

MINNESOTA

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I. MECHANIC'S LIEN BASICS

Chapter 514 of Minnesota Statutes provides for and governs mechanic's liens on private projects. Mechanic's liens provide a vehicle by which contractors, subcontractors, and certain suppliers can obtain a security interest in real property they improved, and, if necessary, compel the sale of the property in order to pay for the improvements they provided. The basic steps to preserve and perfect a mechanic's lien are described below. The failure to comply with these statutory requirements most likely will result in the loss of lien rights.

A. Requirements

Pre-Lien Notice. The person seeking the lien must provide the project owner a notice of that person's right to assert a lien for the value of work and/or materials that person provides to the property. The notice requirements differ depending on what kind of work the person provides. Minn. Stat. § 514.011 sets forth the requirements for general contractors, subcontractors, and material suppliers.¹ Some exceptions exist for pre-lien notice, including when the contractor is also the owner of the improved property, and when the work is done on an apartment building of more than four dwelling units or a non-agricultural commercial property.² When notice is required, it is important that those seeking a lien follow the specific timing provisions for the kind of work they perform.³

Mechanic's Lien Statement. If a contractor, subcontractor, or materials supplier has complied with the pre-lien notice requirements and does not receive payment, a mechanic's lien statement should be recorded against the owner's property. The lien holder must serve upon the owner and file with the appropriate state office a mechanic's lien statement.⁴ The recording of the mechanic's lien statement must be done within 120 days of the lien holder's last day of work or from the last supply of materials on a job.⁵ A contractor's last day of work is defined as when the work reaches "substantial completion." The statement must contain all of the information required by Minn. Stat. § 514.08, subd. 2. Certain circumstances may extend the lien deadline.⁶

B. Enforcement and Foreclosure

To secure the benefit of any mechanic's lien, the contractor, subcontractor, or materials supplier must commence foreclosure of its lien claim within one year of the last date of contribution to the property.⁷ If not commenced within one year, the mechanic's lien becomes

unenforceable. Under Minnesota law, there are several advantages to a mechanic's lien foreclosure versus a regular civil action, including an earlier court hearing date and the right to collect attorney's fees if successful in foreclosing on the lien.⁸

A sheriff's sale of the property may be initiated following a successful foreclosure action. At the sale, the property is sold and the proceeds from the sale are used to pay off the interest holders in the property based upon their priority of interest. *See* Minn. Stat. § 514.15. Each mechanic's lien holder assumes priority based upon the date of the first visible improvement to the property made by the contractor, subcontractor, or materials provider.⁹

Note for Public Projects: On a public project, there should be a payment bond in place for the protection of the subcontractors. The requirements for making a claim against the bond are essentially the same as the mechanic's lien requirements. *See* Part II.

C. Ability to Waive and Limitations on Lien Rights

Minnesota law does not contain any statutory lien waiver forms or form language, and therefore, any lien waiver form may be used. Because lien waivers are not governed by statute, it is important to carefully review each lien waiver form.¹⁰ In addition, and while Minnesota law is unclear about whether lien rights can be waived before a project begins, any waiver must be "based upon consideration" beyond what the contractor is already required to do.¹¹

The failure to file suit in district court to foreclose upon a mechanic's lien within one year from the last date of work on a job results in the lien lapsing. The lien expires after one year and cannot be extended, renewed, or revived.¹²

II. PUBLIC PROJECT CLAIMS

While the mechanic's lien statute does not expressly exempt public property for liens, Minnesota courts have long held that property owned by the public and used for public purposes are exempt from the statute.¹³ This exemption is based on the concern that by allowing private citizens "to force a sale of property devoted to a public use would impermissibly hamper municipalities' ability to administer the local affairs of state government."¹⁴ In determining what constitutes "public property," courts often look to the actual or proposed use of the property as an important factor.¹⁵

A. State and Local Public Work

The Minnesota Public Payment Bond statutes apply to public projects. While the term "public work" is not defined by statute, courts have adopted the following factors "to determine whether a contract is for the doing of 'public work': (1) ownership of the project; (2) funding of the project; (3) the scope of the municipality's participation in the project; and (4) the extent the project is put to a public use."¹⁶ The statutes do, however, define those entities who can make a claim against a payment bond as "all persons furnishing labor and materials engaged under, or to perform the contract."¹⁷ As a result, contractors, subcontractors, and material suppliers are covered by the payment bond and may assert claims against it.

B. Claims to Public Funds

The steps to pursue a bond claim under Minnesota Stat. §574.24 *et seq.* are very similar to the steps necessary to bring a mechanic's lien claim.

Notice of Claim. The person seeking to preserve its rights against a bond must serve a written Notice of Claim upon the general contractor for whom the bond was issued and the surety. The notice must be served within 120 days from the last day of work on the public project by either personal service or certified mail. The notice must state the "nature and amount of the claim and the date the claimant furnished its last item of labor and materials for the public work."¹⁸ Minn. Stat. § 574.31, subd. 2, provides a notice of claim form that is sufficient to meet these requirements.

