

Construction Laws and Customs: Minnesota

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A Q&A guide to construction projects in Minnesota. This Q&A addresses state law and custom relating to public and private construction projects, including prompt payment laws, retainage, project delivery systems, contract forms, and commonly negotiated terms, warranties, and licensing requirements for construction professionals. It also addresses payment and performance bonds, including any applicable “Little Miller Act” statutes, construction statutes of limitation and repose, pleading requirements, and the enforceability of specific clauses, such as liquidated damages, limitations of liability, and no-damages-for-delay. Answers to questions can be compared across a number of jurisdictions (see Construction Laws and Customs: State Q&A Tool).

Prompt Payment Acts and Retainage

1. Does your state have any statutes governing the timing of payments to contractors or subcontractors on publicly owned or financed construction projects? If so, what do those statutes require regarding:

- Payments by owners to prime contractors?
- Payments by prime contractors to subcontractors?
- Penalties for failure to comply with requirements of the statute?
- A contractor’s right to stop work for failure to receive payment?

The following Minnesota Statutes govern times for payment on publicly owned or financed projects:

- Minn. Stat. Ann. §§ 15.72, 16A.124, 16A.1245, and 161.322.
- Minn. Stat. Ann. § 471.425.

- Minn. Stat. Ann. § 137.36.

- Minn. Stat. Ann. § 473.142.

In addition, Minn. Stat. Ann. § 337.10, subd. 3, addresses a party’s right to stop work if not paid.

Payments by Owners

Public Agencies

Unless the contract terms provide otherwise, public agencies must make monthly progress payments on public contracts for public improvements, based on estimates of work completed as approved (Minn. Stat. Ann. § 15.72, subd. 1). A public agency includes any Minnesota state agency or any of its political subdivisions authorized to enter into public contracts (Minn. Stat. Ann. § 15.71, subd. 3).

State agencies must pay each valid vendor obligation within the vendor’s early payment discount period. If there is no early payment discount period, the state agency must pay the vendor within 30 days of receiving an invoice for the completed product or service. (Minn. Stat. Ann. § 16A.124, subd. 3.) A state agency includes any state officer, employee, board, commission, authority, department, or other agency

of the executive branch of Minnesota government. A state agency does not generally include the Minnesota State Colleges and Universities. (Minn. Stat. Ann. §§ 16A.124, subd. 1 and 16B.01, subd. 2.)

Municipalities

Municipalities must pay vendors according to the terms of the contract. If the contract does not specify a payment date, municipalities must pay vendors within:

- 35 days, if the municipality has a governing board that meets at least once a month.
- 45 days, if the municipality does not have a governing board that meets regularly at least once a month.
- 45 days, if two or more government units enter into a contract together.

(Minn. Stat. Ann. § 471.425, subd. 2.)

Payment by Prime Contractors

State Agencies

State agency contracts must require prime contractors to pay subcontractors within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor (Minn. Stat. Ann. § 16A.1245).

Municipalities

Municipality contracts must require prime contractors to pay subcontractors within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor (Minn. Stat. Ann. § 471.425, subd. 4a).

University of Minnesota

University of Minnesota contracts must require prime contractors to pay subcontractors within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor (Minn. Stat. Ann. § 137.36).

Metropolitan Council

Metropolitan Council contracts must require prime contractors to pay subcontractors within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor (Minn. Stat. Ann. § 473.142(f)).

Penalties for Failure to Comply

State Agencies

State agencies generally must pay vendors 1.5% interest per month for undisputed billings not paid after 30 days. The vendor must invoice the agency for the interest amount before the payment is made. (Minn. Stat. Ann. § 16A.124, subd. 5(a), (b).)

Minnesota courts award prevailing vendors:

- Attorneys' fees.
- Court costs.
- Disbursements.

(Minn. Stat. Ann. § 16A.124, subd. 5(d).)

State agency contracts must require prime contractors to pay interest of 1.5% per month on undisputed amounts not timely paid to subcontractors. The minimum monthly interest penalty for an unpaid balance of at least \$100 is \$10. For unpaid balances under \$100, the prime contractor must pay the subcontractor the actual penalty. (Minn. Stat. Ann. § 16A.1245.)

Minnesota courts award prevailing subcontractors:

- Attorneys' fees.
- Court costs.
- Disbursements.

(Minn. Stat. Ann. § 16A.1245.)

For contracts made by the commissioner of transportation for the construction, improvement, or repair of any trunk highway, a contractor is entitled to receive interest when all of the following apply:

- The contractor has completed all work specified in the contract, except for the release of sureties, to the commissioner's (or commissioner's agent's) satisfaction.
- Final estimate for the work has not been made within 90 days after the contractor completed the work.
- The contractor was not the cause of the delay.
- The contract is:
 - for \$2,000,000 or less; or
 - if above \$2,000,000, does not call for a period other than 90 days within which to make the final estimate.

(Minn. Stat. Ann. § 161.322.)

The interest applies:

- At the rate of the Monthly Index of Long Term US Bond Yields for the month prior to the month in which the obligation is incurred.
- To unpaid amounts finally determined to be due the contractor from the expiration of the 90-day period until final payment under the contract is made.

(Minn. Stat. Ann. § 161.322.)

Municipalities

Municipalities must pay vendors 1.5% interest per month for undisputed billings not paid as specified under the contract or within 35 or 45 days of the date of receipt, depending on how often the municipality's governing board meets. The vendor must invoice the agency for the interest amount before the payment is made. (Minn. Stat. Ann. § 471.425, subds. 2, 4.)

Municipality contracts must require prime contractors to pay interest of 1.5% per month on undisputed amounts not timely paid to subcontractors. The minimum monthly interest penalty for an unpaid balance of at least \$100 is \$10. For unpaid balances under \$100, the prime contract must pay the subcontractor the actual penalty. (Minn. Stat. Ann. § 471.425, subd. 4a.)

Minnesota courts award prevailing subcontractors:

- Attorneys' fees.
- Court costs.
- Disbursements.

(Minn. Stat. Ann. § 471.425, subd. 4a.)

University of Minnesota

University of Minnesota contracts must require prime contractors to pay interest of 1.5% per month on undisputed amounts not timely paid to subcontractors. The minimum monthly interest penalty for an unpaid balance of at least \$100 is \$10. For unpaid balances under \$100, the prime contract must pay the subcontractor the actual penalty. (Minn. Stat. Ann. § 137.36.)

Minnesota courts must award prevailing subcontractors:

- Attorneys' fees.
- Court costs.
- Disbursements.

(Minn. Stat. Ann. § 137.36.)

Metropolitan Council

Metropolitan Council contracts must require prime contractors to pay interest of 1.5% per month on undisputed amounts not timely paid to subcontractors. The minimum monthly interest penalty for an unpaid balance of at least \$100 is \$10. For unpaid balances under \$100, the prime contract must pay the subcontractor the actual penalty. (Minn. Stat. Ann. § 473.142(f).)

Minnesota courts award prevailing subcontractors:

- Attorneys' fees.
- Court costs.
- Disbursements.

(Minn. Stat. Ann. § 473.142(f).)

Right to Stop Work

A prime contractor or subcontractor of any tier that does not receive payment within ten days after providing undisputed services may suspend work under the contract until the payment is received (Minn. Stat. Ann. § 337.10, subd. 3).

For more information, see [Prompt Payment Acts \(Private Projects\): State Comparison Chart](#) and [Prompt Payment Acts \(Public Projects\): State Comparison Chart](#).

