con artist takes your money, it may be impossible to get it back. Likewise, some contractors who claim to specialize in storm damage claims may try to trick you into acting immediately, before you have time to shop around.

Carefully read everything a contractor asks you to sign before you sign it. For example, some contractors claim that you must sign an authorization to allow the contractor to inspect your property, provide you with an estimate, or communicate with your insurance company about the damage to your home. While the contractor may further suggest that the form you are signing doesn't obligate you to anything, the contractor may later claim that you signed a binding contract that requires you to use the contractor's services on your insurance restoration project. A reputable contractor should not offer to pay your insurance deductible (which is against the law in Minnesota), ask you to sign a "blank" contract, or require you to sign anything to inspect your property or to provide you with a repair estimate. Ask the representative to leave all documents, including authorizations, contracts, and change orders, with you for review before you sign anything. **If the contractor won't give you time to review documents with a trusted advisor, consider that to be a big red flag.**

Consumer Protections ---

Once you have chosen the best bid, it is time to write the contract. While many homeowners simply sign the bid and let that serve as a contract, the bid or proposal is rarely detailed enough to give you adequate protection should a dispute arise. Many contractors use prepared contract forms, but again, these may not be detailed enough. Remember that the contract can be revised, but only before you sign it.

It is a red flag if the contractor won't give you time to review documents with a trusted advisor.

Don't sign any contract if the oral promises made by the salesperson are not backed up in writing.

Don't sign any contract if the oral promises made by the salesperson are not backed up in writing. The contract should be detailed about the kinds of materials to be used and the work to be done. Minnesota law requires contractors to reduce all contracts and change orders to writing and to include 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 upon which the price will be calculated.

Wherever possible, specify brand names, colors, grades, styles, and model numbers. The contract should also include the names of any subcontractors and all material suppliers. Keep in mind that any item not included in the contract can be considered an extra that may end up costing you more.

State law also provides additional consumer protections when you have work done on your home: every contract for home construction or a home improvement project includes a state-mandated warranty against defects, and, if something really goes wrong with your project, you may be able to recover money from the Contractor Recovery Fund.

What to Include in Your Contract

- **Building Permits and Inspections:** The contractor should obtain the necessary permits and inspections so the contractor will be responsible for the work meeting all building codes. If you obtain the permits, you will be responsible.
- **Starting and Completion Date:** Delays can and do occur, so a general statement allowing for “reasonable” delays, while establishing an anticipated starting and completion date, is a good idea.
- **Change Order Clause:** This is an agreement that the contract cannot be modified without the written consent of both parties. Protect yourself: put major changes in writing.
- **Schedule of Payments:** While a token “good faith” down payment is customary, this should not be more than a small percentage of the total job. Any contractor who insists on a large down payment should be avoided. On the other hand, many contractors are small businesses with the need for cash flow to buy material and pay wages. If this is the case, you might set up a payment schedule that reflects work done to date.

- **Holdback Clause:** This allows you to withhold a final payment until sometime after all inspections have been passed and the job is completed. This allows you time to inspect the job. If there are any problems, this can serve as incentive for the contractor to remedy them.
- **Cleanup:** This item is often neglected, but it should be considered, particularly if a good deal of debris will be generated.

There are many other items that can be part of your contract, depending on the type and size of the project. If the project involves a large amount of money, it may be in your best interest to have an attorney review the contract for possible problems and to suggest additional provisions for your protection. Most importantly, be sure the contract is written in plain language to help minimize the possibility of misinterpretation.

Once you have signed the contract, you still may be able to reconsider that decision within three business days under the Minnesota Home Solicitation Sales Act. Generally, in all home solicitation sales, the seller must: (a) inform the buyer orally of the right to cancel; (b) provide a receipt or copy of a contract that references specific language regarding the right to cancel a contract; and (c) furnish the buyer with a fully completed form in duplicate captioned “Notice of Cancellation.” **If you don’t cancel a home solicitation sale within three days, you may be locked into the contract.**

Similarly, if the goods or services were to be paid from the proceeds of an insurance policy, **State law provides the homeowner with the right to cancel the contract within 72 hours after being notified by his or her insurance company that the claim has been denied.** The contractor must then return any payments to the homeowner within 10 days, less reasonable compensation for emergency services provided to the homeowner.