Enforcement and Foreclosure. To secure the benefit of the bond claim, the contractor or claimant must commence foreclosure of its lien claim within one year of the last date of contribution to the property as set forth in the notice of claim.¹⁹ Unlike a mechanic's lien, a bond claimant can extend the one-year deadline either through: (a) a written stipulation with the surety; or (b) by providing written notice to the surety that the surety does not object to; such notice must be given 90 days before the one-year deadline is set to expire.²⁰

The bond claimant may then commence an action against the bond, and may also join by motion other persons that provided work to the public project. If the bond is insufficient to pay all of the asserted claims, the Court will pro-rate the distribution among those claimants with a valid bond claim.²¹

III. STATUTES OF LIMITATION AND REPOSE

The statutes of limitation and the repose periods applicable to construction defect claims are contained in one statute, Minn. Stat. § 541.051.²² This section provides a brief overview of the limits the statute places on potential causes of action arising from damage sustained from any service or construction that improves real property, and explores some of the important case law interpreting these provisions.

A. Statutes of Limitation and Limitations on Application of Statutes

Under Minn. Stat. § 541.051, subd. 1(a), absent fraud, all claims arising out of "the defective and unsafe condition of an improvement to real property" must be brought within two (2) years of discovery of the injury. Contribution and indemnification claims must be brought within two (2) years of the accrual of the cause of action.²³ For purposes of a construction defect, an action "accrues upon discovery of the injury,"²⁴ regardless of whether the full extent of the injury is known.²⁵ In the case of an action for contribution or indemnity, an action accrues upon "the earlier of commencement of the action against the party seeking contribution or indemnity, or payment of a final judgment, arbitration award, or settlement arising out of the defective and unsafe condition."²⁶

The date of discovery is determined by examining when a defect was actually discovered or, in the exercise of reasonable diligence, should have been discovered.²⁷ This occurs when the claimants "[have] enough facts to be on notice that a potential injury may exist."²⁸ The statute

also requires claimants to act on what is known and to conduct a reasonable investigation to discover any injury.²⁹

Minn. Stat. § 541.051 further sets the limitations period for new home warranties as provided in Minn. Stat. § 327A.02 – creating one, two, and 10-year warranties for purchasers of new residential construction.³⁰ The warranties begin to run from the time the initial purchaser first occupies or takes possession of the dwelling, whichever is earlier.³¹ A breach of warranty claim on a new home must be brought within two years of the date the homeowner discovers, or reasonably should have discovered, the builder’s inability or refusal to honor the statutory warranties of Minn. Stat. § 327A.02 or any express written warranty.³²

B. Statutes of Repose and Limitations on Application of Statutes

Minn. Stat. § 541.051 also contains statutes of repose applicable to construction defect claims. Minn. Stat. § 541.051, subd. 1(a) provides that a cause of action shall not accrue “more than ten years after the date of substantial completion of construction.” However, if the claim accrues (i.e., the injury is discovered) in the 9th or 10th year after substantial completion, a claim “may be brought within two years after the date on which the action accrued, but in no event may an action be brought more than 12 years after substantial completion of the construction.”³³

In 2013, the statute of repose was again amended in regards to contribution and indemnity claims for defective and unsafe conditions resulting from improvements to real property. Back in 2007, § 541.051 was revised so that contribution and indemnity claims were no longer subject to the 10-year statute of repose.³⁴ Pursuant to the 2007 amendments, therefore, all contribution and indemnity claims could be brought within two years of accrual regardless of whether the claims arose within 10 years of substantial completion of the project.³⁵ However, the 2013 amendment to § 541.051 reinstated a repose period for contribution and indemnity claims that was eliminated under the 2007 version of the statute.

Pursuant to amended § 541.051, contribution and indemnity claims now must be brought within 14 years after substantial completion of the improvement project. Moreover, these claims must also be brought no later than two years after accrual of any claim.³⁶

Critically, the 2013 amendment applies to all actions commenced on or after August 1, 2013. Yet, because the 2007 version of Minn. Stat. § 541.051 (which was made retroactive to June 30, 2006), applies to cases pending or commenced prior to August 1, 2013, contribution and indemnity claims in Minnesota can now fall into one of three categories: (1) claims barred by the repose statute prior to June 30, 2006, which continue to be barred; (2) claims for which the repose period did not expire by June 30, 2006, and commenced prior to August 1, 2013, are only subject to the two-year limitations period; and (3) claims for which the repose period did not expire by June 30, 2006, and are commenced after August 1, 2013, are subject both to the 14-year repose period and the two-year limitations period.

