

## SPECIAL POINTS OF INTEREST:

- Homeowner Warranty Statute Revised—Page 1
- Lien Rights for Engineers and Architects Examined—Page 1
- Minnesota Common Interest Act Changes—Page 2
- Contractor's DBE Efforts Sufficient—Page 2
- Insurance Claim Disputes—Page 3
- Hammargren & Meyer News—Page 4

## Homeowner Warranty Statute Revised

### New Rights, New Rules, New Dispute Resolution

Effective January 1, 2011, many changes to Minnesota's homeowner warranty statute go into effect. The changes will apply to all claims commenced after January 1 involving breaches by a builder or any home improvement contractor of their warranty obligations.

The new law expands homeowner rights for those who can prove actual notice of their claim was given to their builder and requires parties in some circumstances to engage in a non-binding dispute resolution process before a lawsuit can be commenced.

Under the current version of the home warranty statute, a homeowner who called or met with their builder to report a problem covered under warranty could face dismissal of their claims for failure to provide written notice. The new law allows the claims to proceed if the homeowner can prove the builder had actual notice within six months of the discovery of the loss or damage.

Once the notice is given, the builder/vendor or home improvement contractor has 30 days to inspect the property and fifteen days from the date of inspection to make a written offer to repair if they intend to do so. If no inspection occurs or if a written offer to repair is not provided, the homeowner can then pursue legal action.

If a written offer to repair is received, the owner and vendor/home improvement contractor are to try to reach an agreement on the scope of repair. The owner may solicit proposals from other contractors to help in this process.

If repairs are agreed upon, the vendor or home improvement contractor must perform them, provide written notice of completion and advise the owner they may have warranty rights.

If no agreement can be reached a new, mandatory dispute resolution process must be followed. (*cont'd p. 3*).

## Lien Rights For Engineers and Architects Examined



Speaking to the American Council of Engineering Companies of Minnesota, Hammargren & Meyer attorney Jason Tarasek urged engineers, architects and other providers of "non-visible" work on construction projects to understand how to protect their lien rights to increase their chances of getting paid. Because liens are a secured interest in the underlying property and allow for the recovery of attorney fees and interest, they can

provide a powerful incentive for the non-paying party to take the claim seriously.

Due to the time-sensitive nature of liens, Mr. Tarasek urged service providers to consult with legal counsel to make sure their rights are fully protected. Most importantly, a statement of contract should be recorded in the county records as soon as the provider starts work to establish priority.

(*cont'd page 3*)

# Contractor's DBE Efforts Sufficient

Federal law requires the recipients of federally funded highway projects to only award contracts to bidders that can establish that they met the Disadvantaged Business Enterprise ("DBE") contract goals or, alternatively, that they made "good faith efforts" to meet the DBE contract goal.

Good faith efforts are those employed by the bidder which demonstrate that the bidder is actively and aggressively trying to obtain DBE participation. Mere *pro forma* efforts are not considered good faith efforts.

With significant dollars at stake, a

contractor that believes that it met the good faith effort standard and that its bid was improperly denied may seek a reconsideration hearing at which it may be represented by legal counsel.

In one such recent hearing, Hammargren and Meyer and its general contractor client, overturned the denial of a bid by demonstrating that it had met the good faith efforts by, among other things, emailing numerous DBE contractors, utilizing and demonstrating justifiable reliance upon previous evaluations of its DBE solicitation efforts, justifying its decision not to accept an unreasonably high bid

and by demonstrating that it met or exceeded the average DBE participation obtained by other bidders.

The decision provides some guidance on good faith efforts by suggesting that individual, project-specific solicitation of DBE participation is preferable over mass emails and encourages all general contractors to maintain a record or log of all such communications to demonstrate good faith.

If you have any questions about your bids, denials or DBE efforts, please contact the firm.



# Minnesota Common Interest Ownership Act Revised

In addition to the changes in the statutory warranty laws, the 2010 legislative session brought with it important changes to the Minnesota Common Interest Ownership Act (MCIOA) which applies to homeowners living in a condominium or townhome environment. The revisions marked the first large-scale overhaul of MCIOA since its inception in the 1990s.

A number of the changes became effective on August 1, 2010, while

others go into effect on January 1, 2012. To a large extent, the changes address the practical realities and challenges common interest communities have faced over the last sixteen years with respect to matters such as reserve funding, insurance coverage, assessment for common expenses, and resale disclosure certificates.