Home Warranties

Minnesota law mandates that contracts for new-home construction and home improvement projects include statutory warranties against defects. These warranties are set forth in Minnesota Statutes, chapter 327A, and are transferable to subsequent purchasers of the home. The statutory warranties may only be waived or modified under limited circumstances. Any attempt to waive or modify the statutory warranties that does not comply with the applicable exceptions “shall be void.”

If you don’t cancel a home solicitation sale within three days, you may be locked into the contract.

In every sale of a new home, in every contract for new-home construction, and in home improvement contracts for major structural changes or additions to a home, a statutory warranty is provided to the homeowner. For new homes, the statutory warranty coverage begins when the buyer takes possession of the home. For home improvements, the statutory warranty begins when the project is completed. Statutory warranties provide that:

1. For one year the home shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building standards.
2. For two years the home shall be free from defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards.
3. For ten years the home shall be free from major construction defects due to noncompliance with building standards.
4. For remodeling projects, work not specifically covered above is covered for a one-year period. During this period the contractor warrants that the home shall be free from defects caused by faulty workmanship or defective materials due to noncompliance with building standards.

In new-home construction, the homeowner can take action against the contractor for breach of warranty and recover either the amount necessary to fix the defect, or the difference between the value of the home without the defect and the value of the home with the defect. In remodeling projects, the homeowner can take action against the contractor for breach of warranty and recover damages up to the amount necessary to fix the problem.

In both new-home and home improvement construction, the contractor is not liable for problems caused by work for which they were not responsible, or products they did not furnish; damage not reported by the homeowner within six months of discovering the problem; damage such as personal injury or loss of personal property; damage due to normal wear and tear; loss or damage due to others' negligence; and, in the case of home improvements, loss or damage due to defects in the existing structure not caused by the home improvement. There are additional exclusions spelled out in State law as well.

These statutory warranties are in addition to any other warranties that the contractor agrees to provide as part of the contract. **You should, therefore, be sure that you have read and understand the extent of any contractual warranties that your contractor agrees to provide.** You should also be sure that you understand what steps you must take to exercise your rights under any contractual warranties that the contractor agrees to provide.

You should be sure that you have read and understand the extent of any contractual warranties that your contractor agrees to provide.

You cannot file a lawsuit against the contractor on your statutory warranties without first going through a multi-step process to give the contractor an opportunity to repair the problem. The first step is to notify the contractor in writing of the problem you have encountered. As a general matter, you must do this within six months of discovering the problem. The next step is to let the contractor inspect the problem so that the contractor can propose a repair. The contractor is required to perform the inspection within 30 days of your notice, and to provide a written offer to repair the problem within 15 days of the inspection.

If you and the contractor are not able to agree on a plan for the repair, your recourse under the warranty law is to file a lawsuit against the contractor. However, if the contractor inspected your property and made a written offer to repair, you cannot file a lawsuit until (a) at least 60 days have lapsed since the written offer of repair is provided, or (b) you complete the home warranty dispute resolution process through the Department of Labor and Industry. In the home warranty dispute resolution process, you and the contractor will select a neutral party who will try to help the parties reach an agreement on the scope of the repair. If the home warranty dispute resolution process is not successful, you still have the right to file a lawsuit against the contractor.