Last, the statute sets a repose period of 12 years for breach of warranty claims.³⁷ Any claim for breach of warranty must be brought within 12 years of the date the owner takes occupancy or legal title, whichever is earlier. In no event may any claim for breach of warranty accrue more than 12 years from this “warranty date.”³⁸

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

Before an owner may bring a claim for breach of statutory warranty, as provided for in Minn. Stat. § 327A.02, subd. (1), the vendor or home improvement contractor is entitled to notice of the claim and is given an opportunity to cure the alleged defect.³⁹

Minnesota requires a homeowner to provide the vendor or home improvement contractor with written notice “within six months after the [homeowner] discovers or should have discovered the loss or damage; unless the [homeowner] establishes that the vendor or home improvement contractor had actual notice of the loss or damage.”⁴⁰ Upon giving notice, the vendee or homeowner must allow for an inspection and give the vendor or home improvement contractor an “opportunity to offer to repair the known loss or damage.”⁴¹

The vendor or home improvement contractor must conduct the inspection within thirty (30) days of receiving the notice. After the inspection, the vendor or contractor is provided fifteen (15) days to provide a written offer to repair the alleged defects.⁴²

If, after the inspection and the vendor’s or home improvement contractor’s delivery of an offer to repair, the parties agree to a scope of work for the repairs, the vendor/home improvement contractor must complete the repairs in accordance with the offer of repair.⁴³ Upon completion of the repairs, the contractor must provide the homeowner with a “written notice that the scope of work agreed upon has been completed,” together with “a list of the repairs made and a notice that the [homeowner] may have a right to pursue a warranty claim[.]”⁴⁴ If the homeowner and vendor/contractor cannot agree to a scope of work, the parties must submit the matter to Minnesota’s new home warranty dispute resolution process.⁴⁵ An action in district court cannot be commenced until the earlier of: (1) completion of the dispute resolution process; or (2) sixty days after the offer of repair is provided to the homeowner.⁴⁶

However, should a homeowner fail to provide written notice within six months of discovering the loss or damage, the homeowner’s claims for breach of statutory warranty are barred unless the vendor/contractor had actual notice of the loss or damage.⁴⁷ This six-month statute of limitations begins to run when “an actionable injury is discovered, or with due diligence, should have been discovered.”⁴⁸ If appropriate notice is given, it is important that the vendor or contractor respond to the homeowner’s allegations and perform an inspection of the alleged damage within 30 days in order to prevent a possible future claim for breach of warranty.

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

A standard commercial general liability (“CGL”) policy provides coverage for those amounts that the insured is legally liable to pay due to property damage that occurs during the applicable policy period. In construction defect cases, this obligation has proven difficult to apply. An insurer must first determine what insurance policy (or policies) is “triggered,” meaning, what policy applies to the loss.

B. Trigger of Coverage

Minnesota follows the “actual injury” rule to determine what liability policy or policies have been triggered.⁴⁹ Under the “actual injury” rule, “the time of the occurrence is not the time that the act resulting in liability is committed, but rather the time that the complaining party is actually damaged.”⁵⁰ Minnesota case law determining when damage has actually occurred and, consequently, which policies have been triggered is wide-ranging and highly dependent upon the specific facts of each case.

The first question that must be answered when more than one policy is involved is whether the injury was continuous; for example, is it a progressive injury existing over multiple policy periods?⁵¹ If the injury was not continuous, the policies on the risk at the time of the injury pay for all losses arising from the injury.⁵² Next, if the injury was continuous, it must be determined whether the injury arose from a discrete, identifiable event.⁵³ If it did, the policies on the risk at the time of that event are responsible for all damages arising out of that event.⁵⁴ When an injury is both continuous and did not arise out of a discrete identifiable event, the damages are split based upon a modified “pro-rata-by-time-on-the-risk” analysis.⁵⁵ Minnesota courts place an emphasis on avoiding the allocation of damages between multiple insurers whenever possible.⁵⁶ Allocation is meant to be an exception and not the rule.⁵⁷ If it is possible to identify a discrete, identifiable originating event that allows for the avoidance of allocation, courts are encouraged to do so.⁵⁸

C. Allocation Among Insurers

As mentioned above, Minnesota courts are encouraged to avoid allocating damages between multiple insurers when possible. However, in those cases where the damage involved is continuous and not arising out of a discrete, identifiable event, Minnesota courts rely on pro-rata-by-time-on-the-risk approach to allocate damages. The pro-rata-by-time approach is applied as follows: (1) triggered policies are given a pro-rata allocation based upon their entire policy period irrespective of the date of construction; (2) allocation ends when the policyholder receives a notice of a claim, not the date of remediation; (3) policyholders who become voluntarily self-insured bear a proportionate share of liability; and (4) if insurance was unavailable during a part of the continuous period, the insurers on the risk cover the uninsured time.⁵⁹

