

Introduced by

Representatives Koppelman, Dietrich, Haas

Senators Espegard, Krebsbach, Nething

1 A BILL for an Act to provide warranties for newly constructed dwellings and home
2 improvements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. Definitions.** In this Act, unless the context otherwise requires:

- 5 1. "Building standards" means the national association of home builders "residential
6 construction performance guidelines".
- 7 2. "Dwelling" means a new building, not previously occupied, constructed for the
8 purpose of habitation, but does not include an appurtenant recreational facility,
9 detached garage, driveway, walkway, patio, boundary wall, retaining wall not
10 necessary for the structural stability of the dwelling, landscaping, fence,
11 nonpermanent construction material, offsite improvement, or other similar item.
- 12 3. "Home improvement" means the repairing, remodeling, altering, converting, or
13 modernizing of, or adding to a residential building, but does not include an
14 improvement to an appurtenant recreational facility, detached garage, driveway,
15 walkway, patio, boundary wall, retaining wall not necessary for the structural
16 stability of the building, landscaping, fence, nonpermanent construction material,
17 offsite improvement, or other similar item.
- 18 4. "Home improvement contractor" means a person engaged in the business of home
19 improvement and who holds out to the public as having knowledge or skill peculiar
20 to the business of home improvement.
- 21 5. "Initial vendee" means a person who first contracts to purchase a dwelling from a
22 vendor for the purpose of habitation and not for resale in the ordinary course of
23 trade.

6. "Major construction defect" means actual damage to the load-bearing portion of a dwelling or home improvement, including damage due to subsidence, expansion, or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes. The term does not include damage due to movement of the soil caused by flood, earthquake, or other natural disaster.
7. "Owner" means any person who owns a residential building on which home improvement work is performed, including any subsequent owner of the residential building.
8. "Vendee" means a purchaser of a dwelling, including the initial vendee and any subsequent purchasers.
9. "Vendor" means any person that constructs dwellings for the purpose of sale.
10. "Warranty date" means the date on which the initial vendee takes legal or equitable title in a dwelling. For a home improvement, the warranty date is the date on which the home improvement work was completed.

SECTION 2. Warranties.

1. In every sale of a completed dwelling, and in every contract for the sale of a dwelling to be completed, the vendor shall warrant to the vendee that:
 - a. During the one-year period after the warranty date, the dwelling must be free from any defect caused by faulty workmanship and any defective material due to noncompliance with a building standard;
 - b. During the two-year period after the warranty date, the dwelling must be free from any defect caused by the faulty installation of a plumbing, electrical, heating, or cooling system due to noncompliance with a building standard; and
 - c. During the ten-year period after the warranty date, the dwelling must be free from any major construction defect due to noncompliance with a building standard.
2. The warranties provided in this section survive the passing of legal or equitable title in the dwelling to the vendee.

3. a. In a sale or in a contract for a home improvement involving a major structural change or addition to a residential building, the home improvement contractor shall warrant to the owner that:

(1) During the one-year period after the warranty date, the home improvement must be free from any defect caused by faulty workmanship and any defective material due to noncompliance with a building standard; and

(2) During the ten-year period after the warranty date, the home improvement must be free from any major construction defect due to noncompliance with a building standard.

b. In a sale or in a contract for the sale of a home improvement involving the installation of a plumbing, electrical, heating, or cooling system, the home improvement contractor shall warrant to the owner that, during the two-year period after the warranty date, the home improvement must be free from any defect caused by the faulty installation of the system due to noncompliance with a building standard.

c. In a sale or in a contract for the sale of a home improvement not covered by subdivision a or b, the home improvement contractor shall warrant to the owner that, during the one-year period after the warranty date, the home improvement must be free from any defect caused by faulty workmanship or any defective material due to noncompliance with a building standard.

SECTION 3. Exclusions. The liability of a vendor or home improvement contractor under this Act is limited to the specific items set forth in this Act and does not extend to any of the following:

1. Loss or damage not reported by the vendee or the owner to the vendor or the home improvement contractor in writing within six months after the vendee or the owner discovers or should have discovered the loss or damage.
2. Loss or damage caused by a defect in design, installation, or a material that the vendee or the owner supplied, installed, or directed to be installed.
3. Secondary loss or damage such as personal injury or property damage.
4. Loss or damage from normal wear and tear.

