

**Senate Counsel, Research,
and Fiscal Analysis**

G-17 STATE CAPITOL
75 REV. DR. MARTIN LUTHER KING, JR. BLVD.
ST. PAUL, MN 55155-1606
(651) 296-4791
FAX: (651) 296-7747
JO ANNE ZOFF SELLNER
DIRECTOR

Senate

State of Minnesota

S.F. No. 1143 - Domestic Abuse No Contact Order

Author: Senator Jane B. Ranum

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 8, 2005

S.F. No. 1143 amends the domestic abuse law by enlarging the definition of a “domestic abuse no contact order” to include orders in criminal proceedings relating to violations of protection orders, violations of domestic abuse no contact orders, and harassment/stalking.

HW:cs



Senator Ranum introduced--

S.F. No. 1143: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to domestic abuse; expanding the
3 applicability of the domestic abuse no contact order;
4 amending Minnesota Statutes 2004, section 518B.01,
5 subdivision 22.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

7 Section 1. Minnesota Statutes 2004, section 518B.01,
8 subdivision 22, is amended to read:

9 Subd. 22. [VIOLATION OF A DOMESTIC ABUSE NO CONTACT
10 ORDER.] (a) A domestic abuse no contact order is an order issued
11 by a court against a defendant in a criminal proceeding for
12 domestic abuse; violation of an order for protection, within the
13 meaning of subdivision 14; violation of a domestic abuse no
14 contact order; or harassment/stalking, within the meaning of
15 section 609.749 committed against a family or household member.

16 It includes pretrial orders before final disposition of the case
17 and probationary orders after sentencing.

18 (b) A person who knows of the existence of a domestic abuse
19 no contact order issued against the person and violates the
20 order is guilty of a misdemeanor.

21 (c) A peace officer shall arrest without a warrant and take
22 into custody a person whom the peace officer has probable cause
23 to believe has violated a domestic abuse no contact order, even
24 if the violation of the order did not take place in the presence
25 of the peace officer, if the existence of the order can be

1 verified by the officer. The person shall be held in custody
2 for at least 36 hours, excluding the day of arrest, Sundays, and
3 holidays, unless the person is released earlier by a judge or
4 judicial officer. A peace officer acting in good faith and
5 exercising due care in making an arrest pursuant to this
6 paragraph is immune from civil liability that might result from
7 the officer's actions.

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S.F. No. 1207 - Criminal Procedure; Postconviction Relief

Author: Senator Leo T. Foley

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 3, 2005

S.F. No. 1207 relates to criminal procedure.

Section 1 provides that the prosecuting authority is not required to pay costs of pretrial and post-trial appeals from various orders, judgments, and sentences. Indigent defendants are excepted.

Section 2 provides that a petition for postconviction relief may not raise grounds that could have been raised on direct appeal.

Section 3 requires that petitions for postconviction relief be brought within two years from conviction or sentence, subject to exceptions for disability, mental disease, new evidence, new interpretations of law, violations of constitutional law, or other nonfrivolous grounds. Petitions invoking exceptions must be brought within two years of the date the claim arises.

HW:cs



1 Senator moves to amend S.F. No. 1143 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. Minnesota Statutes 2004, section 518B.01,
4 subdivision 22, is amended to read:

5 Subd. 22. [VIOLATION OF A DOMESTIC ABUSE NO CONTACT
6 ORDER.] (a) A domestic abuse no contact order is an order issued
7 by a court against a defendant in a criminal proceeding for:

8 (1) domestic abuse;

9 (2) violation of an order for protection, within the
10 meaning of subdivision 14;

11 (3) violation of a domestic abuse no contact order; or

12 (4) harassment or stalking, within the meaning of section
13 609.749 committed against a family or household member.

14 It includes pretrial orders before final disposition of the case
15 and probationary orders after sentencing.

16 (b) A person who knows of the existence of a domestic abuse
17 no contact order issued against the person and violates the
18 order is guilty of a misdemeanor.

19 (c) A peace officer shall arrest without a warrant and take
20 into custody a person whom the peace officer has probable cause
21 to believe has violated a domestic abuse no contact order, even
22 if the violation of the order did not take place in the presence
23 of the peace officer, if the existence of the order can be
24 verified by the officer. The person shall be held in custody
25 for at least 36 hours, excluding the day of arrest, Sundays, and
26 holidays, unless the person is released earlier by a judge or
27 judicial officer. A peace officer acting in good faith and
28 exercising due care in making an arrest pursuant to this
29 paragraph is immune from civil liability that might result from
30 the officer's actions."

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S.F. No. 1207 - Criminal Procedure; Postconviction Relief

Author: Senator Leo T. Foley

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

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HW:cs



Senators Foley, Betzold, McGinn, Kleis and Skoglund introduced--
S.F. No. 1207: Referred to the Committee on Judiciary.

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A bill for an act

relating to courts; limiting postconviction relief;
providing that certain government appeals do not
require payment of defendant attorney fees and costs;
amending Minnesota Statutes 2004, section 590.01,
subdivision 1, by adding a subdivision; proposing
coding for new law as Minnesota Statutes, chapter 545A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [545A.01] [APPEAL OF PRETRIAL ORDERS; ATTORNEY
FEES; DEFENDANT; NOT GOVERNMENT RESPONSIBILITY.]

(a) Notwithstanding Rule 28.04, subdivision 2, clause (6),
of the Rules of Criminal Procedure, the government unit is not
required to pay the attorney fees and costs incurred by the
defendant on the unit's appeal of the following:

(1) in any case, from a pretrial order of the trial court;

(2) in felony cases, from any sentence imposed or stayed by
the trial court;

(3) in any case, from an order granting postconviction
relief;

(4) in any case, from a judgment of acquittal by the trial
court entered after the jury returns a verdict of guilty under
Rule 26.03, subdivision 17, clause (2) or (3), of the Rules of
Criminal Procedure; and

(5) in any case, from an order of the trial court vacating
judgment and dismissing the case made after the jury returns a
verdict of guilty under Rule 26.04, subdivision 2, of the Rules

1 of Criminal Procedure.

2 (b) Paragraph (a) does not apply if the defendant is
3 represented by the public defender in this matter.

4 [EFFECTIVE DATE.] This section is effective July 1, 2005.