In a pro-rata allocation scenario, defense costs are apportioned equally among all insurers involved, not pro-rata-by-time-on-the-risk.⁶⁰

D. Issues with Additional Insurance

Another risk shifting method that is utilized in construction contracts is the requirement that subcontractors procure insurance adding the general contractor as an additional insured. In Minnesota, the general rule is that construction contracts that require a subcontractor to indemnify the general contractor for liability for the subcontractor’s own negligence are not enforceable unless the construction contract requires procurement of specific insurance coverage of indemnity obligations. Minn. Stat. § 337.01 *et seq.*⁶¹ In such instances, Minnesota courts have interpreted additional insurance endorsements that limit coverage to damages caused by the subcontractor to require some showing of fault.⁶²

VI. CONTRACTUAL INDEMNIFICATION

Minnesota does not allow indemnification in building and construction contracts unless there is a specific agreement to insure against the risk.⁶³

Minn. Stat. § 337.02 provides that an indemnification agreement in a building and construction contract is unenforceable except to the extent that the underlying injury or damage is attributable to the negligence of, or breach of contract by, the promisor or promisor's independent contractors, agents, employees, or delegates.⁶⁴ In other words, each link in the chain of construction is responsible for the consequences of its own negligence.⁶⁵

On August 1, 2013, a significant amendment was made to Minn. Stat. § 337.05, subd. 1 – governing indemnification and risk-shifting insurance in construction contracts. The pre-amendment version of Minn. Stat. § 337.05, subd. 1 created an exception to this general prohibition by stating that “agreements whereby a promisor agrees to provide specific insurance coverage for the benefit of others” are valid,⁶⁶ thus allowing contracting parties to procure insurance benefiting each other. The newly amended version of § 337.05, subd. 1 now expressly bars “provision[s] that require[s] a party to provide insurance coverage to one or more other parties, including third parties, for the negligence or intentional acts or omissions of any of those other parties, including third parties” As a result, any additional insurance coverage provisions should be limited to the promisor's negligence or intentional acts to ensure enforceability.⁶⁷

Next, Minn. Stat. § 337.05, subd. 2 provides that a party who was required to purchase specific insurance and fails to do so will be obligated to indemnify the promisee to the extent of the specified insurance.⁶⁸ If the specific insurance would not have provided coverage for the damages alleged, no claim for indemnification exists.⁶⁹ Consequently, if the subcontractor agrees to procure insurance only to cover its own negligence, an indemnification provision in a contract requiring a subcontractor to indemnify a general contractor for its own negligence or the negligence of others is unenforceable.⁷⁰

Under Minn. Stat. § 337.05, subd. 3, indemnification is not available under a contractual agreement to provide insurance if the specified insurance was: (1) not reasonably available in the market; and (2) the promisor specifically informed the other party to insure itself before signing the contract or the contract was signed subject to a written exception to the unavailable insurance.

Finally, under Minn. Stat. § 337.05, subd. 5, the promisor's obligation to provide the specified insurance is not waived by the promisee's: (1) failure to require or insist upon certificates or other evidence of insurance; or (2) the acceptance of a certificate or other evidence of insurance showing a variance from the specified coverage.

VII. CONTINGENT PAYMENT AGREEMENTS

The existence of contingent payment agreements between general contractors and subcontractors is almost standard in construction contracts. Generally speaking, these contingency provisions are known as “pay-when-paid” or “pay-if-paid” clauses. Pay-when-paid clauses provide that the subcontractors are paid when the general contractor, or surety company, is paid by the owner, while pay-if-paid provisions provide less assurance to the subcontractors and can work to shift the burden of nonpayment by owner.

Under Minnesota law, both types of contingent payment agreements are enforceable. However, when the clause is ambiguous it will be interpreted as a pay-when-paid contingency provision.⁷¹ This is because Minnesota courts have adopted the rule that “court[s] will not construe a subcontract to require payment to the general contractor as a condition precedent to payment to the subcontractor, absent unequivocal, unambiguous language to that effect.”⁷²

It should also be noted that Minnesota courts have not considered the validity of “no damage for delay” provisions, but they are statutorily unenforceable as to public works contracts.⁷³

VIII. SCOPE OF DAMAGE RECOVERY

A. Personal Injury Damages vs. Construction Defect Damages

In an action for damages caused by personal injury in Minnesota, particularly in negligence cases, the rule “is that one who commits a tort is liable for all the proximate consequences thereof. The test of the extent of liability is in causation and not in probability or foreseeability. The measure of recovery in each damage case depends upon its particular facts.”⁷⁴ This standard allows the fact-finder in a particular case a great deal of latitude in determining the appropriate measure of damages based upon the circumstances involved.