2. Does your state have any statutes governing the timing of payments to contractors or subcontractors on privately owned construction projects? If so, what do those statutes require regarding:

- Payments by owners to prime contractors?
- Payments by prime contractors to subcontractors?
- Penalties for failure to comply with the requirements of the statute?
- A contractor's right to stop work for failure to receive payment?

Payments by Owners

Minnesota law does not specifically address a private owner's obligation to make timely payments on private projects. A private owner must make monthly progress payments based on estimates of work completed as approved by the owner or its agent,

unless the contract provides otherwise (Minn. Stat. Ann. § 337:10, subd. 4(a)).

Payment by Prime Contractors

The prime contractor and all subcontractors must promptly pay any subcontractor or material supplier within ten days of receiving payment for undisputed services (Minn. Stat. Ann. § 337:10, subd. 3).

Penalties for Failure to Comply

Prime contractors and subcontractors must pay interest of 1.5% per month on undisputed amounts not timely paid to lower-tiered subcontractors. The minimum monthly interest penalty for an unpaid balance of at least \$100 is \$10. For unpaid balances under \$100, the prime contract must pay the subcontractor the actual penalty. (Minn. Stat. Ann. § 337:10, subd. 3.)

Minnesota courts award prevailing subcontractors:

- Attorneys' fees.
- Court costs.
- Disbursements.

(Minn. Stat. Ann. § 337:10, subd. 3.)

Right to Stop Work

A prime contractor or subcontractor of any tier that does not receive payment within ten days after providing undisputed services may suspend work under the contract until the payment is received (Minn. Stat. Ann. § 337:10, subd. 3).

For more information, see [Prompt Payment Acts \(Private Projects\): State Comparison Chart](#) and [Prompt Payment Acts \(Public Projects\): State Comparison Chart](#).

3. If your state does not have a prompt payment act, what is the custom and practice regarding:

- Timing of payments by owners to prime contractors?
- Timing of payment by prime contractors to subcontractors?
- Payment of interest on late payments?
- A contractor's right to stop work for failure to receive a payment?

Minnesota has prompt payment acts that set out the requirements for payments and interest on public construction projects (see Question 1). For private construction projects, Minnesota has a prompt payment act that sets out the requirements for payments and interest from prime contractors and subcontractors to lower-tiered subcontractors (see Question 2).

There is no prevailing custom regarding time of payments by owners to prime contractors on private construction projects. The owner's lender's guidelines on releasing funds generally govern timing. This varies from project to project based on the lender. However, it is rare to see the time between a contractor submitting its payment application and the owner's payment exceed 30 days.

4. If your state does not regulate the timing of payments to subcontractors, are there any statutory or common law restrictions on the flow down of payments to subcontractors, such as prohibiting "pay-if-paid" or "pay-when-paid" clauses?

Minnesota has a prompt payment statute that regulates the timing of payments to subcontractors for public and private construction projects (see Questions 1 and 2).

Contracts may include pay-if-paid or pay-when-paid clauses. However, courts only enforce pay-if-paid clauses if they contain unequivocal, unambiguous language. If the clause is equivocal or ambiguous, courts construe it to mean merely that the timing of payment to the subcontractor must not be delayed after the general contractor receives funds from the owner. (*Mrozik Constr., Inc. v. Lovering Assocs., Inc.*, 461 N.W.2d 49, 52 (Minn. Ct. App. 1990).)

Additionally, a building and construction contract may not require a contractor, subcontractor, or material supplier to waive its right to claim a mechanic's lien or sue on a payment bond before it has been paid for the labor and material furnished (Minn. Stat. Ann. § 337:10, subd. 2).

5. Does your state have a statute related to withholding retainage on a publicly owned or financed construction project? If so, does the statute:

- Regulate the amount of retainage that can be withheld from a contractor or subcontractor?
- Require a partial release of or reduction in retainage at any point during the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

Minn. Stat. Ann. § 15.72 regulates the withholding of retainage on publicly owned or financed construction projects in Minnesota.

Amount of Retainage

A public agency cannot retain more than 5% from a progress payment, except on federally funded contracts with inconsistent terms (Minn. Stat. Ann. §§ 15.72, subd. 2(a) and 15.74).

In lieu of retainage, a contractor may deposit bonds or securities with either:

- The public agency.
- Any bank or trust company.

(Minn. Stat. Ann. § 15.73, subd. 2.)

If the contractor deposits bonds or securities, the agency must reduce the retainage in an amount equal to the value of the bonds or securities. The contractor receives any interest payable on the bonds or securities. (Minn. Stat. Ann. § 15.73, subd. 2.)

Partial Release of Retainage

If, in the agency's opinion, the work is progressing satisfactorily, a public agency may reduce the amount of or eliminate retainage on any monthly contract payment. If the owner reduces the amount of retainage, the contractor must reduce retainage for any subcontractors at the same rate. (Minn. Stat. Ann. § 15.72, subd. 2(a), (b).)

The statute does not include any further obligations on the part of the public owner to:

- Make a partial or early release of retainage.
- Reduce the percentage held for retainage during the contract term.

Final Release of Retainage

An agency must release all retainage no later than 60 days after substantial completion. After substantial completion, the agency may only withhold both:

- 250% of the cost to correct or complete work known at the time of substantial completion.
- 1% of the value of the contract or \$500, whichever is greater, pending completion and submission of all final paperwork by the contractor or subcontractor.

(Minn. Stat. Ann. § 15.72, subd. 2(b), (e).)

Retainage may not be withheld for warranty work (Minn. Stat. Ann. § 15.72, subd. 2(g)).

The contractor must pay all remaining retainage to its subcontractors no later than ten days after receiving payment of retainage (Minn. Stat. Ann. §§ 15.72, subd. 2(c)).

Penalties

The statute does not specifically address the obligation to pay interest on late payment of retainage.

6. Does your state have a statute related to withholding retainage on a privately owned or financed construction project? If so, does the statute:

- Regulate the amount of retainage that can be withheld from a contractor or subcontractor?
- Require a partial release of or reduction in retainage at any point during the project?
- Govern when and how final retainage must be released?
- Impose any penalties for failure to comply with the statute?

Minn. Stat. Ann. § 337:10 regulates the withholding of retainage on privately owned or financed construction projects in Minnesota. This statute does not apply to contracts for professional services as defined in Minn. Stat. Ann. §§ 326.02 to 326.15 (Minn. Stat. Ann. § 337:10, subd. 4(h)).

Amount of Retainage

Retainage under building and construction contracts cannot exceed 5% (Minn. Stat. Ann. § 337:10, subd. 4(b)).

Partial Release of Retainage

If, in the owner's opinion, the work is progressing satisfactorily, the owner or its agent may reduce the amount of or eliminate retainage on any monthly contract payment. When the owner reduces retainage for the contractor, the contractor must reduce retainage for subcontractors by the same rate. (Minn. Stat. Ann. § 337:10, subd. 4(b).)

Final Release of Retainage

An owner or the owner's agent must release all retainage no later than 60 days after substantial completion. After substantial completion, the agency may only withhold both:

- 250% of the cost to correct or complete work known at the time of substantial completion.
- The greater of 1% of the value of the contract or \$500, pending completion and submission of all final paperwork by the contractor or subcontractor.

(Minn. Stat. Ann. § 337:10, subd. 4(c), (e).)