5 Sec. 2. Minnesota Statutes 2004, section 590.01,
6 subdivision 1, is amended to read:

7 Subdivision 1. [PETITION.] Except at a time when direct
8 appellate relief is available, a person convicted of a crime,
9 who claims that:

10 (1) the conviction obtained or the sentence or other
11 disposition made violated the person's rights under the
12 Constitution or laws of the United States or of the state; or

13 (2) scientific evidence not available at trial, obtained
14 pursuant to a motion granted under subdivision 1a, establishes
15 the petitioner's actual innocence;

16 may commence a proceeding to secure relief by filing a petition
17 in the district court in the county in which the conviction was
18 had to vacate and set aside the judgment and to discharge the
19 petitioner or to resentence the petitioner or grant a new trial
20 or correct the sentence or make other disposition as may be
21 appropriate. A petition for postconviction relief after a
22 direct appeal may not be based on grounds that could have been
23 raised on direct appeal of the conviction or sentence. Nothing
24 contained herein shall prevent the Supreme Court or the Court of
25 Appeals, upon application by a party, from granting a stay of a
26 case on appeal for the purpose of allowing an appellant to apply
27 to the district court for an evidentiary hearing under the
28 provisions of this chapter. The proceeding shall conform with
29 sections 590.01 to 590.06.

30 Sec. 3. Minnesota Statutes 2004, section 590.01, is
31 amended by adding a subdivision to read:

32 Subd. 4. [TIME LIMIT.] (a) No petition for postconviction
33 relief may be filed more than two years after the later of:

34 (1) the entry of judgment of conviction or sentence if no
35 direct appeal is filed; or

36 (2) an appellate court's disposition of petitioner's direct

1 appeal.

2 (b) Notwithstanding paragraph (a), a court may hear a
3 petition for postconviction relief if:

4 (1) the petitioner establishes that a physical disability
5 or mental disease precluded a timely assertion of the claim;

6 (2) the petitioner alleges the existence of newly
7 discovered evidence, including scientific evidence, that could
8 not have been ascertained by the exercise of due diligence by
9 the petitioner or petitioner's attorney within the two-year time
10 period for filing a postconviction petition, and the evidence is
11 not cumulative to evidence presented at trial, is not for
12 impeachment purposes, and establishes by a clear and convincing
13 standard that the petitioner is innocent of the offense or
14 offenses for which the petitioner was convicted;

15 (3) the petitioner asserts a new interpretation of federal
16 or state constitutional or statutory law by either the United
17 States Supreme Court or Minnesota Supreme Court, and the
18 petitioner establishes that this interpretation is retroactively
19 applicable to the petitioner's case;

20 (4) the petition is brought pursuant to subdivision 3; or

21 (5) the petitioner establishes to the satisfaction of the
22 court that the petition is not frivolous and is in the interests
23 of justice.

24 (c) Any petition invoking an exception provided in
25 paragraph (b) must be filed within two years of the date the
26 claim arises.

27 Sec. 4. [EFFECTIVE DATE.]

28 Section 1 is effective July 1, 2005. Sections 2 and 3 are
29 effective August 1, 2005. Any person whose conviction became
30 final before August 1, 2005, shall have two years after the
31 effective date of this act to file a petition for postconviction
32 relief.

defendant be discharged or that or to an offense of lesser degree, the case shall be returned to the

argument in every case if the clerk of the appellate courts a the party's initial brief, unless:

ent pursuant to Rule 128.02, of failure to timely file a brief and ted it; or

le 134.06; or the exercise of its discretion that oral issues has been authoritatively

present the facts and legal significantly aided by oral argu-

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en request for reconsideration argument shall be allowed. If e case shall be considered as late courts notifies the parties

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as been assigned, and Except as otherwise ll, pa including waiver and

Minnesota Rules of Civil

de after 12 o'clock midnight commenced or arrests made ctive for all criminal actions

February 1, 2003; amended ch 17, 2003.)

t, or if, upon any motion to y motion relating to the tab

arise which in the opinion of ion of the Court of Appeals,

ereto, report the case, so far rify the report to the Court

stayed until the decision of a certification of the report, pense of the county. Other on the same question, may, ed in the manner until the d by order of the appellate

court, the filing and serving of briefs upon certification shall be as provided in Rule 28.04, subd. 2(3).

(Effective for criminal actions commenced or arrests made after 12 o'clock midnight January 1, 1990.)

See Rule 28.05 for Comment

28.04 Appeal by Prosecuting Attorney

Subd. 1. Right of Appeal. The prosecuting attorney may appeal as of right to the Court of Appeals:

(1) in any case, from any pretrial order of the trial court, including probable cause dismissal orders based on questions of law. However, an order is not appealable

(a) if it is based solely on a factual determination dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or (b) if it is an order dismissing a complaint pursuant to Minnesota Statutes, section 631.21; and

(2) in felony cases from any sentence imposed or stayed by the trial court; and

(3) in any case, from an order granting postconviction relief under Minnesota Statutes, chapter 590; and

(4) in any case, from a judgment of acquittal by the trial court entered after the jury returns a verdict of guilty under Rule 26.03, subd. 17(2) or (3); and

(5) in any case, from an order of the trial court vacating judgment and dismissing the case made after the jury returns a verdict of guilty under Rule 26.04, subd. 2; and

(6) in any case, from an order for a new trial granted under Rule 26.04, subd. 1, after a verdict or judgment of guilty, if the trial court expressly states therein, or in a memorandum attached thereto, that the order is based exclusively upon a question of law which in the opinion of the trial court is so important or doubtful as to require a decision by the appellate courts. However, an order for a new trial is not appealable if it is based on the interests of justice.

Subd. 2. Procedure Upon Appeal of Pretrial Order. The procedure upon appeal of a pretrial order by the prosecuting attorney shall be as follows:

(1) Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order which shall also include a statement for the record as to how the trial court's alleged error, unless reversed, will have a critical impact on the outcome of the trial, the trial court shall order a stay of proceeding of five (5) days to allow time to perfect the appeal.

(2) Notice of Appeal. The prosecuting attorney shall file with the clerk of the appellate courts a notice of appeal, a statement of the case as provided for by Rule 133.03 of the Minnesota Rules of Civil Appellate Procedure which shall also include a summary statement by the prosecutor as to how the trial court's alleged error, unless reversed, will have a critical impact on the outcome of the trial, and a copy of the written request to the court reporter for such transcript of the proceedings as appellant deems necessary. The notice of appeal, the statement of the case, and request for transcript shall have attached at the time of filing, proof of service on the defendant or defense counsel, the State Public Defender, the attorney general for the State of Minnesota, and the clerk of the trial court in which the pretrial order is entered. Failure to serve or file the statement of the case, to request the transcript, to file a copy of such request, or to file proof of service does not deprive the Court of Appeals of jurisdiction over the prosecuting attorney's appeal, but it is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal. The contents of the notice of appeal shall be as set forth in Rule 28.02, subd. 4(2).