In a construction defect case (not governed by statutory warranties), the measure of damages is generally “the cost of making the work conform to the contract.”⁷⁵ To achieve this standard, Minnesota courts use “either the cost of reconstruction in accordance with the contract, if this is possible without unreasonable economic waste, or the difference in the value of the building as contracted for and the value as actually built, if reconstruction would constitute unreasonable waste.”⁷⁶

Damages for defects in residential construction that violate Minnesota’s statutory warranties are governed by statute. Section 327A.05 of Minnesota Statutes limits these damages to “the amount necessary to remedy the defect or breach” or “the difference between the value of the dwelling without the defect and the value of the dwelling with the defect.”⁷⁷

B. Attorneys’ Fees Shifting and Limitations on Recovery

Attorneys’ fees are available through contract, or by statute if a party acts in bad faith, and certain third-party practice.⁷⁸

C. Consequential Damages

Consequential damages are recoverable under a breach of contract claim in Minnesota.⁷⁹ Consequential damages are defined as damages naturally flowing from a contractual breach or that were reasonably contemplated as probable at the time of contract formation.⁸⁰ These damages can include expenses due to a defendant’s failure to perform in a workmanlike manner, costs to settle with the owner for a subcontractor’s breach, excess costs, loss of use, and lost profits to a reasonable certainty.⁸¹

D. Delay and Disruption Damages

Delay and disruption damages may be calculated from the reasonable value of work done, including actual costs, overhead, and profits based on the bid price (i.e., total cost method).⁸² Escalation damages, arising where material and labor costs increase as well as idle equipment costs from delay or shutdown, are also collectable.⁸³

E. Economic Loss Doctrine

The economic loss doctrine in Minnesota is codified in Minn. Stat. § 604.10 and applies to claims specified in Minn. Stat. § 604.101. Construction contracts can be treated as a commercial sale of goods unless predominantly for services.⁸⁴ However, in actions for property damages arising from a sale of goods between parties not “merchants in goods of the kind,” recovery under negligence and strict liability theories is possible.⁸⁵

F. Interest

In Minnesota, claims collect simple interest on an annual basis at an established rate from the date the lawsuit is commenced.⁸⁶ The interest rate on awards in excess of \$50,000 is statutorily set at ten percent (10%).⁸⁷ For judgments less than \$50,000, the annual interest rate is set on an annual basis.⁸⁸ This rate is set at four percent (4%) for 2019.⁸⁹

G. Punitive Damages

A party claiming breach of contract is generally not entitled to punitive damages unless the breach constitutes an independent tort.⁹⁰ However, punitive damages are sometimes available for intentional property damage.⁹¹ In such instances, the complaint should not seek punitive damages and the plaintiff should later make a motion to amend the pleadings to claim punitive damages.⁹²

H. Liquidated Damages

In Minnesota, liquidated damages may only be recovered by contract. Courts look to the language in the contract itself, and the facts and circumstances under which the contract was made to determine whether a liquidated damages provision is enforceable.⁹³ “Although prima facie valid, a liquidated damages provision is enforceable only where damages are not readily ascertainable and where the amount fixed is reasonable in light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances.”⁹⁴

IX. CASE LAW AND LEGISLATION UPDATE

On May 8, 2018, Governor Mark Dayton signed HF No. 2743 into law and thereby modified Minn. Stat. §541.051, which establishes the statute of limitations for claims relating to injuries to real property. The amendment to Minn. Stat. §541.051 clarified that the statute of limitations cannot accrue until “substantial completion, termination or abandonment of the construction or the improvement to real property” has occurred.

The change effectively served to reverse the Supreme Court of Minnesota’s ruling in *328 Barry Avenue, LLC v. Nolan Properties Group, LLC*, 871 N.W.2d 745 (Minn. 2015). In *328 Barry Avenue*, the Court considered the statute of limitations for causes of action “arising out of the

defective and unsafe condition of an improvement to real property” under Minn. Stat. § 541.051, subd. 1, and whether it required construction be substantially complete to start the running of the statute of limitations. The Court affirmed the lower court’s decision that “substantial completion” was unnecessary to trigger the running of the statute of limitation, but reversed the lower court’s finding that the statute of limitations could be determined as a matter of law based upon the facts in the record. As a result, the Court remanded the action for further proceedings.

Pursuant HF No. 2743 and the amendments to Minn. Stat. §541.051, the two-year statute of limitations for property damage does not begin to run, at its earliest, until the project in question has reached substantial completion. Once substantial completion has occurred, the limitations period begins to run upon the claimant’s discovery of its injury, or when it reasonably should have become aware of its injury. While most contractors and owners assumed this was the law prior to the Court’s decision in *328 Berry Avenue*, the amendment to Minn. Stat. §541.051 confirms that the limitations period cannot begin to accrue (at its earliest) until after substantial completion of the project.

¹ For contractors, notice is required in the written contract for services or, if no written agreement is entered into, by a separate document delivered personally or by certified mail within ten (10) days of the work of improvement being agreed upon. Minn. Stat. § 514.011, Subd. 1 (2018). For subcontractors and material suppliers, notice is due within 45 days of first providing work or supplies to the property. *Id.* at Subd. 2.