Contractor Recovery Fund

If a homeowner hires a licensed contractor who fails to perform the agreed-upon duties or breaches the contract, the homeowner may take legal action and obtain a judgment against the contractor. **If the homeowner is unable to collect on this judgment from the contractor, the homeowner may be eligible to have part of the judgment paid by the Contractor Recovery Fund, provided that the contractor is properly licensed with the State of Minnesota and the final judgment was obtained against the contractor on the grounds of fraudulent, deceptive, or dishonest practices; conversion of funds; or failure of performance arising out of the performance of licensed contractor activity.** The fund is established by statute and administered by the Minnesota Department of Labor and Industry as a safety net for consumers. State law limits the amounts of possible recovery and the circumstances under which the fund will provide recovery. **Minnesota law limits an individual claimant's annual payments from the fund to \$75,000 per licensed contractor, and the total annual payment to all claimants about a single contractor to \$150,000.** These limits mean that, if multiple claims are filed, your claim may be subject to prorating or reduction.

If the homeowner is unable to collect on this judgment from the contractor, the homeowner may be eligible to have part of the judgment paid by the Contractor Recovery Fund.

There are several steps in the process between suing a contractor and recovering money from the Contractor Recovery Fund. The steps in the process that you, the homeowner, must take include:

- Obtaining a judgment in your favor against a licensed contractor.
- Diligently pursuing your remedies against the contractor and any other persons liable to you for the damage. You will probably look to the assets of the contractor, the owner of the contracting company, the bondholders, the insurance company, and anyone else that may be liable.
- Applying to the Contractor Recovery Fund. If no assets are found during your search, you must apply to the fund within two years after your judgment became final. You will submit an application form, supporting documents, and a copy of your judgment to the Minnesota Department of Labor and Industry.
- Seeking payment from the fund:
 - If your application for payment is accepted, payment is generally made in the following fiscal year.
 - If your application is not accepted, you have 30 days from your receipt of the order denying the application to make a written request for a hearing to determine whether you are entitled to payment.
- Receiving an order for payment from the fund. Payments are limited to your actual and direct out-of-pocket losses from the transaction with your contractor. The applicable law provides that you cannot recover your attorney fees, litigation costs, or any interest from the fund.

You may file an application to the fund even if the judgment against your contractor has been discharged in bankruptcy. If your contractor files for bankruptcy before you obtain a judgment, you should ask the bankruptcy court to lift the bankruptcy stay for the sole purpose of allowing you to obtain a judgment against the contractor so you can file a claim for recovery with the fund.

Understanding Mechanic's Liens —

If you have never heard about a mechanic's lien, or you have heard the term but do not really know what a mechanic's lien is, you are not alone.

If you are planning to build or have work done on your home or property, take time to first understand Minnesota's mechanic's

lien law (Minnesota Statutes, chapter 514). Understanding the law now can save you time, money, and frustration later.

What Is a Mechanic's Lien?

Every person or firm that has furnished work or provided material to build or improve your property is entitled to a mechanic's lien on the property. This means that the contractor and any subcontractor or material supplier for a building project can go to court and try to take possession of your property if they are not paid. However, there are a number of items you should be aware of in order to avoid liens or determine whether a lien is valid and enforceable.

Contractor Must Be Licensed by the State

A contractor who is supposed to be licensed, but is not, cannot file a mechanic's lien, even if all other provisions of the contract have been met.

Contractor Must Give You Notice

In most cases, your contractor must give you written notice of intent to file a lien if the contractor is not paid. This notice is required whenever subcontractors or material suppliers are employed to provide labor, skill, or materials for the improvement. If subcontractors are used, the notice is prescribed by law and must be included in a written contract, or, if there is no written contract, must be delivered to you separately within 10 days after the work is agreed upon. The notice must explain that subcontractors and suppliers may also have a lien on your property if they are not paid, even though they do not have a contract directly with you. The notice must state that Minnesota law allows you to either:

- Pay any subcontractor directly and deduct that amount from the contract price; or
- Withhold from the contractor for 120 days after all work is completed as much of the contract price as is necessary to pay those subcontractors directly unless the contractor has given you lien waivers signed by the subcontractors. A lien waiver is a written statement signed by a subcontractor giving up the subcontractor's right to file a lien against your property.

If the contractor's notice is not given properly, the contractor does not have the right to a lien against your property.