(3) Briefs. Within fifteen (15) days of delivery of the transcripts, or within fifteen (15) days of the filing of the notice of appeal if the transcript was delivered prior to the filing of the notice of appeal or if the appellant has not requested any transcript under Rule 28.04, subd. 2(2), appellant shall file the appellant's brief with the

clerk of the appellate courts together with proof of service upon the respondent. Within 8 days of service of appellant's brief upon respondent the respondent shall file the respondent's brief with said clerk together with proof of service upon the appellant. In all other respects the Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the form and filing of briefs and appendices except that the appellant's brief shall contain a statement of the procedural history.

(4) *Dismissal by Attorney General.* In appeals by the prosecuting attorney, the attorney general may, within 20 days after entry of the order staying proceedings, dismiss the appeal and shall within 3 days thereafter give notice thereof to the judge of the lower court and file with the clerk of the appellate courts notice of such dismissal. The lower court shall then proceed as if no appeal had been taken.

(5) *Oral Argument and Consideration.* The provisions of Rule 28.02, subd. 13 concerning oral argument shall apply to appeals by the prosecuting attorney provided that the date of oral argument or submission of the case to the court without oral argument shall not be more than 3 months after all briefs have been filed. The Court of Appeals shall not hear or accept as submitted any such appeals more than 3 months after all briefs have been filed and in such cases the lower court shall then proceed as if no appeal had been taken.

(6) *Attorney's Fees.* Reasonable attorney's fees and costs incurred shall be allowed to the defendant on such appeal which shall be paid by the governmental unit responsible for the prosecution involved.

(7) *Joinder.* The prosecuting attorney may appeal from one or several of the orders under this rule joined in a single appeal.

(8) *Time for Appeal.* The prosecuting attorney may not appeal under this rule until after the Omnibus Hearing has been held under Rule 11, or the evidentiary hearing and pretrial conference, if any, have been held under Rule 12, and all issues raised therein have been determined by the trial court. The appeal then shall be taken within 5 days after the defense, or the clerk of court pursuant to Rule 33.03, subsequently serves notice of entry of the order appealed from upon the prosecuting attorney or within 5 days after the prosecuting attorney is notified in court on the record of such order, whichever occurs first. All pretrial orders entered and noticed to the prosecuting attorney prior to the trial court's final determination of all issues raised in the Omnibus Hearing under Rule 11, or the evidentiary hearing and pretrial conference under Rule 12, may be included in this appeal. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached.

An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

Subd. 3. Cross-Appeal by Defendant. Upon appeal by the prosecuting attorney, the defendant may obtain review of any pretrial or postconviction order which will adversely affect the defendant, by filing a notice of cross-appeal with the clerk of the appellate courts, together with proof of service on the prosecuting attorney, within 10 days after service of notice of the appeal by the prosecuting attorney, provided that in postconviction cases the notice of cross-appeal may be filed within 60 days after the entry of the order granting or denying postconviction relief, if that is later. Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over defendant's cross-appeal, but is ground only for such action as the Court of Appeals deems appropriate, including dismissal of the cross-appeal.

Subd. 4. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for defendant's release pending the appeal shall be governed by Rule 6.02, subd. 1 and subd. 2. The court shall also consider that the defendant, if not released, may be confined for a longer time pending the appeal than would be possible under the potential sentence for the offense charged.

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DIRECTOR

Senate

State of Minnesota

S.F. No. 1287 - Construction Defects; Causes of Actions

Author: Senator Linda Scheid

Prepared by: Harry Walsh, Senate Counsel (651/296-6200)

Date: March 4, 2005

S.F. No. 1287 provides procedures to govern disputes about construction defects in residential housing.

Section 1 has definitions that apply to the act, among them:

Subdivision 2 limits the application of the law to actions for more than \$7,500;

Subdivision 3 defines "association" as in the Common Interest Ownership Act;

Subdivision 6 defines "construction defect;" and

Subdivision 8 defines "dwelling" to include both single and multifamily residences.

Section 2 regulates the time for notice of a claim to be made, inspection, settlement offers, and failure to negotiate settlement.

Section 3 requires that contracts for sale or repair of housing include a notice to the buyer that problems with claimed defects are regulated by law.

Section 4, paragraph (a), requires that a lawsuit be dismissed if the claimant has not complied with the act.

Paragraph (b) excludes personal injury and death claims from the scope of the act.

Paragraph (c) allows early filing to toll the statute of limitations.

Paragraph (d) states that no new cause of action or limit on contributions from other parties is being created.

Paragraph (e) preserves insurance relationships.

Section 5 limits contractor liability if notices are ignored, building rules are followed, preexisting defects are present, or claimants refuse warranty service work.

Section 6 relates to claims involving associations.

Subdivision 1 prohibits bribes.

Subdivision 2 sets conditions for claims by associations.

Subdivision 3 requires association votes before association actions.

Subdivision 4 sets conditions for testing.

Subdivision 5 allows an exception for emergency repairs.

Section 7 gives the act an immediate effective date.

HW:cs

A handwritten signature in black ink, appearing to be the initials 'HW' with a stylized flourish above the 'W'.

1 Senator Betzold from the Committee on Judiciary, to which
2 was referred

3 S.F. No. 1207: A bill for an act relating to courts;
4 limiting postconviction relief; providing that certain
5 government appeals do not require payment of defendant attorney
6 fees and costs; amending Minnesota Statutes 2004, section
7 590.01, subdivision 1, by adding a subdivision; proposing coding
8 for new law as Minnesota Statutes, chapter 545A.

9 Reports the same back with the recommendation that the bill
10 be amended as follows:

11 Pages 1 and 2, delete section 1

12 Page 3, delete line 28 and insert:

13 "Sections 1 and 2 are"

14 Renumber the sections in sequence

15 Amend the title as follows:

16 Page 1, delete lines 3 and 4 and insert "setting conditions
17 for petitions;"

18 Page 1, line 6, delete "; proposing" and insert a period

19 Page 1, delete line 7

20 And when so amended the bill do pass and be re-referred to
21 the Committee on Crime Prevention and Public Safety. Amendments
22 adopted. Report adopted.