All association boards and managers should be aware of the changes and their implications for the associations that they run. If

you have questions or would like more information, please contact the attorneys at Hammargren & Meyer, P.A.



# Seasons Greetings

## Homeowner Warranty Cont'd

(continued from page 1)

The dispute must be submitted to non-binding resolution with a neutral evaluator chosen from a list which will be maintained at the Department of Labor. Within 30 days of the selection of the neutral, a conference will be held to determine the scope of repair at which evidence may be presented. The neutral will then issue his or her findings as to the scope of repair necessary.

The statute imposes a number of deadlines on the homeowner prior to the hearing. In order to be fully compliant, a homeowner would be well-served to seek legal counsel to understand their rights and responsibilities under the new law.

A potential downside for homeowners is that since the dispute process is non-binding, either side may choose to disregard the finding. This may result in further delay as litigation can not be started

until the process is concluded. Experts anticipate that it will also add a layer of cost to homeowners who will have the burden to present appropriate testimony and expert opinions in support of their position as to the proper scope of repair.

For further information, please contact the firm.

## Insurance Claim Disputes



Paying for insurance coverage on your home, business or commercial property is one thing, actually having a claim properly evaluated is another. When a dispute arises between a policy holder and the insurance company as to the value of a loss, most policies call for an appraisal process to determine the value of the loss.

Within 20 days of a written demand for appraisal, each party must select a competent and disinterested appraiser and provide notice to the other side of who is selected.

The appraisers then select a competent and disinterested umpire.

After an informal hearing where each party presents evidence as to value, the appraisers try to reach an agreement. If no agreement can be reached, then the umpire will issue a determination.

If you are in a dispute with your insurer over the value of or coverage for your loss, please contact the firm.

## Lien Rights Cont'd

(continued from page 1)

Mr. Tarasek's advice was recently underscored by the Minnesota Supreme Court in *Riverview Muir Doran, LLC v. JADT Development Group, LLC*. In that case, an architecture firm that failed to record its statement of contract lost its \$350,000 lien right, interest and attorney fees.

Mr. Tarasek recently obtained a judgment in favor of an architecture firm for a \$300,000 lien, substantial legal fee and interest after establishing that the architecture firm's mechanic's lien had priority over a subsequent mortgage.



# Hammargren & Meyer News

Welcome Jason! On November 1, 2010, Jason C. Tarasek joined Hammargren & Meyer. Mr. Tarasek, formally of Best & Flanagan, has been recognized as a "Rising Star" by Minnesota Law & Politics magazine. Mr. Tarasek practices in all areas of commercial litigation with a focus on mechanic's liens and construction defects. Hammargren & Meyer Shareholders Dave Hammargren, Tim Cook and Brenda M. Sauro were recognized by Minnesota Law & Politics as *Super Lawyers* for 2010. Fellow shareholder, Jennifer Thompson was named a *Rising Star* by the publication as was senior associate Patrick Lee-O'Halloran.

Mr. Hammargren co-presented a continuing legal education webinar and also spoke at the MNCLE 2010 Real Estate Institute on the changes to the Minnesota Homeowner Warranty

Statute. He will be addressing the same issues at the December meeting of the Minnesota State Bar Association Construction Law Section. Mr. Hammargren is starting his third year as a member of the Board of Directors of the Minnesota Chapter of the Construction Management Association of America.

Ms. Thompson was also selected as a participant for the *Minnesota Women Lawyers Leadership Project: A Core Development Program for Women Attorneys, 2010-2011* and was elected as the membership director for the National Association of Women in Construction.

Ms. Sauro and Ms. Thompson serve as council members for the Construction Law Section of the Minnesota State Bar Association.

Ms. Adina Bergstrom spoke to prospective attorneys at William Mitchell College of Law about construction law, insurance coverage litigation and developing a practice.

Paul Meyer, a shareholder in the firm and also a professional engineer, has assisted AGC committee members in suggesting changes to Mn/DOT's Proposed 2010 Specifications for Highway Construction.

In case you missed it, we've moved! Our new address is:

3500 American Boulevard West  
Suite 450  
Bloomington, MN 55431

Look for our newly launched website [www.hammarlaw.com](http://www.hammarlaw.com). Coming Soon!



*HAPPY HOLIDAYS FROM HAMMARGREN & MEYER, P.A.!*

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