5. Loss or damage from normal shrinkage caused by drying of the dwelling or the home improvement within the tolerance of a building standard.
6. Loss or damage from dampness and condensation due to insufficient ventilation after occupancy.
7. Loss or damage from negligence, improper maintenance, or alteration of the dwelling or the home improvement by a person other than the vendor or the home improvement contractor.
8. Loss or damage from a change in grading of the ground around the dwelling or the home improvement by a person other than the vendor or the home improvement contractor.
9. Landscaping or insect loss or damage.
10. Loss or damage from the failure to maintain the dwelling or the home improvement in good repair.
11. Loss or damage that the vendee or the owner, whenever feasible, has not taken timely action to minimize.
12. Loss or damage that occurs after the dwelling or the home improvement is no longer used primarily as a residence.
13. Accidental loss or damage usually described as acts of God, including damage caused by an aircraft or vehicle, a falling tree, fire, explosion, smoke, water escape, windstorm, hail, lightning, flood, or earthquake, except when the loss or damage is caused by failure to comply with a building standard.
14. Loss or damage from soil movement which is compensated by legislation or covered by insurance.
15. Loss or damage due to a soil condition where the construction is done upon land owned by the vendee or the owner and obtained by the vendee or owner from a source independent of the vendor or the home improvement contractor.
16. Loss or damage due to a defect in the existing structure or a system not caused by the home improvement.

SECTION 4. Waiver and modification limited.

- 1 1. Except as provided in subsections 2 and 3, the provisions of this Act may not be
2 waived or modified. An agreement to waive or modify the provisions of this Act,
3 except as provided in subsections 2 and 3, is void.
- 4 2. After a contract for the sale of a dwelling is entered between a vendor and a
5 vendee or a contract for home improvement work is entered between a home
6 improvement contractor and an owner, any of the warranties under section 2 of this
7 Act may be excluded or modified only by a written instrument, printed in boldface
8 type of a minimum size of ten points, which is signed by the vendee or the owner
9 and which sets forth in detail the warranty involved, the consent of the vendee or
10 the owner, and the terms of the new agreement. An exclusion or modification is
11 not effective unless the vendor or the home improvement contractor provides a
12 substitute express warranty offering substantially the same protection to the
13 vendee or the owner as the warranties under section 2 of this Act.
- 14 3. a. If a major construction defect is discovered before the sale of a dwelling, the
15 warranty under subdivision c of subsection 1 of section 2 of this Act may be
16 waived for the defect identified in the waiver instrument, after full oral
17 disclosure of the specific defect, by an instrument that includes:
18 (1) A description of the specific defect;
19 (2) An analysis of the difference between the value of the dwelling without
20 the defect and the value of the dwelling with the defect, as determined
21 and attested to by an independent appraiser, contractor, insurance
22 adjuster, engineer, or any other similarly knowledgeable individual
23 selected by the vendee;
24 (3) The amount of price reduction;
25 (4) The date the construction was completed;
26 (5) The legal description of the dwelling;
27 (6) A statement indicating the consent of the vendee to the waiver; and
28 (7) The signatures of the vendee, the vendor, and two witnesses.
- 29 b. A waiver agreement under this subsection may not apply to more than one
30 major construction defect in a dwelling. The waiver is not effective unless
31 filed for recording with the county recorder.

1 **SECTION 5. Required notice.** Before undertaking any repair or instituting any action
2 for breach of warranty, the vendee or owner shall give the vendor written notice by registered
3 mail, within six months after knowledge of the defect, advising the vendor of any defect and
4 giving the vendor a reasonable time to comply with this chapter.

5 **SECTION 6. Remedies.**

- 6 1. Subject to the notice requirement in section 5 of this Act, a vendee has a cause of
7 action against a vendor for damages arising out of a breach of warranty under
8 subsection 1 of section 2 of this Act. The damages are limited to the lesser of:
9 a. The amount necessary to remedy the defect or breach; or
10 b. The difference between the value of the dwelling without the defect and the
11 value of the dwelling with the defect.
- 12 2. An owner has a cause of action against a home improvement contractor for
13 specific performance or for damages arising out of a breach of warranty under
14 subsection 3 of section 2 of this Act. The damages are limited to the amount
15 necessary to remedy the defect or breach.

16 **SECTION 7. Other warranties.** Unless otherwise agreed by the parties, the warranties
17 provided in section 2 of this Act are the exclusive remedies available to a vendee in any cause
18 of action brought against a vendor or home improvement contractor for breach of warranties
19 imposed by this chapter. The remedies provided in section 6 of this Act do not limit any remedy
20 in an action not predicated upon breach of the warranties provided in section 2 of this Act.

21 **SECTION 8. Limitations.** Notwithstanding any other provision of this chapter:

- 22 1. The terms of a home improvement warranty required under this Act commence
23 upon completion of the home improvement and the term may not be required to be
24 renewed or extended if the home improvement contractor performs additional
25 improvements required by warranty;
- 26 2. A home improvement warranty required under this Act does not include a product
27 or material installed which is covered by an implied or written warranty; and
- 28 3. A home improvement warranty required under this Act is intended to be an implied
29 warranty that imposes an affirmative obligation upon a home improvement
30 contractor, and this Act does not require that a written warranty instrument be
31 created and conveyed to the owner.