23

24
25 (Committee Chair)

26
27 March 8, 2005.....
28 (Date of Committee recommendation)

1 Subd. 6. [CONSTRUCTION DEFECT.] A "construction defect" or
2 "defect" has the meaning assigned by an express, written
3 warranty provided by a contractor, or if no express warranty
4 provides a definition, means a matter concerning the design,
5 construction, or repair of a dwelling, of an alteration of or
6 repair or addition to an existing dwelling, or of an
7 appurtenance to a dwelling, on which a person has a complaint
8 against a contractor. A defect includes any physical damage to
9 the dwelling or any appurtenance, or the real property on which
10 the dwelling or appurtenance is affixed, caused by a
11 construction defect. A "major construction defect" has the
12 meaning given in section 327A.01, subdivision 5.

13 Subd. 7. [CONTRACTOR.] A "contractor" means any person,
14 firm, partnership, corporation, or other organization that is
15 engaged in the business of design, development, construction,
16 alteration, addition to, or repair of, a new or existing
17 dwelling, or of an appurtenance to a new or existing dwelling.

18 A contractor includes an:

19 (1) owner, officer, director, shareholder, partner, or
20 employee of the contractor;

21 (2) subcontractors, suppliers, and other agents of the
22 contractor; and

23 (3) a risk retention group, if any, registered by law, that
24 insures any part of a contractor's liability for the cost to
25 repair a construction defect.

26 Subd. 8. [DWELLING.] A "dwelling" means a single-family
27 house, duplex, or multifamily unit designed for residential use
28 in which title to each individual unit is transferred to the
29 owner and shall include common areas and improvements that are
30 owned or maintained by an association or members of the
31 association. A dwelling includes the systems, other components,
32 improvements, other structures, or recreational facilities that
33 are appurtenant to the single-family house, duplex, or
34 multifamily unit at the time of its initial sale, but not
35 necessarily a part of the single-family house, duplex, or
36 multifamily unit.

1 Sec. 2. [337A.02] [NOTICE AND OPPORTUNITY TO REPAIR.]

2 Subdivision 1. [NOTICE.] Not later than 90 business days
3 before filing a cause of action, the claimant must provide
4 written notice to the contractor. The written notice must be
5 served by certified mail or personal service and must describe
6 in sufficient detail the defect that the claimant is claiming
7 has occurred.

8 Subd. 2. [RESPONSE.] Within 30 business days of receipt of
9 the notice in subdivision 1, the contractor must provide a
10 written response to the claimant. The response must be served
11 by certified mail or personal service and must:

12 (1) offer to settle the claim by a monetary payment, the
13 making of repairs, or a combination of both; or

14 (2) propose to inspect the dwelling that is the subject of
15 the claim.

16 Subd. 3. [INSPECTION; RESPONSE; SUPPLEMENTAL OFFER.] (a)
17 If a proposal for inspection is made under subdivision 2, the
18 claimant, within 30 business days of receiving the response,
19 must provide the contractor with timely access to the dwelling
20 in order to inspect and document the claimed defect, and perform
21 any testing reasonably necessary to evaluate the nature, extent,
22 and cause of the claimed defect, and nature and extent of any
23 repairs or replacements that may be required to remedy the
24 claimed defect.

25 (b) Within 14 business days of completing the inspection
26 and testing, the contractor must provide a written response to
27 the claimant. The response must be served by certified mail or
28 personal service and must:

29 (1) offer to settle the claim by a monetary payment, making
30 repairs, or a combination of both; or

31 (2) state that the contractor will not proceed further to
32 remedy the claimed defect.

33 (c) Within 15 business days of receiving a claimant's
34 rejection of a settlement offer made under paragraph (b), the
35 contractor may make a supplemental offer to settle the claim by
36 a monetary payment, making repairs, or a combination of both.

1 Subd. 4. [OFFER TO MAKE REPAIRS.] Any offer under
2 subdivision 2 or 3 to remedy the claimed defect by making
3 repairs shall include a detailed description of additional
4 construction necessary to remedy the defect and an anticipated
5 timetable for the completion of the construction.

6 Subd. 5. [ACCEPTANCE OF SETTLEMENT OFFER.] (a) If the
7 claimant accepts a settlement offer made in subdivision 2 or 3,
8 including a supplemental offer, the claimant must provide
9 written notice of the acceptance. The acceptance must be served
10 by certified mail or personal service within 30 business days of
11 receipt of the offer. The claimant may not file an action
12 without responding to the settlement offer within 30 business
13 days of receipt of the offer.

14 (b) If the claimant accepts an offer to repair, the
15 claimant must provide the contractor with timely access to the
16 dwelling to complete the construction by the timetable agreed
17 upon in the settlement offer.

18 (c) If a claimant accepts, and a contractor performs in
19 accordance with, a settlement offer made under this section:

20 (1) the claimant is thereafter barred from bringing an
21 action involving the defect. If a subsequent defect is alleged,
22 the claimant must provide notice to the contractor as provided
23 by subdivision 1; and

24 (2) the contractor is deemed to have been legally obligated
25 to make the repairs or monetary payment as if the claimant had
26 recovered a judgment against the contractor in the amount of the
27 cost of repairs or monetary payment, or a combination of both.

28 Subd. 6. [REJECTION OF CLAIM; FAILURE TO RESPOND; FAILURE
29 TO PROVIDE NOTICE.] The claimant may, without further notice,
30 file a cause of action if the contractor:

31 (1) rejects the claim and will neither remedy the defect or
32 settle the claim as provided in subdivision 2 or 3;

33 (2) fails to serve a response to the claimant as required
34 by subdivision 2 or 3; or

35 (3) fails to provide the notice required by section 337A.03.

36 Subd. 7. [REJECTION OF SETTLEMENT OFFER.] (a) If the

1 claimant rejects a settlement offer made in subdivision 2 or 3,
 2 including a supplemental offer, the claimant must provide
 3 written notice of the rejection prior to commencing an action.
 4 The rejection must be served by certified mail or personal
 5 service within 30 business days of receipt of the offer and must
 6 specify the reasons known to the claimant for the rejection. If
 7 the claimant believes the settlement offer omitted reference to
 8 any portion of the claim, or was unreasonable in its terms, the
 9 claimant must set forth those items of the claim the claimant
 10 believes were omitted or why the settlement offer was
 11 unreasonable.

12 (b) In an action subsequently brought, if the court or
 13 arbitrator determines that the contractor has made a good faith
 14 and reasonable offer of settlement of the claim under
 15 subdivision 2 or 3, and that the claimant has rejected the
 16 offer, the claimant may not recover an amount in excess of the
 17 written settlement offer.