Retainage may not be withheld for warranty work (Minn. Stat. Ann. § 337:10, subd. 4(f)).

The contractor must pay all remaining retainage to its subcontractors no later than ten days after receiving payment of retainage (Minn. Stat. Ann. § 337:10, subd. 4(d)).

Penalties

The statute does not address penalties related to violation of retainage requirements.

7. If your state does not regulate retainage on privately owned construction projects, what is the custom and practice regarding:

- The amount of retainage withheld from each payment requisition? Does it differ for labor or material?
- Partial or early release of retainage upon achieving any project milestone or for early completion subcontractors?
- Requirements for the final release of retainage, including hold backs for incomplete work or disputed amounts?

Minnesota has a prompt payment act relating to withholding retainage on privately owned construction projects (see Question 6).

Project Delivery Systems and Contract Forms

8. What forms of project delivery systems are most commonly used in your state? Do they differ by the nature of the construction project?

For public projects in Minnesota, design-build contracts are becoming more popular because they allow the public entity to let the contract more quickly, which in turn allows the project to begin sooner than with a design-bid-build contract. Shorter delivery time is important in Minnesota where prime construction season is shorter than in most other areas of the country due to longer, colder winters.

For private projects in Minnesota, the most common project delivery system is the traditional design-bid-build contract. However, on larger, more complex projects, especially when an owner has little experience in the construction industry, private owners often contract with a construction manager (usually at-risk).

If an owner is more tolerant to risk and more comfortable with the construction industry, the owner may contract for the cost of the work plus a

fee, typically with a guaranteed maximum price. This delivery system allows the owner to incentivize the contractor to achieve project completion on time and under budget.

For more information on project delivery systems, see [Practice Note, Selecting the Right Private Project Delivery System](#).

9. Does your state have any statutes specifically related to design-build or construction management? If so, do they apply to:

- Publicly owned or financed construction projects?
- Privately owned or financed construction projects?

Minnesota has several statutes authorizing use of design-build or construction manager at risk contracts for publicly owned or financed projects, including:

- The [Minnesota Department of Administration](#) may use either a design-build or construction manager at risk method of project delivery (Minn. Stat. Ann. §§ 16B.31 and 16C.34).
- The [Minnesota Department of Transportation](#) may use a design-build contract for a project (Minn. Stat. Ann. § 161.3412).
- Authorities responsible for light rail transit projects may award design-build contracts (Minn. Stat. Ann. § 473.3995).
- The NFL stadium was permitted to be built under a design-build contract or with a construction manager at risk (Minn. Stat. Ann. § 473J.11).
- The University of Minnesota may use design-build for projects with an estimated cost greater than \$2 million (Minn. Stat. Ann. § 16C.33, subd. 4).
- The Minnesota State Colleges and Universities System is authorized to use design-build or a construction manager at risk (Minn. Stat. Ann. § 16B.31, subd. 1(d), (e), (f)).
- Hennepin County is authorized to enter design-build contracts (Minn. Stat. Ann. §§ 383B.158 to 383B.1584).

Minnesota has no statutes specifically related to design-build or construction management applicable to privately owned or financed construction projects.

10. Are industry standard forms of documents customarily used in private construction projects? If so:

- Do they vary by delivery system or type of project?
- Which forms are most widely used?

In Minnesota, the most widely used standard forms are the [Associated General Contractors of Minnesota](#) (AGC) standard form subcontracts, including:

- The Builders Subcontract Agreement Rider.
- The Highway Heavy Subcontract Agreement Rider.

Parties also commonly use the [American Institute of Architects](#) (AIA) standard form contracts on projects of all sizes. This is the preferred form across the spectrum of delivery systems. The degree that parties modify the AIA forms varies by:

- The parties' sophistication.
- The project's size.

Many Minnesota general contractors typically prefer their own subcontract forms to the AGC or AIA standard form subcontracts. This allows the general contractors to include:

- More favorable provisions.
- Provisions unique to the nature of the work.

For more information on these contract families, see [Practice Note: Standard Construction Industry Documents: Overview](#).

11. What terms are customarily most heavily negotiated in construction contracts? Do they vary by delivery system or type of project?

The most heavily negotiated terms in Minnesota construction contracts, regardless of delivery system or type of project, are:

- Price.
- Indemnification.
- Differing site conditions.
- Termination events and compensation.

- Project schedule.
- Events constituting compensable delay.

With cost-plus contracts, the parties also often heavily negotiate the items that are to be reimbursable. When contracts include a guaranteed maximum price (GMP), the parties also often heavily negotiate:

- The requirements for increasing the GMP.
- The division of savings should the project come in under budget.

For more information on cost-plus and GMP contracts, see [Practice Note, Guaranteed Maximum Price Contracts: Drafting Strategies](#).

Licensing

12. Does your state license construction professionals? If so:

- Which construction professionals are licensed (general contractors, specialty contractors, construction managers, design professionals)?
- Which departments oversee the licensing and regulation of these construction professionals?

Minnesota requires the following professionals to be licensed or registered to practice:

- Architects (Minn. Stat. Ann. § 326.02, subd. 2; see Architects).
- Engineers (Minn. Stat. Ann. § 326.02, subd. 3; see Engineers).
- Land surveyors (Minn. Stat. Ann. § 326.02, subd. 4; see Land Surveyors).
- Landscape architects (Minn. Stat. Ann. § 326.02, subd. 4a; see Landscape Architects).
- Certain general contractors (Minn. Stat. Ann. § 326B.805, subd. 1; see General Contractors).

Other construction trades in Minnesota that require a license or certification include:

- Geoscientists (Minn. Stat. Ann. § 326.02, subd. 3a).
- Interior designers (Minn. Stat. Ann. § 326.02, subd. 4b).
- Electricians (Minn. Stat. Ann. § 326B.33).
- Plumbers (Minn. Stat. Ann. § 326B.46).
- Pipefitters (Minn. Stat. Ann. § 326B.921).
- Elevator constructors (Minn. Stat. Ann. § 326B.164).

- Water conditioning (Minn. Stat. Ann. § 326B.55).
- Boiler inspector (Minn. Stat. Ann. § 326B.954).

Minnesota does **not** require licenses for professional design or engineering work on:

- Single-family dwellings and associated outbuildings.
- Two-family dwellings.
- Farm buildings.
- Temporary buildings or sheds that are:
 - two stories or fewer;
 - used exclusively for construction purposes; and
 - not used for living quarters.

(Minn. Stat. Ann. § 326.03, subd. 2.)

Architects

Architects must be licensed. Architects include all persons holding themselves out as being able to plan, design, or supervise construction to assure compliance with specifications and design, in connection with any private or public building or any structure or project, including any equipment or accessory when:

- Safeguarding of life, health, or property is concerned or involved.
- The services require the application of the art and science of construction based on the principles of mathematics, aesthetics, and the physical sciences, acquired by education or training and by experience.

(Minn. Stat. Ann. § 326.02, subds. 1, 2.)

The [Minnesota Department of Labor and Industry](#) (MN DLI) oversees licensure for all design professionals. However, the [Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design](#) (Board) provides more direct oversight and licensure.

The Board consists of 21 members appointed by the governor (Minn. Stat. Ann. § 326.04).