² See Minn. Stat. § 514.011, Subd. 4a-4c (2018).

³ See Minn. Stat. § 514.011, Subd. 1-2 (2018).

⁴ The statement must be personally served or sent by certified mail to the owner or party who entered into the contract. Minn. Stat. § 514.08, Subd. 2 (2018).

⁵ Minn. Stat. § 514.08, Subd. 1 (2018).

⁶ See *Kahle v. McClary*, 96 N.W.2d 243, 246 (Minn. 1959) (although *de minimus* operations performed for the sole purpose of extending the time for the lien and the work is otherwise substantially completed will not allow for lien revival).

⁷ Minn. Stat. § 514.12, Subd. 3 (2018).

⁸ Minn. Stat. § 514.10 (2018); see also *Lyman Lumber Co. v. Cornerstone Const., Inc.*, 487 N.W.2d 251 (Minn. Ct. App. 1992) (further clarifying what amount of attorneys’ fees are recoverable in a mechanic’s lien foreclosure action).

⁹ *Chicago Title Ins. Co. v. Resolution Trust Corp.*, 53 F.3d 899, 902 (8th Cir. 1995) (applying Minnesota law).

¹⁰ Although Minnesota Uniform Conveyancing Blank Form 40.5.1 is often used as a means of receipt and waiver of mechanic’s liens rights.

¹¹ *Sussel Co. v. First Fed. Sav. & Loan Ass’n of St. Paul*, 232 N.W.2d 88, 89 (Minn. 1975) (holding that “a lien waiver which ‘waives all rights acquired to date’ does not waive rights acquired subsequent to the execution of the waiver”).

¹² Minn. Stat. § 514.12, Subd. 3 (2018).

¹³ *GME Consultants, Inc. v. Oak Grove Development, Inc.*, 515 N.W.2d 74, 76 (Minn. Ct. App. 1994) (discussing the public policy exemption and its aim to protect the general public).

¹⁴ *Comstock & Davis, Inc. v. City of Eden Prairie*, 557 N.W.2d 213, 215 (Minn. Ct. App. 1997).

¹⁵ *Id.* (holding that municipally owned property devoted to economic development was not exempt from attachment of a mechanic’s lien because it was to be devoted exclusively to private purposes); *GME Consultants, Inc.*, 515 N.W.2d 74.

¹⁶ *Green Elec. Sys., Inc. v. Metro. Airports Comm’n*, 486 N.W.2d 819, 822 (Minn. Ct. App. 1992).

¹⁷ Minn. Stat. § 574.26 (2018).

¹⁸ Minn. Stat. § 574.31, Subd. 2 (2018).

¹⁹ Minn. Stat. § 574.31, Subd. 2(c) (2018).

²⁰ Minn. Stat. § 574.31, Subd. 2(d) (2018).

²¹ Minn. Stat. § 574.08 (2018).

²² The distinction between a limitations and repose period is important. Critically, “. . . a statute of limitations limits the time within which a party can pursue a remedy, whereas a statute of repose limits the time within

which a party can acquire a cause of action.” *Weston v. McWilliams Assoc., Inc.*, 716 N.W.2d 634, 641 (Minn. 2006).

23 Minn. Stat. § 541.051, Subd. 1(b).

24 *Id.* at Subd. 1(c).

25 *See, e.g., Hyland Hill North Condo. Ass’n v. Hyland Hill Co.*, 549 N.W.2d 617, 621 (Minn. 1996). (overruled on other grounds) (discovery of injury was when inspector first noted roof needed repairs rather than the later determination that the entire roof needed to be replaced); *Pamida, Inc. v. Christenson Building Corp.*, 285 F.3d 701 (8th Cir. 2003) (applying Minnesota law) (retailer discovered significant cracking in concrete floor along north and south sides of store in 1991 and 1996; court held that “[t]hough greater damage materialized in 1997 and 1998, the two-year limitations period in § 541.051, subd. 1(a), does not await a leisurely discovery of the full details of the injury”) (internal citations omitted).

26 *Id.*

27 *Greenbrier Village Condominium Two Ass’n, Inc. v. Keller Inv., Inc.*, 409 N.W.2d 519, 524 (Minn. Ct. App. 1987).

28 *Appletree Square One Limited v. W.R. Grace & Co.*, 815 F.Supp. 1266, 1279 (D. Minn. 1993) (applying and interpreting Minnesota and 8th Circuit law); *see also Greenbrier Village*, 409 N.W.2d at 524 (limitation period began when plaintiffs discovered only two of eight defects and merely “suspected underlying structural deficiencies”).

29 *Appletree Square*, 815 F.Supp. at 1279.