18 Subd. 8. [FAILURE TO COMPLY.] If a claimant accepts a
 19 settlement offer pursuant to this section, and the contractor
 20 fails to make the monetary payment or remedy the defect within
 21 the agreed timetable, the claimant may, without further notice,
 22 file a cause of action. The claimant may also file the
 23 settlement offer and acceptance which will create a rebuttable
 24 presumption that a binding and valid settlement agreement has
 25 been created and should be enforced by the court or arbitrator.

26 Subd. 9. [ADDITIONAL DEFECTS.] A defect that is discovered
 27 after the claimant has provided the original claim notice under
 28 subdivision 1 may not be alleged in an action until the claimant
 29 has provided the required notice and the contractor has been
 30 given opportunity to respond, as provided by this section.

31 Sec. 3. [337A.03] [CONTRACT FOR SALE.]
 32 A contractor must include, in every contract for the sale
 33 of a dwelling to be completed and in every contract for the sale
 34 of home improvement work, the notice required by this section.
 35 The notice must be in at least 10-point bold type, if printed,
 36 or in capital letters, if typewritten, and must state as follows:

1 "Minnesota law contains important procedures and
2 requirements you must follow before you may file a lawsuit for
3 defective construction against the contractor who constructed,
4 or performed construction on, your home. Failure to follow
5 these procedures and requirements may affect your ability to
6 file a lawsuit. You must serve a written notice on the
7 contractor of any construction conditions you believe to be
8 defective 90 business days before you file your lawsuit. A
9 contractor has the opportunity to make an offer to repair or pay
10 for the defects. You are not obligated to accept an offer made
11 by a contractor."

12 Sec. 4. [337A.04] [DISMISSAL; RELATION TO OTHER LAWS.]

13 (a) Except as provided in paragraph (b) or (c), if a
14 claimant has not complied with section 337A.02 before filing a
15 cause of action, the court or arbitrator with whom the action
16 has been filed shall dismiss the cause of action without
17 prejudice. The action may not be refiled until the claimant has
18 complied with section 337A.02.

19 (b) An action that includes a cause of action for damages
20 due to personal injury or death is not subject to dismissal
21 under section 337A.02.

22 (c) A claimant may file an action if delay would preclude
23 the action from being brought by section 541.051. However, the
24 court or arbitrator shall stay the proceedings pending
25 compliance with this section. This subdivision shall not be
26 construed to revive or extend any applicable statute of
27 limitation or repose periods set forth in section 541.051. This
28 section does not negate a claimant's duty to report loss or
29 damage as required by section 327A.03, clause (a).

30 (d) Nothing in this chapter creates a cause of action on
31 behalf of a claimant or contractor. Nothing in this chapter
32 limits a contractor's right to seek contribution, indemnity, or
33 recovery against a subcontractor, material supplier, or design
34 professional for any claim made against a contractor.

35 (e) Nothing in this chapter diminishes or enlarges the
36 rights or responsibilities of a claimant or of an insurer,

1 pursuant to contract or by law under any insurance contract. If
2 a contractor requests that its insurer indemnify the contractor
3 against a claim made in accordance with this chapter, the
4 insurer shall complete its investigation and inform the insured
5 contractor of acceptance or denial of the claim within 30
6 business days after receipt of notification of claim, as
7 required by section 72A.201, subdivision 4. If an insurer fails
8 to accept or deny a claim within 30 business days after receipt
9 of notification of the claim, the insurer waives its rights to
10 claim that the insured contractor's subsequent efforts to
11 resolve the claim violated the insurance contract's conditions
12 or prejudiced the insurer in any way.

13 Sec. 5. [337A.05] [LIMITATION.]

14 In any action relating to a dwelling involving a
15 construction defect, a contractor is not liable for:

16 (1) loss or damage described in section 327A.03;

17 (2) damages caused by the contractor's reliance on the
18 written directive of a local or state building official;

19 (3) damages involving a construction defect known by or
20 disclosed to the claimant before the claimant's purchase of the
21 dwelling, or that could have been discovered by the claimant
22 through the exercise of reasonable diligence before the
23 claimant's purchase of the dwelling; or

24 (4) refusal by the claimant or predecessor claimant to
25 permit the contractor to perform warranty service work.

26 Sec. 6. [337A.06] [ACTIONS OF HOMEOWNER ASSOCIATIONS.]

27 Subdivision 1. [PROHIBITION.] (a) No person shall provide
28 or offer to provide anything of value, directly or indirectly,
29 to a property manager, member, or officer of an association, to
30 encourage or discourage the association to file an action for
31 damages arising from a construction defect.

32 (b) No property manager, member, or officer of an
33 association shall accept anything of value, directly or
34 indirectly, in exchange for encouraging or discouraging the
35 association from filing an action for damages arising from a
36 construction defect.

1 (c) Violation of this subdivision is a misdemeanor.

2 Subd. 2. [ACTION.] No association may bring an action for
3 damages arising from a construction defect against a contractor
4 unless:

5 (1) the action involves the common elements or limited
6 common elements of the common interest ownership community;

7 (2) the association obtains the written approval of each
8 unit's owner whose interest in the common elements or limited
9 common elements is the subject of the action;

10 (3) a vote of the units' owners to which at least a
11 majority of the votes of the members of the association are
12 allocated;

13 (4) the full board of directors of the association and the
14 contractor have met and conferred in a good faith attempt to
15 resolve the association's claim, or the contractor has declined
16 or ignored the requests to meet with the board of directors of
17 the association; and

18 (5) the association has complied with this chapter.

19 Subd. 3. [VOTE.] (a) At least three business days in
20 advance of voting to bring an action against a contractor, the
21 attorney representing the association shall provide each unit's
22 owner a written statement that includes, in reasonable detail:

23 (1) the defect and the nature and extent of damages or
24 injuries to the common elements or limited common elements
25 resulting from the defect, if known;

26 (2) the cause and location of the defect, if known;

27 (3) an estimate of the cost of the action, including
28 reasonable attorney's fees, costs, and fees, including expert
29 and testing fees; and

30 (4) all disclosures that the unit owner is required to make
31 upon sale of the unit.

32 (b) At least 21 calendar days in advance of voting to bring
33 an action against a contractor, the association must provide
34 written notice of each unit owner of the meeting at which the
35 vote will be considered.