Engineers

Engineers must be licensed. Professional engineers include all persons holding themselves out as being able to plan, design, or supervise construction to

assure compliance with specifications and design, in connection with any private or public buildings, structures, utilities, equipment, processes, works, or projects when:

- Safeguarding of life, health, or property is concerned or involved.
- The service requires the application of the principles of mathematics, applied engineering, and the physical sciences, acquired by education or training and by experience.

(Minn. Stat. Ann. § 326.02, subds. 1, 3.)

A professional engineer does **not** need a separate professional geoscience license to:

- Acquire engineering data involving soil, rock, groundwater, and other earth materials.
- Evaluate the physical and chemical properties of soil, rock, groundwater, and other earth materials for engineering.
- Use this data for analysis, design, and construction.

(Minn. Stat. Ann. § 326.02, subd. 3a.)

The MN DLI oversees licensure for all design professionals. However, the Board provides more direct oversight and licensure.

The Board consists of 21 members appointed by the governor (Minn. Stat. Ann. § 326.04).

Land Surveyors

Land surveyors must be licensed. A land surveyor uses mathematics, physical and applied sciences, and law to measure and locate lines, angles, elevations, and natural or artificial features in the air, on the surface of the earth, underground, and on the beds of bodies of water to:

- Determine, monument, establish, or reestablish:
 - property boundaries; or
 - the position of any public land survey system corner or line.
- Plan, design, and plat land and subdivisions, including the topography, alignment, and grades of streets.
- Prepare and perpetuate maps, record plats, and property descriptions.

(Minn. Stat. Ann. § 326.02, subd. 4.)

The MN DLI oversees licensure for all design professionals. However, the Board provides more direct oversight and licensure.

The Board consists of 21 members appointed by the governor (Minn. Stat. Ann. § 326.04).

Landscape Architects

Landscape architects must be licensed. Landscape architecture involves performing any professional service in connection with the development of land areas where the dominant purpose of the service is:

- The preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings, approaches, or environment for structures or other improvements.
- The consideration and determination of inherent problems of the land concerning erosion, wear and tear, blight, and hazards.

(Minn. Stat. Ann. § 326.02, subd. 4a.)

The MN DLI oversees licensure for all design professionals. However, the Board provides more direct oversight and licensure.

The Board consists of 21 members appointed by the governor (Minn. Stat. Ann. § 326.04).

General Contractors

Most general contractors do not need a license. However, certain contractors must obtain a license, including a:

- Residential building contractor, which is anyone using two or more “special skills” to:
 - build residential real estate;
 - contract or offer contract to build residential real estate; or
 - contract or offer to contract to improve existing real estate.

(Minn. Stat. Ann. § 326B.802, subd. 11.)

- Residential remodeler, which is anyone in the business of contracting or offering to contract with an owner to improve residential real estate by providing two or more “special skills” (Minn. Stat. Ann. § 326B.802, subd. 12).

- Residential roofer, which is anyone in the business of contracting or offering to contract with an owner to work on residential real estate in roof coverings, roof sheathing, roof weatherproofing and insulation, and repairing roof systems. A residential roofer does not construct new roof systems. (Minn. Stat. Ann. § 326B.802, subd. 14.)
- Manufactured home installer, which is any person, firm, or corporation that, for others, installs or repairs a manufactured home at the home's site (Minn. Stat. Ann. § 327.31, subd. 1).

(Minn. Stat. Ann. § 326B.805, subd. 1.)

Special skills include work in any of the following areas:

- Excavation.
- Masonry and concrete.
- Carpentry.
- Interior finishing.
- Exterior finishing.
- Drywall and plaster.
- Residential roofing.
- General installation specialties.

(Minn. Stat. Ann. § 326B.802, subd. 15.)

The MN DLI oversees licensure.

13. What are the licensing requirements for each licensed construction professional in Question 12? Are there any continuing education requirements for those licensed construction professionals?

Architects

Licensing Requirements

In Minnesota, an applicant for licensure as an architect must:

- Comply with the Rules of Professional Conduct established in rules by the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design (Board) (Minn. Stat. Ann. § 326.10, subd. 1(1)).
- Pass the required exam.

- Complete an architectural curriculum accredited by the National Architectural Accrediting Board or its equivalent.
- Complete training and experience sufficient to satisfy guidelines published by the National Council of Architectural Registration Boards.

(Minn. R. 1800.1000.)

Licenses expire at midnight on June 30 of each even-numbered year and must be renewed by submitting the renewal fee and application (Minn. Stat. Ann. § 326.10, subd. 8(a)). The renewal fee is \$120 (Minn. Stat. Ann. § 326.105).

Continuing Education Requirements

Practicing architects must complete at least 24 professional development hours every two years, two of which must be in professional ethics (Minn. Stat. Ann. § 326.107, subd. 1(c)).

Engineers

Licensing Requirements

An applicant for licensure as a professional engineer must:

- Comply with the Rules of Professional Conduct established in rules by the Board (Minn. Stat. Ann. § 326.10, subd. 1(1)).
- Pass the required exam.
- Graduate from an engineering program accredited by the Engineering Accrediting Commission of ABET, Inc.
- Complete the required qualifying experience, which varies according to the level of education.

(Minn. R. 1800.2500.)

Licenses expire at midnight on June 30 of each even-numbered year and must be renewed by submitting the renewal fee and application (Minn. Stat. Ann. § 326.10(a), subd. 8). The fee to renew is \$120 (Minn. Stat. Ann. § 326.105).

Continuing Education Requirements

Practicing engineers must complete at least 24 professional development hours every two years, two of which must be in professional ethics (Minn. Stat. Ann. § 326.107, subd. 1(b)).

Land Surveyors

Licensing Requirements

An applicant for a professional land surveying license must:

- Comply with the Rules of Professional Conduct established in rules by the Board (Minn. Stat. Ann. § 326.10, subd. 1(1)).
- Pass the required exam.
- Complete an approved land surveying program.
- Complete the required qualifying experience, which varies according to the level of education.

(Minn. R. 1800.3505.)

Licenses expire at midnight on June 30 of each even-numbered year and must be renewed by submitting the renewal fee and application (Minn. Stat. Ann. § 326.10(a), subd. 8). The fee to renew is \$120 (Minn. Stat. Ann. § 326.105).

Continuing Education Requirements

Practicing land surveyors must complete at least 24 professional development hours every two years, two of which must be in professional ethics (Minn. Stat. Ann. § 326.107, subd. 1(c)).

Landscape Architects

Licensing Requirements

An applicant for a professional landscape architecture license must:

- Comply with the Rules of Professional Conduct established in rules by the Board (Minn. Stat. Ann. § 326.10, subd. 1(1)).
- Pass the required exam.
- Graduate with a master's or baccalaureate degree from a landscape architecture program accredited by the Landscape Architectural Accreditation Board or the Landscape Architecture Accreditation Council.
- Complete the required qualifying experience, which varies according to the level of education.

(Minn. R. 1800.1500.)

Licenses expire at midnight on June 30 of each even-numbered year and must be renewed by submitting the renewal fee and application (Minn. Stat. Ann.

§ 326.10(a), subd. 8). The fee to renew is \$120 (Minn. Stat. Ann. § 326.105).

Continuing Education Requirements

Practicing landscape architects must complete at least 24 professional development hours every two years, two of which must be in professional ethics (Minn. Stat. Ann. § 326.107, subd. 1(c)).

General Contractors

Licensing Requirements

Applicants for each type of contractor's license identified must:

- Pass the required examination.
- Meet the related education and experience for the licenses for which they are applying.