30 Minn. Stat. § 541.051, Subd. 4 (2018).

31 Minn. Stat. § 327A.01, Subds. 6, 8 (2018). These warranties run with the dwelling and extend to subsequent purchasers, however, the warranty is not reset when a subsequent purchaser occupies or takes title to the property.

32 Minn. Stat. § 541.051, Subd. 4. *See, e.g., Vlahos v. R & I Const. of Bloomington, Inc.*, 676 N.W.2d 672 (Minn. 2004) (discussing the 10-year warranty applicable to “major construction defects”).

33 Minn. Stat. § 541.051, Subd. 2.

34 *Id.* at Subd. 1(b), 2 (2007).

35 *Id.* at Subd. 1(b).

36 Contribution and indemnity claims accrue “upon the earlier of commencement of the action against the party seeking contribution or indemnity, or payment of a final judgment, arbitration award, or settlement arising out of the defective and unsafe condition.” Minn. Stat. § 541.051, Subd. 1(c)(2018).

37 *Id.* at Subd. 4.

38 Minn. Stat. § 327A.01, Subd. 8 (2018).

39 Once appropriate notice has been provided by the homeowner, the statute of limitations is tolled until the latest of: (1) the date of completion of a home warranty dispute resolution process under Minnesota Statutes § 327A.051; or (2) 180 days.

40 Minn. Stat. § 327A.03 (a) (2018). The “actual knowledge” exception was added to the statute by the Minnesota Legislature in 2010.

41 Minn. Stat. § 327A.02, Subd. 4(a) (2018).

42 *Id.* at Subd. 4(a), 5(a).

43 *Id.* at Subd. 5(c).

44 *Id.* at Subd. 4(c).

45 *Id.* at Subd. 5(c).

46 *Id.* at Subd. 7.

47 Minn. Stat. § 327A.03 (a).

48 *Independent School Dist. 775 v. Holm Bros. Plumbing and Heating, Inc.*, 660 N.W.2d 146, 150 (Minn. Ct. App. 2003).

49 *Singsaas v. Diederich*, 238 N.W.2d 878, 880-81 (Minn. 1976).

50 *Jenoff, Inc. v. New Hampshire Ins. Co.*, 558 N.W.2d 260, 261-62 (Minn. 1997).

51 *Kootenia Homes, Inc. vs. Federated Mutual Insurance Co.*, No. A05-278, 2006 WL 224162, *6 (Minn. Ct. App., Jan. 31, 2006), *pet. for rev. denied* (Minn., Apr. 18, 2006).

52 *Id.*

53 *Id.*

54 *Id.*

55 *Wooddale Builders, Inc. v. Maryland Cas. Co.*, 722 N.W.2d 283, 294 (Minn. 2006).