36 Subd. 4. [TESTING.] An association or an attorney for an

1 association shall not employ a person to perform testing to
2 determine damage or injury to a unit, common element, or limited
3 common element, unless:

4 (1) the person is licensed under chapter 326;

5 (2) the association has obtained the prior written approval
6 of each unit's owner whose interest in the common elements or
7 limited common elements is the subject of the action;

8 (3) the person performing the tests is required to repair
9 all damage resulting from the test in accordance with state and
10 local law and has provided a written schedule for repairs; and

11 (4) prior notice and opportunity to observe the test is
12 given to the contractor against whom an action may be brought as
13 a result of the tests.

14 Subd. 5. [EXCEPTION.] The board of directors of an
15 association may, without giving notice, employ a contractor to
16 make immediate and necessary repairs to a unit or common element
17 within the common interest ownership community in order to
18 protect the health, safety, and welfare of the unit owners.

19 Sec. 7. [EFFECTIVE DATE.]

20 This act is effective the day following final enactment and
21 applies to all actions commenced on or after that date.

1 Senator moves to amend S.F. No. 1287 as follows:

2 Page 2, line 13, delete everything after "means" and insert
3 "a vendor, as defined by section 327A.01, subdivision 7, and a
4 home improvement contractor, as defined by section 327A.01,
5 subdivision 10."

6 Page 2, delete lines 14 to 25

7 Page 4, line 29, after "notice" insert "or delay"

8 Page 5, line 30, after the period, insert "If a defect is
9 alleged that directly relates to a defect for which notice has
10 been given under subdivision 1, the claimant may include this
11 information in a counter offer or provide additional
12 correspondence to the contractor without providing notice in
13 accordance with subdivision 1."

14 Page 6, line 27, delete everything after the period and
15 insert "Notice under this chapter satisfies the notice
16 requirements of section 327A.03, clause (a)."

17 Page 6, delete lines 28 and 29

18 Page 7, line 18, after the semicolon, insert "or"

19 Page 7, delete lines 19 to 23

20 Page 7, line 24, delete "(4)" and insert "(3)"

1 Senator moves to amend S.F. No. 1287 as follows:

2 Page 4, line 19, delete the colon, and insert "the claim is
3 satisfied."

4 Page 4, line 20, delete everything after "(1)"

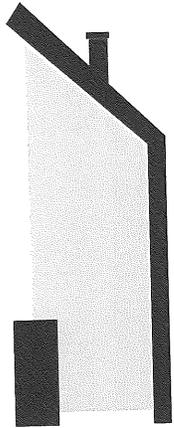
5 Page 4, line 21, delete everything before "If"

INFORMATION SHEET FOR
PROPOSED CHANGE TO Minn. Stat. 518B.01, SUBD. 22

- This proposed change to Minn.Stat. § 518B.01, subd. 22 is meant to close an inadvertent loophole that currently exists.
- Because the domestic abuse no contact order is tied to the definition of “domestic abuse” in subd. 2(a) of this same statute, it can be issued only when the prosecution is for one of those crimes enumerated in that definition (assault, criminal sexual conduct, terroristic threats, interference with an emergency call). The proposed amendment expands the applicability of this no contact order (and also prosecutions for violations of this order) to include three additional offenses which frequently arise in domestic situations: Violation of an Order for Protection, Harassment/ stalking, and Violation of a Domestic Abuse No Contact Order. When these crimes are committed against a family or household member, the court would be able to impose a Domestic abuse no contact order.
- Currently, No Contact Orders are issued in 99% of domestic violence cases in Ramsey County. Their purpose is simple. To keep victims of domestic violence safe while their case is being prosecuted. Often abusers will blame victims for their arrest and subsequent issuance of charges. A pending criminal case increases the stress in an already difficult situation. These orders prohibit a party charged with committing a crime of domestic violence from having contact with the victim of that crime until a resolution of the case or until a judge lifts the order, whichever comes first.

Before the Domestic abuse no contact order statute was enacted, persons who violated criminal court no contact orders could only be charged with the general crime of Contempt of Court. Contempt of Court can apply to a variety of circumstances far less serious than domestic abuse. The new crime of Violation of a domestic abuse no contact order readily identifies the offense as domestic-abuse related and increases the likelihood that these court order violations will be treated with the seriousness they deserve. This offense (but not Contempt of Court) also counts as a qualified misdemeanor for purposes of subsequent felony sentences under the Minnesota Sentencing Guidelines.

- In 2004, St. Paul prosecuted approximately 400 Violation of Order for Protection cases and Violation of domestic abuse no contact order case, and approximately 30 Harassment/Stalking cases. In each of these cases, violations of the No Contact Orders resulted in Contempt of Court charges instead of Violation of DA NCO charges. As a result, these 500 victims were exposed to a greater risk of harm without the added protection of the statute.



BUILDERS

ASSOCIATION OF MINNESOTA

Notice and Opportunity to Repair Legislation
(NOR)

NOTICE AND OPPORTUNITY TO REPAIR (NOR) ACT

FACT SHEET

- The current system to correct problems with new or remodeled homes is confusing and does not work. Too often the system, combined with poor communication between homeowners and builders, results in needless lawsuits that cost money, take time, and make it hard to fix the problem.
- The Notice and Opportunity to Repair Act (NOR) is a common sense way to simplify the process and make it easier for homeowners to get problems fixed and reduce lawsuits.
- NOR would create a system in which disputes would first be attempted to be settled through communication between the builder and homeowner, rather than through the courts.

The NOR process

- Once a homeowner notifies a contractor of a perceived construction defect, the contractor must respond to the homeowner within 30 days by proposing a settlement (money or repairs) or stating his or her intent to inspect the site.
- A homeowner then has 30 days to grant access to the property if an inspection is requested. Within 14 days of the inspection, the contractor must make a settlement offer which, if accepted by an owner, precludes a lawsuit.
- NOR does not ban lawsuits. If an owner rejects a contractor's proposed settlement, a lawsuit may be filed. If the court determines that a contractor has made a good faith effort to settle the dispute, the award from the suit would be limited to the cost of repairs.
- More than 20 states have enacted such laws in an effort to stem a tide of lawsuits connected with a boom in residential construction and to address skyrocketing insurance premiums paid by contractors.
- NOR requires that future construction contracts contain a prominently displayed notice of the timetable and owner rights contained in the law.