(Minn. Stat. Ann. § 326B.83.)

The application must include:

- A Minnesota workers' compensation insurance certificate.
- An employment insurance account number.
- A certificate of liability insurance.
- The type of license requested.
- The applicant's name, current address, and telephone number. If the applicant does not fulfill the examination and education requirements, the name and address of the qualifying person fulfilling the requirements on behalf of the applicant (Minn. Stat. Ann. § 326B.802, subd. 10).
- The name and address of the applicant's agent in Minnesota authorized to receive service of process and a consent to service of process.
- The address and telephone number where the business is physically located.
- Whether the applicant, an employee, or qualifying person has ever been licensed in either Minnesota or any other state and has had the license reprimanded, censured, limited, conditioned, refused, suspended, revoked, or has been the subject of any administrative action.
- Whether the applicant sold or transferred its business or whether there has been a change in ownership, control, or name within the past five years.

- Whether certain shareholders or employees have taken or been subject to any action described in Minn. Stat. Ann. § 326B.83, subd. 2(10), (11), or (12) within the last ten years.
- Whether the qualifying person is the qualifying person for any additional licensees.

(Minn. Stat. Ann. § 326B.83, subd. 2.)

Residential contractor, residential remodeler, and residential roofer licenses expire every two years. Manufactured home installer licenses expire every three years. Renewal applications for the residential trades must be submitted by March 1 of the renewal year. (Minn. Stat. Ann. § 326B.885.)

The fee to renew includes:

- The base fee, which varies depending on license classification.
- Any applicable board fee, continuing education fee, and contractor recovery fund fee.
- Any additional assessment.

(Minn. Stat. Ann. § 326B.092, subd. 7.)

Continuing Education Requirements

All practicing residential building contractors, residential remodelers, and residential roofers must complete 14 hours of continuing education credit every two years (Minn. Stat. Ann. § 326B.821, subd. 2). At least one hour must relate to business management strategies applicable to residential construction businesses and either:

- Energy codes.
- Energy conservation measures.

(Minn. Stat. Ann. § 326B.821, subd. 21.)

Immediately after the adoption of new residential codes, the [Minnesota Department of Labor and Industry](#) may require that 7 of the 14 hours to be about the new or existing codes (Minn. Stat. Ann. § 326B.821, subd. 21).

14. What is the best way to confirm that a construction professional is duly licensed? Are there any consequences if a construction professional is not properly licensed?

License Confirmation

To confirm that a construction professional is duly licensed in Minnesota, a party may conduct a search on the following websites:

- The [Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design](#) for architects, engineers, land surveyors, landscape architects, geoscientists, and interior designers.
- The [Minnesota Department of Labor and Industry](#) for electricians, plumbers, pipefitters, elevator constructors, and general contractors.

Consequences of Violation

If an unlicensed person practices a profession requiring a license:

- Minnesota courts generally hold that the contract is illegal and void.
- The person may be precluded from enforcing a promise to pay for the person's services.

(See *Lew Bonn Co. v. Herman*, 135 N.W.2d 222, 225 (Minn. 1965); *Dick Weatherston's Assoc. Mech. Servs. v. Minn. Mut. Life Ins. Co.*, 100 N.W.2d 819, 823 (Minn. 1960).)

If a person practices architecture, engineering, land surveying, landscape architecture, geoscience, or interior design without a license, the Board may:

- Deny, suspend, or refuse to renew the license.
- Revoke the person's application, license, or certification.
- Censure or reprimand the person.
- Condition or limit the person's practice.
- Refuse the person admittance to the examination.
- Refuse to release the person's examination scores.

(Minn. Stat. Ann. § 326.111, subd. 4.)

The Board may also:

- Impose a civil penalty up to \$10,000 per violation.
- Require the violator to pay all or some of the attorneys' fees and costs of the enforcement actions.

(Minn. Stat. Ann. § 326.111, subd. 6.)

Warranties

15. Does your state recognize any implied warranties related to construction projects, whether established by statute or case law?

In Minnesota, the availability of a general implied warranty of fitness in construction contracts is unclear.

In 1966, the Minnesota Supreme Court extended common-law implied warranties to construction contracts where the owner relies on the contractor's experience and expertise (*Robertson Lumber Co. v. Stephen Farmers Coop. Elev. Co.*, 143 N.W.2d 622 (Minn. 1966)). The Minnesota Court of Appeals has clarified that a project need not be substantially complete for a cause of action for the breach of an implied warranty to accrue (*Liberte Constr., LLC v. Smith*, No. A22-1455, 2023 WL 5011091, at *4-5 (Minn. Ct. App. Aug. 7, 2023)). Federal courts considering implied warranty claims have since applied Minnesota's version of the Uniform Commercial Code (UCC) where a contract applies to the sale of goods. Statutory warranties under the UCC do not apply to service contracts. (*Spectro Alloys Corp. v. Fire Brick Eng'rs Co., Inc.*, 52 F. Supp. 3d 918, 924-25 (D. Minn. 2014).)

Courts evaluating an implied warranty claim in a construction dispute under Minnesota law use a predominant purpose test. Where the predominant purpose of a contract was a sale of goods rather than services, the implied warranty under the UCC applies. (*Spectro Alloys Corp.*, 52 F. Supp. 3d at 925.)

The Minnesota Supreme Court has not overruled its approach to implied warranties. If still valid, the common-law implied warranty applies only to construction contracts to provide services in which the owner has no relevant expertise and relies on the contractor's experience and skill. (*Spectro Alloys Corp.*, 52 F. Supp. 3d at 927.)

Minnesota courts do imply a warranty of accuracy in construction documents in government contracts. To recover for a breach of the implied warranty of accuracy, a contractor must show that:

- The contract documents contain representations that are materially different from the actual facts.
- The contractor reasonably relied on those representations.

- The actual conditions increased the cost of performing the work.

(*Alley Constr. Co. v. State*, 219 N.W.2d 922, 925 n.1 (Minn. 1974).)

This warranty is not undermined by clauses requiring the contractor to verify measurements or quantities (*W. M. Schlosser Co., Inc. v. US*, 767 F.2d 870, 873 (Fed. Cir. 1985)).

The implied warranty also contains a suitability prong. When one party gives specifications and plans for a contractor to follow, that party impliedly warrants that the plans and specifications are sufficient for the purposes implicit in the specifications and plans (*McCree & Co. v. State*, 91 N.W.2d 713, 725 (Minn. 1958)). This warranty applies to design or method specifications, but not to performance specifications (*Blake Constr. Co. v. US*, 987 F.2d 743, 745 (Fed. Cir. 1993)).

Performance specifications require a contractor to produce a specific result without specifying how the contractor achieves the results. A design specification states how the contract should be performed and does not permit any deviation. (*Stuyvesant Dredging Co. v. US*, 834 F.2d 1576, 1582 (Fed. Cir. 1987).)

When the specification is mixed, part design and part performance, the court considers:

- The degree of control the owner retained.
- Whether a restrictive design feature caused the deficiency.

(*Blake Constr.*, 987 F.2d at 746.)

These warranties flow down to subcontractors, as a general contractor impliedly warrants the owner's contract documents to its subcontractors and suppliers (see *Hayle Floor Covering v. First Minn. Constr. Co.*, 253 N.W.2d 809 (Minn. 1977); *D. H. Blattner & Sons, Inc. v. Firemen's Ins. Co. of Newark, New Jersey*, 535 N.W.2d 671, 676-77 (Minn. Ct. App. 1995)).