Subcontractors Must Give You Notice

Subcontractors, including materials suppliers, must also give you a specific notice in order to protect their right to file a lien if they

If you are planning to build or have work done on your home or property, take time to first understand Minnesota's mechanic's lien law.

In most cases, your contractor must give you written notice of intent to file a lien if the contractor is not paid.

are not paid by the contractor. The notice must give the name and address of the subcontractor, the name of the contractor who hired the subcontractor, and the type of service or material provided and its estimated value. The subcontractor's notice must be given to you within 45 days of the time the subcontractor first furnishes labor or materials, or it is not enforceable. The notice required from both the general contractor and the subcontractors must be delivered personally or by certified mail to either you or your authorized agent.

You Only Have to Pay Once

If you obtain a valid lien waiver from the subcontractor, or if you pay the general contractor in full before receiving the notice from the subcontractor, you cannot be forced to pay for the services or material a second time if the contractor fails to pay the subcontractor.

Protect Yourself

To protect yourself from having liens filed against your property, you should have the contractor list in the contract the names of all anticipated subcontractors and material suppliers. In addition, keep track of any subcontractor notices you may receive before your final payment, since some subcontractors may not be listed in the contract. Then, before making final payment, be certain you receive lien waivers signed by each of the subcontractors.

Apportioning Your Payment

Minnesota law gives you, as a property owner, two ways to reduce the risk that a subcontractor will file a mechanic's lien against your property. First, if you have not yet paid the general contractor in full when you receive the subcontractor's notice, you have the right to deduct the price of the subcontractor's goods or services from the amount you owe to the general contractor. You can then pay that amount directly to the subcontractor. If you pay the subcontractor directly, be sure to get a lien waiver from the subcontractor.

Second, for 120 days after all work is completed, you have the right to withhold from the contractor as much of the contract price as is necessary to pay subcontractors unless the contractor has given you lien waivers signed by the subcontractors.

When and Where Liens Are Filed

If a lien is filed against your property (in the form of a lien statement), it must be filed with the county recorder and a copy delivered to you, the property owner, either personally or by certified mail, within 120 days after the last material

or labor is furnished for the job. **If the lienholder wants to foreclose on your property (i.e., wants to enforce a lien), the lienholder must start that process within one year after providing the last item described on the lien statement.**

To Enforce a Lien

To enforce a lien, the lienholder, who has filed a lien statement with the county recorder and delivered a copy to you, must bring a civil complaint against you in district court. When one lienholder begins such an action, all other lienholders become defendants with you, the property owner. These other lienholders must file an answer to the complaint just as you must do. At the time the lienholder files the complaint, the lienholder must also send you and all other lienholders a summons announcing the filing of the suit. The summons will contain the amount of the lien, a description of the property, a description of the improvements made by the lienholder, and a requirement that each defendant file with the court his or her answer to the complaint within 20 days after the summons is served.

Complainant's Notice of *Lis Pendens*

In addition to filing a lien statement and a complaint, and sending out summonses, the lienholder bringing the suit must also file with the county recorder a Notice of *Lis Pendens* ("litigation pending"). The notice must also be filed within one year after the lienholder provided the last item described on the lienholder's lien statement. This notice is attached to the title of your property and serves to notify buyers (should you decide to sell your property before the matter is settled) that there is a lien on the property. The *lis pendens* does not, however, extend the one-year deadline for filing the complaint.

Usually the lienholder begins the action at the same time the lienholder files the Notice of *Lis Pendens*. If the lienholder fails to file the notice within the one year deadline, the lien cannot be enforced against a buyer or mortgage holder who does not know about the lien, regardless of how far the lawsuit has gone.

Action You Can Take

If a mechanic's lien has been filed against your property, you need to consider your options. One option is to wait for the lienholder to file suit against you to enforce the lien. Then, you can raise any defenses to the lien in your answer. If the lienholder does not file suit and the Notice of *Lis Pendens* within the one-year timeframe, the lien is unenforceable.

If the lienholder wants to foreclose on your property, the lienholder must start that process within one year after providing the last item described on the lien statement.