Notice and Opportunity to Repair (NOR) Legislation

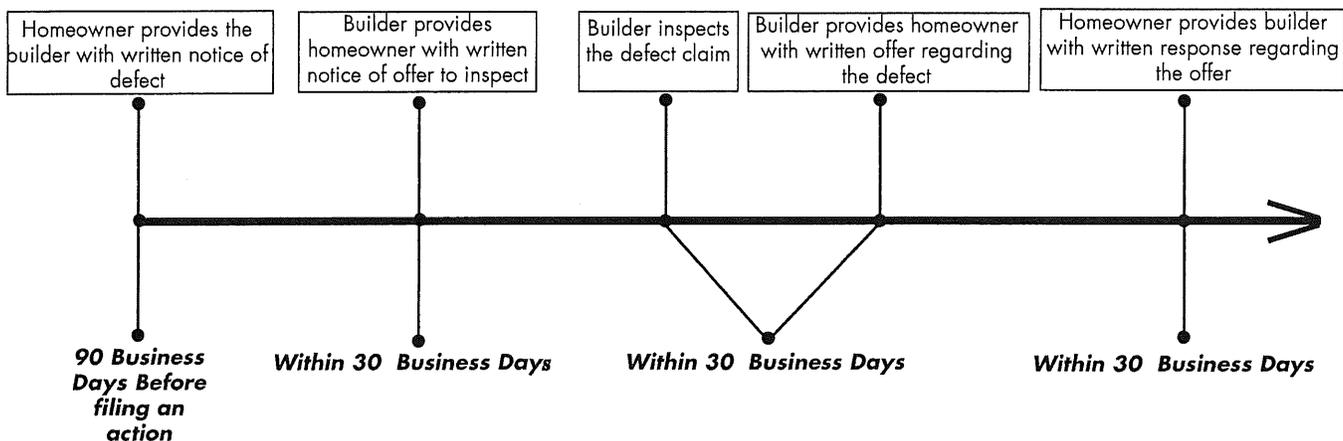
Minnesotans need a faster, easier and less costly way to fix problems in new and newly remodeled homes

The current system fails the consumer

- **The current system causes needless delays for homes that need repair.** A lack of effective communication between the builder, the homeowner, and insurers can get in the way of fixing the problem.
- **The delays and confusion too often force frustrated homeowners to file lawsuits against their builders, resulting in costly legal bills and higher insurance premiums,** which in the end are passed on to building and remodeling customers. Meanwhile, the problem has not been addressed.

NOR – the common-sense solution

- **NOR will make it faster and easier for homeowners to get their problems fixed.** It will create a strict timeline for builders and insurance companies to communicate and attempt to fix homeowners' problems, preventing many of the needless lawsuits that are filed today.
- **Homeowners rights are protected by NOR.** Following the NOR communications process, homeowners retain their rights to pursue a cause of action in court to resolve the construction defect.
- **NOR is the common-sense approach to addressing homeowners' frustrations.** Homeowners, builders and lawyers support the act. Similar bills have been passed in 24 states since 2001, helping homeowners get fair, fast and effective solutions.



Fact sheet

Who is BAM?

Founded in 1974, the Builders Association of Minnesota (BAM) is an organization of licensed contractors and remodelers who are committed to a code of ethics and ongoing training on the latest codes, technical requirements, and building skills.

BAM works to **improve the quality and professionalism of the state's home building industry** and **protect homeowners** through:

- **Communication/consumer awareness information** – educating consumers about how to select the right contractors for their projects and how this benefits consumers
- **Research** – monitoring and suggesting improvements to building codes, techniques and materials
- **Builder education** – developing and providing continuing education courses to builders and remodelers
- **Legislation** – affecting legislation and regulatory policy to improve the industry

BAM is affiliated with 14 local associations from across the state, consisting of more than 4,000 members. These local builders associations are the **best resource available for finding the highest quality contractors and remodelers** in every region of Minnesota.

The benefits of using contractors who are BAM members

BAM-affiliated contractors are licensed professionals who:

- Build an estimated 40,000 homes per year
- Remodel more than 100,000 homes each year
- Are active members of their communities
- Receive the most up-to-date, quality education available on an ongoing basis

Licensed, BAM-affiliated contractors carry their own liability and workers compensation insurance, obtain the building/remodeling permits for their clients, arrange for formal inspection of their work, and provide a 10-year warranty. Unlicensed contractors are under no obligation to provide any of these consumer benefits, which exposes homeowners to significant financial risks ranging from medical costs to repairs to rebuilding.

For more information about BAM or home building or remodeling, please call 651-646-7959 or 1-800-654-7783, or visit www.bamn.org.

The Problem

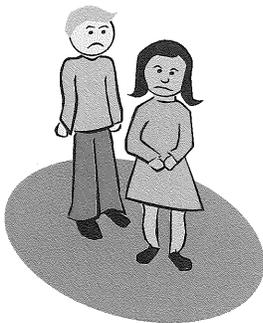
Over the past three years, an average of 40,620 building permits a year were issued in Minnesota.

According to the National Association of Homebuilders



Less than one percent of projects resulted in a quality of construction complaint.

According to the Minnesota Department of Commerce

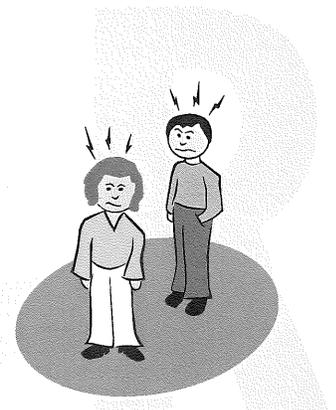


When something does go wrong, the current system:

- Condone poor communication
- Create confusion
- Cause needless delays

Homeowners get frustrated which results in:

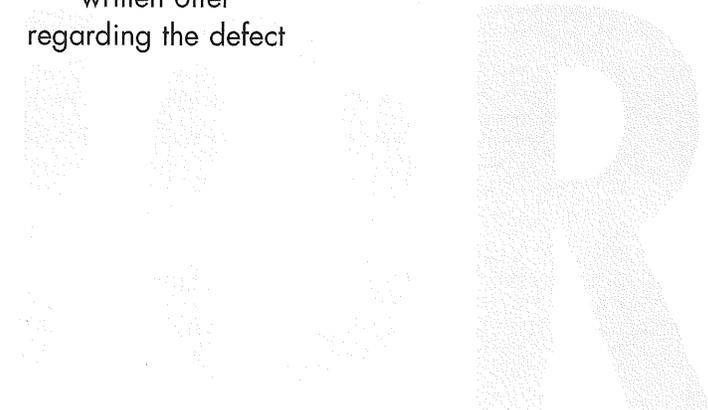
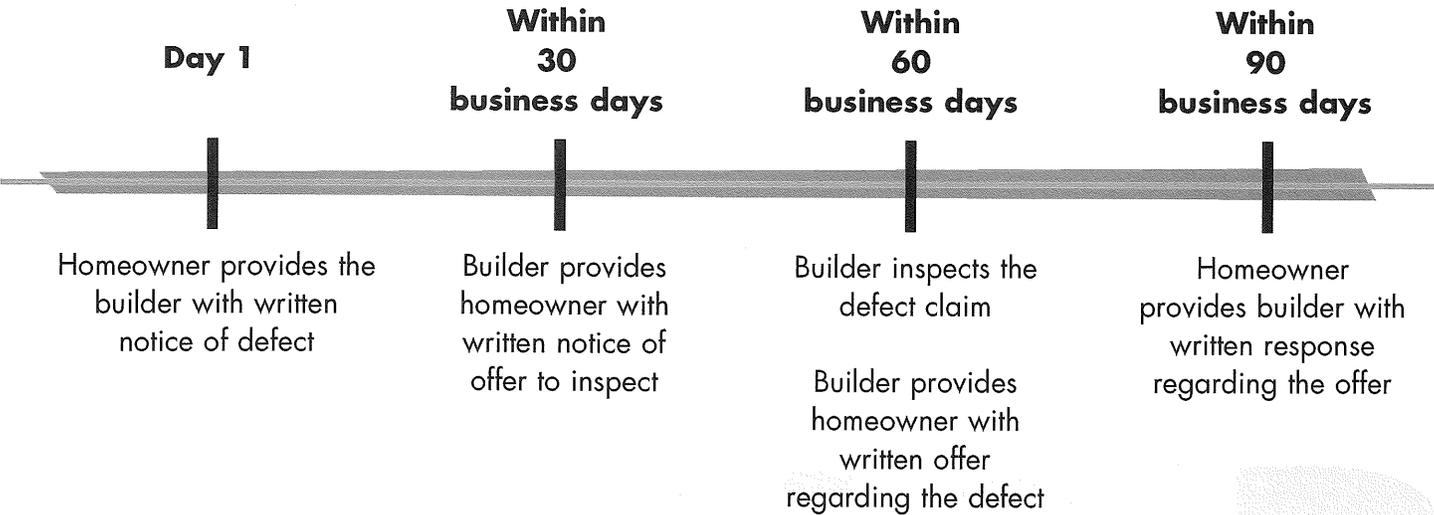
- Needless lawsuits
- Higher insurance costs for builders
- Higher construction costs for homeowners



The Solution

Notice and Opportunity to Repair (NOR) Legislation is the common-sense solution to resolving construction and remodeling problems between homeowners and builders.

- **Sets strict timelines.** Builders are required to communicate with and attempt to fix a homeowner's problems, thereby preventing many of the needless lawsuits that are filed today.
- **Protects homeowner's rights.** With NOR, homeowners still retain all of their rights to file a lawsuit.
- **Creates a common-sense approach.** Similar bills have passed in 24 states since 2001, helping homeowners get fair, fast and effective solutions.



CONTACT:

Mike Zipko
651/292-8062, 651/269-8756 (cell)

FOR IMMEDIATE RELEASE:

March 8, 2005

**NEW LEGISLATION WILL MAKE IT FASTER, EASIER AND CHEAPER
FOR HOMEOWNERS TO FIX PROBLEMS WITH
NEW OR NEWLY REMODELED HOMES**

SAINT PAUL, Minn. – Homeowners who have problems with new or newly remodeled homes will find it easier to get them fixed if new legislation is adopted. Legislative committees began hearing testimony this week about a proposed bill that will help homeowners quickly resolve claims connected with new residential construction by outlining new requirements for builders, in an effort to make lawsuits a last resort. Under the legislation, owners and contractors would operate under a strict timetable for notification of alleged defects and for fixing them before a lawsuit could be filed.

“The current system does not work for homeowners,” said State Senator Linda Scheid (DFL-Brooklyn Park) who is the Senate sponsor of the Notice and Opportunity to Repair (NOR) act. “In too many instances, disputes that should be settled by a carpenter with a hammer and saw end up being resolved by lawyers with briefcases because frustrated homeowners are left with few options. At the core of this issue is the need for better communication between homeowners and contractors, and that’s what we are addressing in this bill.”

“NOR makes a tough situation better for a homeowner because it guarantees action to get the problem solved,” said State Representative Dan Severson (R-Sauk Rapids) the House sponsor for NOR. “This legislation will set a strict timetable once a complaint has been made about alleged construction defects. The homeowner’s rights are still protected and they still are able to file legal action. NOR keeps everyone focused on helping the homeowner get the problem fixed quickly. The homeowner still has the option of filing a lawsuit. We just think people working together makes more sense than a lawsuit.”

– more –

NOR will make it easier and faster for homeowners to get problems fixed. Once a contractor is notified of alleged defects, a 90-day timetable begins during which the builder must notify the homeowner in writing of offers to fix the problem, make inspections, and react to rejections of offers by the homeowner. The bill would require builders to include details of NOR in all contracts for sale of a dwelling and contracts for home improvements.

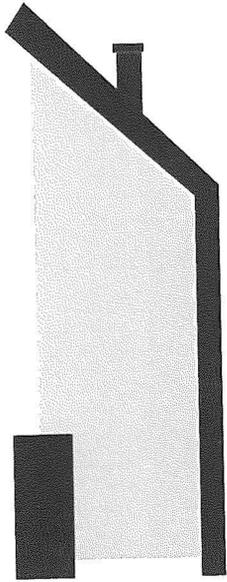
“This is a common sense approach to a confusing situation that has become hampered by lack of communication between owners and builders, and the result has been far too many needless lawsuits,” said Steve Meister, Chairman of the Builders Association of Minnesota, a major supporter of the bill. “Similar legislation has been passed in more than 20 states so far. It’s a way to relieve homeowners’ frustrations and make it easier to get problems fixed.”

Lawsuits could still be filed under this legislation. But the two sides would first be required to communicate directly about construction problems and potential plans to fix the problems in a timely way prior to any legal action. Supporters of the bill believe that most disputes will be solved by NOR’s requirements for communication and avoid cluttering up the courts with costly lawsuits.

About the Builders Association of Minnesota

BAM is a voluntary organization for homebuilders, remodelers, and other industry professionals who wish to improve the quality and professionalism of the home building industry in Minnesota. BAM and its 14 affiliated local associations across Minnesota work to protect homeowners through research, education and legislation. For more information please visit the BAM website at www.bamn.org.

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BUILDERS
ASSOCIATION OF MINNESOTA

Notice and Opportunity to Repair Legislation
(NOR)