The warranties do not apply:

- To design-build contracts or other instances where the owner does not supply the plans or specifications.
- Where the plans or specifications provide no direction and no representations.

Further, the warranties do not apply if:

- There is a specifically disclosed unusual risk of error or failure (*White v. Edsall Constr. Co., Inc.*, 296 F.3d 1081, 1086 (Fed. Cir. 2002)).
- The defects and errors are so obvious that the contractor was or should have been aware of them when bidding (see *White*, 296 F.3d at 1086).
- The contractor deviates from the plans or specifications (see *J. N. Sullivan & Assocs., Inc. v. F. D. Chapman Constr. Co.*, 231 N.W.2d 87, 89-90 (Minn. 1975)).

These warranties are reversed when the contractor provides the design and the contractor impliedly warrants the design to the owner (see *Haehn Mgmt. v. US*, 15 Cl. Ct. 50, 56, 61 (1988)). This is increasingly the case on design-build projects.

Minnesota also recognizes warranties under the UCC, where, unless excluded or modified, there is an implied warranty that goods are:

- Merchantable, if the seller is a merchant for goods of that kind (Minn. Stat. Ann. § 336.2-314(1)).
- Fit for the purpose for which the goods are required if both:
 - the seller, at the time of the contract, has reason to know the purpose for which the buyer requires the goods; and
 - the buyer relies on the seller's skills or judgment to select or furnish suitable goods.

(Minn. Stat. Ann. § 336.2-315.)

16. What types of warranties are customarily included in construction contracts? What are the customary warranty periods?

In Minnesota, owners generally require contractors to obtain and assign to the owner all manufacturers' warranties for equipment and systems installed on the project. Owners generally require that all warranties run from the date of acceptance of the equipment or building systems rather than from the date of delivery or installation of the equipment.

Contractors usually warrant all work and agree to repair any deficient or defective work for a period of one or two years after:

- Substantial completion of the work.
- Final completion of the contract.

This warranty is typically accompanied by a requirement that the owner notify the contractor of any defect within a reasonable time.

17. Does your state have any statutes governing warranties for new residential construction? If so:

- What building structures and systems are warranted?
- When is each warranty in effect?
- Are there any restrictions on filing claims under the warranty?

Minnesota statutes impose implied warranties concerning new residential construction projects for:

- Completed dwellings (see Completed Dwellings).
- Common interest communities (see Common Interest Communities).

Completed Dwellings

Building Structures and Systems

A dwelling is a new building, not previously occupied, constructed for the purpose of habitation. "Dwelling" excludes:

- Appurtenant recreational facilities.
- Detached garages.
- Driveways.
- Walkways.
- Patios.
- Boundary walls.
- Retaining walls not required for structural stability of the dwelling.
- Landscaping.
- Fences.
- Nonpermanent construction materials.
- Off-site improvements.
- All other similar items.

(Minn. Stat. Ann. § 327A.01, subd. 3.)

Time Period

For sales of a completed dwelling and contracts for a dwelling to be completed, vendors must warrant that the dwelling will be free from:

- Defects caused by faulty workmanship and defective materials due to noncompliance with building standards for one year.
- Defects caused by faulty installation of plumbing, electrical, heating, and cooling systems due to noncompliance with building standards for two years.
- Major construction defects due to noncompliance with building standards for ten years.

(Minn. Stat. Ann. § 327A.02, subd. 1.)

A major construction defect is actual damage to the load-bearing portion of the dwelling or home improvement, including damage due to subsidence, expansion or lateral movement of the soil (not caused by flood, earthquake, or natural disaster), which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes (Minn. Stat. Ann. § 327A.01, subd. 5).

Restrictions

The vendor's liability is limited to the items set out in Minn. Stat. Ann. §§ 327A.01 to 327A.07 and does not include:

- Loss or damages not reported by the owners to the vendor or home improvement contractors, in writing, within six months after the owner discovers or should have discovered the loss or damages. This exclusion does not apply if the vendor or home improvement contractor has actual notice of the loss or damages.
- Loss or damages caused by defects in design, installation, or materials the owner supplied, installed, or directed to be installed.
- Secondary loss or damage, such as personal injury or property damage.
- Loss or damage from:
 - normal wear and tear;
 - normal shrinkage caused by drying, within tolerances of building standards;
 - dampness and condensation caused by insufficient ventilation after occupancy;

- negligence, improper maintenance, alteration of the dwelling, or failure to maintain the dwelling or home improvement in good condition;

- changes in grading of the ground around the dwelling;

- home improvement by other parties; or

- landscaping or insects.

- Loss or damage that:

- the owner did not take feasible timely actions to minimize.

- occurs when the dwelling is no longer being used primarily as a residence.

- Accidental loss or damage usually described as an act of God, including, but not limited to the following when not caused by the contractor's noncompliance with building standards:

- fire;

- explosion;

- smoke;

- water escape;

- windstorm;

- hail or lightning;

- falling trees;

- aircraft and vehicles;

- floods; and

- earthquakes.

- Loss or damage from soil movement that is compensated by legislation or covered by insurance.

- Loss or damage because of soil conditions where construction is done on lands owned by the vendee or the owner and obtained by the vendee or owner from a source independent of the vendor or home improvement contractors.

(Minn. Stat. Ann. § 327A.03.)

The statutory warranties may only be excluded or modified by a written instrument:

- Printed in boldface type in at least ten-point font.

- Signed by the home buyer/owner.

- Containing the home buyer/owner's consent to the exclusion or modification.

- Setting out in detail the warranty involved.
- Containing the terms of a new agreement providing substitute express warranties offering substantially the same protections as the statutory warranty.

(Minn. Stat. Ann. § 327A.04, subd. 2.)

Additionally, if a major construction defect is discovered before the sale of a dwelling, the ten-year warranty may be waived:

- For that defect.
- After full oral disclosure of the defect.
- By an instrument setting out in detail:
 - the specific defect;
 - the difference between the value of the dwelling with and without the defect as determined by an independent appraiser, contractor, insurance adjuster, engineer, or any other similarly knowledgeable person selected by the home buyer;
 - the price reduction resulting from the defect;
 - the construction completion date;
 - the dwelling's legal description;
 - the home buyer's consent to the waiver; and
 - signatures of the home buyer, seller, and two witnesses.

(Minn. Stat. Ann. § 327A.04, subd. 3.)

The waiver must be recorded with the county recorder or registrar of title and a single waiver can only cover one defect (Minn. Stat. Ann. § 327A.04, subd. 3).

Common Interest Communities

Building Structures and Systems

A common interest community is real estate in Minnesota that is subject to an instrument that obligates persons, by reason of their owning or leasing a separately described parcel of the real estate, to pay for any of the following with respect to a part of the real estate that is not the part the persons own or occupy:

- Real estate taxes.
- Insurance premiums.
- Maintenance.

- Construction, maintenance, repair, or replacement of improvements on the real estate.

(Minn. Stat. Ann. § 515B.1-103(10).)

Time Period

For common interest communities, Minnesota imposes the following implied warranties on a person offering a unit to a purchaser:

- The unit is in at least as good condition at the earlier of conveyance or delivery of possession as it was at the time of contracting.
- A unit and the common elements are suitable for the ordinary uses of real estate of its type.
- Any improvements the seller made or contracted for in the creation of the community is both:
 - free from defective materials; and
 - constructed under applicable law, according to sound engineering and construction standards, and in a workmanlike manner.
- Residential use will not violate applicable law at the time of conveyance or delivery.