If you think the lien was filed without justification, you can also bring an action in court to have the lien removed from your title.

If you think the lien was filed without justification, you can also bring an action in court to have the lien removed from your title.

This type of lawsuit is called an action to determine “adverse claims” in real estate. An action to determine adverse claims on your property may be necessary if you want to have the validity of a mechanic’s lien determined before the one-year deadline. For example, this may be necessary if you want to sell your home before the one year is up. A private attorney can help you determine whether you need to file an action to determine adverse claims if a mechanic’s lien is filed against your property.

Settlement

There are several ways a lien might be settled after an action is begun by the lienholder. You may settle out of court. If this happens, you, the property owner, should make sure that, as a condition of settlement, the lienholder removes the Notice of *Lis Pendens* from the title and files a Satisfaction of Mechanic’s Lien form with the county registrar of deeds.

If you do not settle out of court, you may receive a judgment by the court. A judgment takes precedence over lien statements and notices of *lis pendens*. The lien statements and notices of *lis pendens* are removed from the title to the property when a judgment is issued. In the event the court finds in favor of the lienholder, it may order the sale of the property to satisfy the lien.

Civil Action

If a lienholder fails to complete any of the steps involved, the lienholder may still try to recover his or her claim in an ordinary civil action, that is, the lienholder can sue anyone with whom the lienholder has a contract (usually the general contractor or you, the property owner).

Chronology of Events in a Lien Process

- Sign the contract. Subcontractors should be listed on the contract.
- The general contractor gives notice to you, the property owner. Notice must be given in the written contract, or by separate notice delivered within 10 days after work is agreed upon if there is no written contract.
- Work begins. Liens of general contractor and all subcontractors attach.
- Subcontractor gives notice to property owner within 45 days after subcontractor first begins work.
- All work is completed.

- (Optional.) If property owner requests, lienholders must furnish within 15 days an itemized list of amounts claimed, and lienholders may not take steps to enforce liens for 10 days after the itemized list is furnished.
- Property owner may pay:
 1. General contractor (owner must get lien waivers from subcontractors and general contractor); or
 2. Each lienholder (owner should get lien waivers from each one as owner pays them).
- Property owner may withhold payment from the general contractor for 120 days after all work is completed as much of the contract price as is necessary to pay subcontractors directly, unless the owner is furnished with valid lien waivers by the general contractor.
- If not paid, a lienholder files a lien statement within 120 days after work is completed.
- Lienholder must begin action to enforce a lien within one year after landholder's work is completed.

If a lienholder fails to complete any of the steps involved, the lienholder may still try to recover his or her claim in an ordinary civil action.

Resources

Glossary

Building Official: The person designated by a municipality to administer and enforce the State Building Code within the municipality.

Building Permit: A required permit issued by a building official or municipality to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert, or replace any gas, mechanical, electrical, plumbing system, or other equipment. The work for which a building permit is required is typically subject to inspection and approval by the building official after completion.

Mechanic's Lien: A legal right that may be exercised by contractors, subcontractors, and materials suppliers to take possession of a home or property for nonpayment of labor or materials that improved the home or property (*See* Minn. Stat. §514.01).

In general, a contractor who provides two or more “special skills” must be licensed by the Minnesota Department of Labor and Industry.

Residential Building Contractor: A person or company 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” (*See* Minn. Stat. § 326B.802, subds. 11 & 15). Residential building contractors must have a license to operate in Minnesota.

Residential Real Estate: A new or existing building constructed for habitation by one to four families, as well as detached garages (*See* Minn. Stat. § 326B.802, subd. 13).

Residential Remodeler: A person or company 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,” (*See* Minn. Stat. § 326B.802, subds. 12 & 15). Residential remodelers must have a license to operate in Minnesota.

Residential Roofer: A person or company 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 (*See* Minn. Stat. § 326B.802, subd. 14). Residential roofers must have a license to operate in Minnesota.