56 *Tony Eiden Co. v. State Auto Property and Cas. Ins. Co.*, No. A07-2222, 2009 WL 233883, *4 (Minn. Ct. App.,
 57 Jan. 26, 2009) (citing *In re Silicone Implant Ins. Coverage Litig.*, 667 N.W.2d 405, 421-22 (Minn. 2003)).
 58 *Id.*
 59 *Id.*
 60 *Wooddale*, 722 N.W.2d at 292-301.
 61 *Id.* at 301-04.
 62 *See Holmes v. Watson-Forsberg Co.*, 488 N.W.2d 473 (Minn. 1992).
 63 *See Engineering & Construction Innovations Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695 (Minn. 2013).
 64 Minn. Stat. § 337.01 *et. seq.*
 65 Minn. Stat. § 337.01 contains the definition section of the statute and specifically defines “building and
 construction contract,” “indemnification agreement,” and “promise.” *See* Minn. Stat. § 337.01 (2010). *See also*
Katzner v. Kelleher Canst., 545 N.W.2d 378 (Minn. 1996) (holding that an attempt to indemnify a party in a
 construction contract from liability for its own actions is unenforceable).
 66 *Seward Hous. Corp. v. Conroy Bros.*, 573 N.W.2d 364, 366 (Minn. 1998).
 67 *See also Van Vickie v. C. W. Scheurer & Sons, Inc.*, 556 N.W.2d 238, 241-42 (Minn. Ct. App. 1996).
 Although it should be noted that Minn. Stat. 337.05, Subd. 1 (c) reads as follows:
 Paragraph (b) does not affect the validity of a provision that requires a party to provide or obtain workers
 compensation insurance, construction performance or payment bonds, or project-specific insurance, including,
 without limitation, builder’s risk policies or owner or contractor-controlled insurance programs or policies. The
 term “project-specific insurance” is not defined or a term of art, and until Minnesota courts determine its
 meaning some may argue that the term refers to CGL policies for a given project. *See also, Yang v. Voyagaire*
Houseboats, Inc., 701 N.W.2d 783 (Minn. 2005) (noting that it is against public policy for an individual to be
 required to indemnify a company for the company’s own negligence resulting in injuries to others).
 68 *See also Van Vickie*, 556 N.W.2d at 241-42.
 69 *Seward.*, 573 N.W.2d 364.
 70 *Katzner*, 545 N.W.2d 378.
 71 *Mrozik Constr., Inc. v. Lovering Assocs., Inc.*, 461 N.W.2d 49, 52 (Minn. App. Ct. 1990) (holding that
 ambiguous language will be interpreted to “mean merely that the timing of payment to the subcontractor must
 not be delayed after the general contractor receives funds from the owner”).
 72 *Ryan Contracting, Inc. v. Brandt*, No. C4-97-138, 1997 WL 526303 (Minn. App. Ct. 1984); *see also Mrozik*
Constr., Inc., 461 N.W.2d at 52.
 73 *See* Minn. Stat. § 15.411.
 74 *Marlowe v. Gunderson*, 109 N.W.2d 323, 326 (Minn. 1961) (citing 5 Dunnell, Dig. (3 ed.) § 2570).
 75 *Eveleth v. Ruble*, 225 N.W.2d 521, 528 (Minn. 1974) (quoting *H. P. Droher and Sons v. Toushin*, 85 N.W.2d
 273 (Minn. 1957)).
 76 *Northern Petrochemical Co. v. Thorsen & Thorshov, Inc.*, 211 N.W.2d 159, 165 (Minn. 1973) (citing *Marshall*
v. Marvin H. Anderson Const. Co., 167 N.W.2d 724 (Minn. 1969); *H. P. Droher & Sons v. Toushin*, 85 N.W.2d
 273 (Minn. 1957); Restatement of Contracts § 346).
 77 Minn. Stat. § 327A.05 Subd. 1.
 78 *See Barr/Nelson, Inc. v. Tonto’s Inc.*, 336 N.W.2d 46, 53 (Minn. 1983); *Material Movers, Inc. v. Hill*, 316
 N.W.2d 13, 18 (Minn. 1982); *Prior Lake State Bank v. Groth*, 108 N.W.2d 619, 622 (Minn. 1961).
 79 *Les Jones Roofing, Inc. v. City of Minneapolis*, 373 N.W.2d 807 (Minn. Ct. App. 1985).
 80 *Imdieke v. Blenda-Life, Inc.*, 363 N.W.2d 121, 125 (Minn. Ct. App. 1985).
 81 *Northern Petrochem. Co. v. Thorsen & Thorshov, Inc.*, 211 N.W.2d 159, 166 (Minn. 1973); *McCarthy Well Co.*
v. Aladdin Elec. Co., 364 N.W.2d 441, 445 (Minn. Ct. App. 1985).
 82 *Prichard Bros., Inc. v. Grady Co.*, 436 N.W.2d 460, 468 (Minn. Ct. App. 1989).
 83 *Eric A. Carlstrom Const. Co. v. Ind. School Dist. No. 77*, 256 N.W.2d 479, 484 (Minn. 1997); *McCree & Co. v.*
State, 91 N.W.2d 713, 726 (Minn. 1958).
 84 *Valley Farmers’ Elev. v. Lindsay Bros. Co.*, 398 N.W.2d 553, 556 (Minn. 1987), *overruled on other grounds,*
Hapka v. Panquin Farms, 458 N.W.2d 683 (Minn. 1990).
 85 *Smith v. Den-Tal-Ez, Inc.*, 491 N.W.2d 11, 17 (Minn. 1992).
 86 Minn. Stat. § 549.09 (2018).
 87 *Id.* at Subd. 1(c)(2).
 88 *Id.* at Subd. 1(c)(1). This interest rate also applies to any and all awards for or against the state or a political
 subdivision of the state. *Id.*

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- ⁸⁹ The Minnesota State Court Administrator’s office sets this interest rate according to the formula stated in Minn. Stat. § 549.09, Subd. 1(c)(1). The rate can be found at:
http://www.mncourts.gov/mncourtsgov/media/scao_library/Interest-Rates-on-State-Court-Judgements.pdf
- ⁹⁰ *Barr/Nelson, Inc.*, 336 N.W.2d at 52.
- ⁹¹ *Jensen v. Walsh*, 623 N.W.2d 247, 250 (Minn. 2001).
- ⁹² The motion must allege the applicable legal basis under Minn. Stat. § 549.20 or other law for awarding punitive damages. Minn. Stat. § 549.191 (2013). Under Minn. Stat. § 549.20, subd. 1(a), punitive damages shall be allowed “only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.”
- ⁹³ *E.D.S. Const. Co. v. N. End Health Ctr., Inc.*, 412 N.W.2d 783, 786 (Minn. Ct. App. 1987).
- ⁹⁴ *Id.* (citing *Gorco Construction Co. v. Stein*, 99 N.W.2d 69, 74 (Minn. 1959)).