(Minn. Stat. Ann. § 515B.4-113.)

Restrictions

Implied warranties may be excluded or modified for units restricted to nonresidential use (Minn. Stat. Ann. § 515B.4-114).

For more information on residential construction warranties, see Quick Compare Chart, Statutory Residential Construction Warranties - Select States.

Payment and Performance Bonds

18. Does your state have a “Little Miller Act” requiring contractors to provide security in connection with performing public improvement contracts? If so:

- What are the minimum requirements to trigger the law?
- What types of security can be posted?
- Where is the security posted?

Minnesota has a Little Miller Act, which is codified in Minn. Stat. Ann. § 574.26.

Minimum Requirements

Minnesota's Little Miller Act applies to contracts:

- With a public body.
- For an expected value of \$175,000 or more.

(Minn. Stat. Ann. §§ 574.26, subd. 2 and 471.345, subd. 3.)

Security

The contractor must post payment and performance bonds in an amount no less than the contract amount as security (Minn. Stat. Ann. § 574.26, subd. 2).

The contractor gives the performance bond to the public body contracting with the contractor, for the use and benefit of the public body to:

- Complete the contract according to its terms.
- Save the public body from all costs and charges beyond the contract amount that may accrue on account of completing the specified work.

(Minn. Stat. Ann. § 574.26, subd. 2.)

The contractor gives the payment bond to secure payment to all persons providing labor and materials under the contract (Minn. Stat. Ann. § 574.26, subd. 2).

19. What is the mechanism for making a claim or filing a lawsuit against the security? Specifically:

- Are there any statutory notices for making claims against the security?
- What is the statute of limitations for making a claim against the security? For filing a lawsuit?
- Are there any other requirements associated with collection of funds against the security?

Statutory Notices

In Minnesota, a person furnishing labor and materials must serve a written claim on a payment bond:

- Personally or by certified mail on the surety that issued the bond and the contractor on whose behalf the bond was issued.

- Within 120 days after completion, delivery, or provision by the person of its last item of labor and materials for the public work.

(Minn. Stat. Ann. § 574.31, subd. 2(a).)

Statute of Limitations

Any action by the public body on a performance bond must be commenced within the applicable statute of limitations (Minn. Stat. Ann. § 574.31, subd. 1).

Any action against the surety that issued the payment bond must be commenced within one year of the date of completion, delivery, or provision by the claimant of its last item of labor and materials for the public work (Minn. Stat. Ann. § 574.31, subd. 2(c).)

Additional Requirements

If the action is successfully maintained or appealed, Minnesota courts may award:

- Attorneys' fees.
- Costs.
- Disbursements.

(Minn. Stat. Ann. § 574.26, subd. 2.)

20. Do private owners generally require payment or performance bonds or other types of security? Does the security vary by project type or dollar value of the construction? What types of security can be posted?

Private owners typically require payment and performance bonds only on large, complex private projects because the bonds are difficult and expensive for contractors to obtain in Minnesota.

Instead of a payment bond, private owners may require:

- A contractor to take out a letter of credit.
- That a higher retainage be withheld.

Litigation Concerns

21. What are the applicable statutes of limitations for filing a lawsuit or commencing arbitration in connection with a construction project for:

- Breach of contract?
- Breach of warranty?
- Negligence resulting in bodily injury or property damage?
- Professional malpractice by a design professional?
- Latent defects in design or construction?

The following statutes of limitations apply to claims in Minnesota:

- **Breach of contract.** The statute of limitations is:
 - six years generally (Minn. Stat. Ann. § 541.05(1));
 - four years for a breach of contract for sale under the Uniform Commercial Code (UCC) (Minn. Stat. Ann. § 336.2-725); and
 - two years after discovery of the injury for a breach of contract arising out of defective and unsafe condition of an improvement to real property (Minn. Stat. Ann. § 541.051, subd. 1(a)).
- **Breach of warranty on a completed dwelling.** The statute of limitations for breach of the statutory warranty under Minn. Stat. Ann. § 327A.02 is two years after the discovery of the breach (Minn. Stat. Ann. § 541.051, subd. 4).
- **Breach of warranty on a common interest community.** The statute of limitations for breach of warranty under Minn. Stat. Ann. § 515B.4-101 to Minn. Stat. Ann. § 515B.4-118 is generally six years. However, this limitations period may be shortened to not less than two years by agreement of the parties. The reduced limitations period is binding on the purchaser's assigns. An agreement reducing the limitations period for a residential unit must be both:
 - separate from the purchase agreement; and
 - signed by the purchaser.(Minn. Stat. Ann. §§ 515B.4-115(b), 515B.4-1151(b), and 515B.4-1152(b).)

- **Breach of warranty under the UCC.** The statute of limitations is four years from actual or constructive discovery of the breach, though the parties may reduce it to not less than one year (Minn. Stat. Ann. § 336.2-725(1)).
- **Negligence.** The statute of limitations is generally six years (Minn. Stat. Ann. § 541.05, subd. 1(5)).
- **Professional malpractice by a design professional.** The statute of limitations is two years after the plaintiff discovers the injury (Minn. Stat. Ann. § 541.051, subd. 1(a)).
- **Latent defects in design or construction.** The statute of limitations is two years after the plaintiff discovers the injury (Minn. Stat. Ann. § 541.051, subd. 1(a)).

These statutes of limitations do not bar a party from pursuing arbitration under appropriate contracts. The statute of limitations for an action arising “upon a contract” applies in those circumstances and only begins to run when there has been both a demand and a refusal to arbitrate. (*Har-Mar, Inc. v. Thorsen & Thorshov, Inc.*, 218 N.W.2d 751, 754-56 (Minn. 1974).)

22. Are there any special requirements for filing a construction-related lawsuit? For example:

- Is an affidavit of merit required for filing a professional malpractice claim against a design professional?
- Must a party required to be licensed allege or attach proof of licensure?
- Are there any special requirements for lawsuits alleging damages resulting from latent design or construction defects?

Affidavit of Merit

In Minnesota, in an action against a licensed architect, engineer, land surveyor, or landscape architect where the plaintiff alleges professional negligence and intends to use expert testimony to establish a prima facie case, the plaintiff must serve:

- With the pleadings, an affidavit stating that either:
 - the plaintiff's attorney reviewed the facts of the case with a suitable expert, in whose opinion the

defendant deviated from the applicable standard of care;

- an expert could not reasonably be obtained because of the statute of limitations (in which case it must be served within 90 days); or
 - the parties agreed to waive expert review.
- Within 180 days after the commencement of discovery under Minn. R. Civ. P. 26.04(a), a second affidavit signed by the party's attorney stating:
 - each person the attorney expects to call as an expert witness at trial to testify about the issues of negligence, malpractice, or causation;
 - the substance of the facts and opinions to which the expert is expected to testify; and
 - a summary of the grounds for each opinion.

(Minn. Stat. Ann. § 544.42, subds. 1 to 4.)

Proof of Licensure

Minnesota does not require any proof of licensure when filing a construction-related lawsuit.

Special Requirements

There are no special requirements for alleging causes of action related to latent design or construction defects.