Special Skill: A statutorily defined term related to whether a contractor must be licensed. The following eight categories are “special skills” under Minn. Stat. §326B.802, subd. 15:

- **Excavation**, which includes work in excavation, trenching, grading, and site grading.
- **Masonry and Concrete**, which includes work in drain systems; poured walls; slabs and poured-in-place footings; masonry walls; masonry fireplaces; masonry veneer; and water resistance and waterproofing.
- **Carpentry**, which includes work in rough framing; finish carpentry; doors, windows, and skylights; porches and decks (excluding footings); wood foundations; and drywall installation, (excluding taping and finishing).
- **Interior Finishing**, which includes work in floor covering; wood floors; cabinet and counter top installation; insulation and vapor barriers; interior or exterior painting; ceramic, marble, and quarry tile; ornamental guardrail and installation of prefabricated stairs; and wallpapering;

- **Exterior Finishing**, which includes work in siding; soffit, fascia, and trim; exterior plaster and stucco; painting; and rain carrying systems such as gutters and down spouts.
- **Drywall and Plaster**, which includes work in installation, taping, finishing, interior plaster, painting, and wallpapering.
- **Residential Roofing**, which includes work in roof coverings; roof sheathing; roof weatherproofing and insulation; and repair of roof support system, but not construction of new roof support systems.
- **General Installation Specialties**, which includes work in garage doors and openers; pools, spas, and hot tubs; fireplaces and wood stoves; asphalt paving and seal coating; and ornamental guardrail and prefabricated stairs.

Specialty Contractor: A person or company in the business of contracting or offering to contract to build or improve residential real estate by providing only one “special skill” in every contract with a homeowner (*See* Minn. Stat. § 326B.802, subd. 16). Specialty contractors are not required to be licensed to operate in Minnesota so long as they stick to one “special skill.”

State Building Code: The rules and regulations adopted by the Commissioner of the Minnesota Department of Labor and Industry to govern the construction, reconstruction, alteration, repair, and use of certain buildings and structures. The code represents the minimum construction and building requirements to safeguard the public health, safety, and welfare at the least possible cost (*See* Minn. Stat. § 326B.01-.16).

Statutory Warranties: Warranties that must be given as a matter of law by contractors to consumers in the sale of a new home or in the contract for the sale of home improvement work involving major structural changes or additions to a residential building. These warranties range from one to ten years and relate to defects due to noncompliance with the State Building Code (*See* Minn. Stat. §§ 327A.01-.08).

Subcontractor: A person or company hired by a general contractor to complete a portion of a construction project for which the general contractor is responsible. Subcontractors are typically paid directly by the general contractor from payments made to the general contractor by the homeowner, although, in some cases, the homeowner may wish to consider paying the subcontractor directly to avoid the subcontractor filing a mechanic’s lien action. A subcontractor is not required to be licensed as a residential building contractor, residential remodeler, or residential roofer.

Statutory warranties generally cannot be waived or modified by contract.

Referral Guide

Minnesota Attorney General's Office

The Minnesota Attorney General's Office answers consumer questions, mediates consumer complaints to resolve disputes between Minnesota consumers and businesses, and enforces the State's civil laws. Staff can answer questions and provide consumer publications about landlord and tenant rights, mobile homes, mortgages, cars, credit, scams, unwanted mail and phone calls, and other consumer issues. For further information, or to file a complaint, contact:

Office of Minnesota Attorney General Lori Swanson

445 Minnesota Street, Suite 1400

St. Paul, MN 55101

(651) 296-3353 or (800) 657-3787

TTY: (651) 297-7206 or TTY: (800) 366-4812

www.ag.state.mn.us

Minnesota Department of Labor and Industry

If you want information about a licensed contractor, or wish to check whether a contractor is licensed, contact:

Minnesota Department of Labor and Industry

Construction Codes and Licensing Division

443 Lafayette Road North

St. Paul, MN 55155

(651) 284-5005 or (800) 657-3944

www.doli.state.mn.gov

You can also file a complaint about licensed contractors or unlicensed activity. Your complaint will be assigned to an investigator. The contractor will be contacted and asked for a timely written response to your complaint. Because a copy of your complaint will be forwarded to the contractor, do not include statements or other information in your complaint that you do not want the contractor to see. The investigator will decide whether the department will take administrative disciplinary action against the contractor. You will be notified in writing when the investigation is done. Send a written complaint, clearly detailing the problem and attaching copies of contracts, canceled checks, or any pertinent document or evidence, to the Department of Labor and Industry at the address listed above.

The Department of Labor and Industry is the State agency with the authority to license and regulate a substantial portion of the construction industry in Minnesota.

City of Minneapolis

For questions about contractors licensed by the City of Minneapolis, contact:

City of Minneapolis

250 South 4th Street, Room 300

Minneapolis, MN 55415

(612) 673-3000

www.minneapolismn.gov/mdr/mdr_findliccont_index

Board of Architecture

If you are considering hiring a contractor who purports to provide design or architectural services, contact the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design to make sure the contractor is licensed to do this type of work:

Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design

85 East 7th Place, Suite 160

St. Paul, MN 55101

(651) 296-2388

mn.gov/aelslagid

Better Business Bureau

To find out if other consumers have filed complaints against a contractor, contact:

Better Business Bureau of Minnesota and North Dakota

220 South River Ridge Circle

Burnsville, MN 55337

(651) 699-1111 or (800) 646-6222

www.bbb.org

Builders Association of Minnesota

There are 12 local builder associations in Minnesota. Contact your local association directly for more information about member contractors.

To determine your local association, contact:

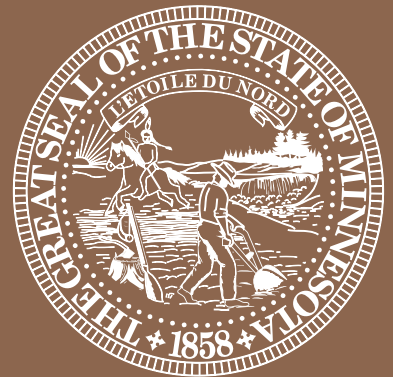
Builders Association of Minnesota

525 Park Street, Suite 150

St. Paul, MN 55103

(651) 646-7959

www.bamn.org



Consumer Questions or Complaints

The Minnesota Attorney General's Office answers questions regarding numerous consumer issues. The Attorney General's Office also provides assistance in resolving disputes between Minnesota consumers and businesses and uses information from consumers to enforce the state's civil laws. We welcome your calls!

If you have a consumer complaint, you may contact the Attorney General's Office in writing:

Minnesota Attorney General's Office
445 Minnesota Street, Suite 1400
St. Paul, MN 55101

You can also receive direct assistance from a consumer specialist by calling:

(651) 296-3353 or (800) 657-3787
TTY: (651) 297-7206 or TTY: (800) 366-4812
(TTY numbers are for callers using teletypewriter devices.)

Additional Publications

Additional consumer publications are available from the Minnesota Attorney General's Office. Contact us to receive copies or preview the publications on our website at www.ag.state.mn.us.

- Car Handbook
- Home Building and Remodeling
- Conciliation Court
- Credit Handbook
- Guarding Your Privacy: Tips to Prevent Identity Theft
- Home Buyer's Handbook
- Home Seller's Handbook
- Landlords and Tenants: Rights and Responsibilities
- Managing Your Health Care
- Manufactured Home Parks Handbook
- Minnesota's Car Laws
- Phone Handbook
- Probate and Planning: A Guide to Planning for the Future
- Seniors' Legal Rights
- Veterans and Service Members
- Other Consumer Bulletins

MINNESOTA ATTORNEY GENERAL'S OFFICE

445 Minnesota Street, Suite 1400, St. Paul, MN 55101
(651) 296-3353 • (800) 657-3787 • TTY: (651) 297-7206 • TTY: (800) 366-4812
www.ag.state.mn.us