23. Does your state have a statute of repose? If so:

- What is the applicable period of limitations?
- What types of claims fall under the statute?
- Are there any special notice requirements or conditions precedent to filing a lawsuit?

Minnesota has a statute of repose related to construction activities (Minn. Stat. Ann. § 541.051).

Period of Repose

The repose period for injury resulting from the defective and unsafe condition of an improvement to real property is ten years after substantial completion of the construction. If the cause of action accrues during the ninth or tenth year after substantial completion, a plaintiff may commence an action to

recover damages within two years after the date on which the cause of action accrued, but in no event more than 12 years after substantial completion. (Minn. Stat. Ann. § 541.051, subd. 1(a) and subd. 2.)

A cause of action accrues when the plaintiff discovers the injury (Minn. Stat. Ann. § 541.051, subd. 1(c)).

Plaintiffs must bring an action for contribution or indemnity arising out of the defective and unsafe condition of an improvement to real property within two years after the cause of action for contribution or indemnity accrued, regardless of whether it accrued before or after the ten-year repose period. However, the plaintiff must bring the action for contribution or indemnity within 14 years after substantial completion of the construction. (Minn. Stat. Ann. § 541.051, subd. 1(b).)

A cause of action for contribution or indemnity accrues on the earlier of:

- The commencement of the action against the party seeking contribution or indemnity.
- Payment of a final judgment, arbitration award, or settlement arising out of the defective and unsafe condition.

(Minn. Stat. Ann. § 541.051, subd. 1(c).)

A claimant may not commence an action for breach of Minnesota's statutory dwelling and home improvement warranties (see Question 17) more than two years after discovery of the breach. If the cause of action accrues during the ninth or tenth year after the warranty date, the claimant may bring the action within two years of the discovery of the breach, but in no event more than 12 years after the effective warranty date. (Minn. Stat. Ann. § 541.051, subd. 4.)

Types of Claims Allowed

The statute of repose applies to actions in contract, tort, or other legal remedy to recover damages for any of the following arising out of the defective and unsafe condition of an improvement to real property:

- Any injury to real or personal property.
- Bodily injury or wrongful death of a person.

(Minn. Stat. Ann. § 541.051, subd. 1(a).)

Notice or Conditions Precedent

A party must file with the pleadings an affidavit of merit in any case alleging professional malpractice (see Question 22).

Further, before commencing an action for a breach of warranty under Minn. Stat. Ann. §§ 327A.01 to 327A.08 (see Question 17), a party must first provide a contractor with:

- Notice of the alleged defect.
- An opportunity to inspect the property and prepare an offer to repair.

(Minn. Stat. Ann. § 327A.02, subd. 4.)

The claimant must give notice of the alleged defect in writing within six months after the claimant discovered or should have discovered the loss or damage, unless the dwelling seller or home improvement contractor has actual notice of the loss or damage (Minn. Stat. Ann. § 327A.03(a)).

After receiving notice, the contractor must complete its inspection within 30 days (Minn. Stat. Ann. § 327A.02, subd. 4). After the inspection, the contractor must prepare an offer of repair within 15 days. The offer of repair must include:

- The scope of the proposed repair work.
- The proposed date on which the repair work is to begin.
- The estimated date of completion.

(Minn. Stat. Ann. § 327A.02, subd. 5.)

The owner may not commence an action until the earlier of:

- The completion of the home warranty dispute resolution process under Minn. Stat. Ann. § 327A.051.
- 60 days after the contractor provides the written offer of repair.

(Minn. Stat. Ann. § 327A.02, subd. 7.)

However, the owner may commence the action immediately if the contractor does **not**:

- Inspect the alleged defect.
- Provide the owner with an offer to repair within the specified time period.

(Minn. Stat. Ann. § 327A.02, subd. 6.)

24. Are the following contractual provisions enforceable in your state:

- Liquidated damages?
- Limitations on liability?
- No-damages-for-delay clause?
- Choice of law or forum?

Liquidated Damages

In Minnesota, a liquidated damages clause is prima facie valid if it:

- Represents fair compensation for breach-related damages caused by a party's nonperformance.
- Is not a penalty for nonperformance.

(*Gorco Constr. Co. v. Stein*, 99 N.W.2d 69, 74 (Minn. 1959).)

In deciding whether a clause is an unacceptable penalty, the controlling factor is whether its amount is reasonable in light of:

- The contract as a whole.
- The nature of the contemplated damages.
- The surrounding circumstances.

(*Gorco Constr. Co.*, 99 N.W.2d at 74-75.)

Minnesota courts validate liquidated-damages provisions if both:

- Actual damages cannot be determined under ordinary rules.
- A liquidated damage provision is not manifestly disproportionate to actual damages.

(*Gorco Constr. Co.*, 99 N.W.2d at 74-75.)

Limitations of Liability

Minnesota courts generally do not favor exculpatory clauses and they are strictly construed against the benefited party. An exculpatory clause is unenforceable if it:

- Is ambiguous in scope.
- Purports to release the benefited party from liability for intentional, willful, or wanton acts.
- Is against public policy.

(*Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 923 (Minn. 1982).)

Construction Laws and Customs: Minnesota

In determining whether an exculpatory clause violates public policy, Minnesota courts consider:

- Whether there was a disparity in the parties' bargaining power.
- The types of services being offered or provided (taking into consideration whether they are public or essential services).

(*Schlobohm*, 326 N.W.2d at 923.)

In Minnesota, an agreement between parties for a consumer service that purports to release, limit, or waive the liability of one party for damage, injuries, or death resulting from conduct constituting greater than ordinary negligence is void and unenforceable (Minn. Stat. Ann. § 604.055).

An indemnification agreement in a contract for a public or private improvement is unenforceable, except when:

- The underlying injury or damage arises from the negligent or other wrongful act or omission of the promisor or its:
 - independent contractors;
 - agents;
 - employees; or
 - delegates.
- An owner, responsible party, or government entity agrees to indemnify a contractor directly or through another contractor for strict liability under environmental laws.

(Minn. Stat. Ann. §§ 15.72, subd. 3(a) and 337.02.)

A provision in a public building or construction contract that requires a party to provide insurance coverage to one or more other parties, including third parties, for those parties' negligence or intentional acts or omissions violates public policy and is void and unenforceable, except where the provision:

- Requires a party to provide or obtain:

- workers' compensation insurance;
 - construction performance or payment bonds;
 - builder's risk policies;
 - owner or contractor-controlled insurance programs or policies; or
 - project-specific insurance for claims arising out of the negligent acts or omissions of the promisor or its independent contractors, agents, employees, or delegates.
- Requires the promisor to provide or obtain insurance coverage for the promisee's vicarious liability, or liability imposed by warranty, arising out of the promisor's acts or omissions.

- Applies to building and construction contracts for work within 50 feet of public or private railroads, or railroads regulated by the Federal Railroad Administration.

(Minn. Stat. Ann. § 15.72, subd. 3(b) to (e).)

No-Damages-for-Delay Clause

No-damages-for-delay clauses are unenforceable in public works contracts (Minn. Stat. Ann. § 15.411, subd. 2).

Minnesota courts have not considered these clauses in the context of privately owned or financed construction projects.

Choice of Law or Forum

A provision contained in or executed in connection with a building and construction contract performed in Minnesota is void if it:

- Makes the contract subject to the laws of another state.
- Requires litigation, arbitration, or another dispute resolution process to occur in another state.

(Minn. Stat. Ann. § 337.10, subd. 1.)

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