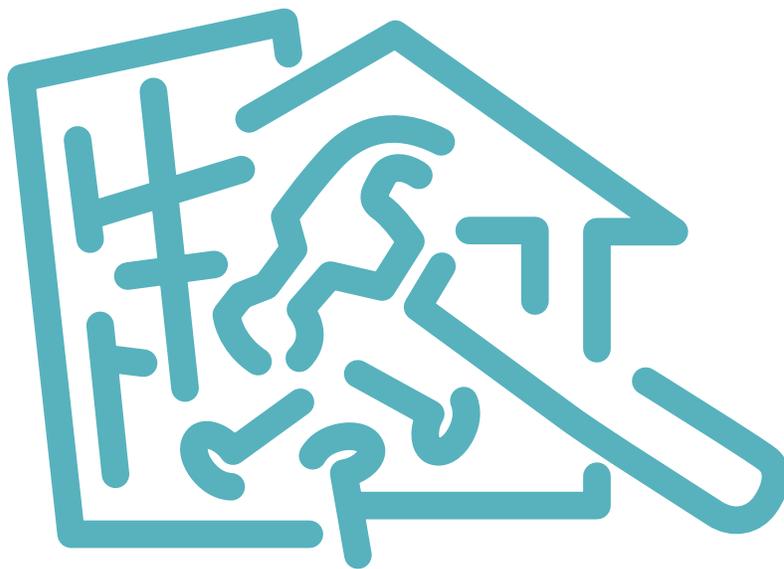


Citizen's Guide to Home Building and Remodeling



**From the Office of
Minnesota Attorney General
Lori Swanson**

www.ag.state.mn.us

CITIZEN'S GUIDE TO HOME BUILDING AND REMODELING

If you are planning to build or have work done on your home, take a moment to first read this handbook.

This handbook will give you guidelines for selecting a contractor and writing a home improvement contract, as well as highlight Minnesota's mechanic's lien law.

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Step One: CHOOSING A CONTRACTOR

Whether you are planning to build, remodel or add on, your home improvement project may require the services of a contractor.

Home improvement projects can easily cost thousands of dollars, making selection of the right contractor very important.

Although most contractors are reputable professionals, there are some who lack necessary skills or business expertise. Less reputable contractors may try to sell you items you don't need, or may not be financially viable should a problem arise.

Research Your Project

The first step to selecting a contractor is to research the project so you will be knowledgeable about what the job involves. Your research should include what has to be done, the best ways to do the work, and the types of materials that may be used and their cost.

You may also wish to contact your local building inspector to find out what building permits you need and what your legal obligations are regarding permits.

In some cases you may discover that you have the expertise to act as your own contractor. Then, you can hire and direct the necessary subcontractors. While this may provide substantial savings, it can also require a substantial commitment on your part. You will need to know exactly what has to be done, when to schedule the various jobs, and you will oversee the subcontractors when they are working on your project. Anything that goes wrong will be your responsibility to resolve.

Get the Names of Several Contractors

If you decide to forego acting as your own contractor, your next step is to get the names of several contractors and obtain bids. Although there is no surefire way to obtain a list of reputable contractors, there are some good sources of information to consult.

Start with friends and neighbors who have undertaken similar projects. Direct experience with a contractor and knowing how he or she performed through a difficult project is often the best recommendation. If your project involves energy conservation, check with your utility company to see if it has a list of contractors with expertise in that area. Hardware, building supply and home improvement stores have ongoing business relationships with many contractors. Their recommendations will tell you what their customers are saying, and may also be a clue as to whether the contractor has a good credit standing with the store. Trade associations can also be a good resource since your satisfaction with a contractor will be a reflection on the industry as a whole.

Once you have obtained the names of several contractors, check with the Minnesota Department of Labor and Industry. This should be done to ensure the legitimacy of the

contractors that you are considering. Your local licensing office may also be a source for information about problem contractors.

Next, contact the Better Business Bureau to find out if any complaints have been filed against a contractor. Also, call one or more of the references provided by a contractor you are considering hiring. Former customers will tell you if they were satisfied with the contractor's work, if any problems arose, and if they would change anything if they had the project to do over again. You may also want to look at work the contractor has done on other homes.

Contact information for both the Minnesota Department of Labor and Industry and the Better Business Bureau appears at the end of this brochure.

Get Bids on Your Job

Next, it is time to get bids on your job. Prior to meeting with each contractor, you should prepare a detailed list of what you envision the scope of work to be, including the types of materials to be used. This will serve as a guide for your discussions with the contractors. This will also minimize any chance of a misunderstanding about what the project entails. Each bid should be similar enough so that you can readily compare them.

When meeting with a contractor, be open to ideas or suggestions about your project. Remember, you are hiring a contractor for the contractor's expertise and any advice you receive can be very valuable. Beware that less reputable contractors may try to sell you items you don't need, or try to persuade you to cut corners and diminish the value of the job so the contractor can submit a lower bid. Emphasize that the contractor must follow state and local building codes.

For any significant home improvement project, you should obtain at least three written bids that detail the scope of the work, the types of materials that will be used, and the total cost of the project. Regardless of the scope of the project, you should never accept a verbal estimate. Be wary of a contractor who says he or she works only on a "cost-plus" or "time and materials" basis.

Carefully Compare Bids

Once you receive the bids, take time to carefully compare them. Here are some tips to keep in mind:

- Be sure each bid includes everything you want. If a bid contains unwanted or unneeded items, keep these in mind to negotiate with the contractor.
- Remember that the bid is the starting point in your negotiations with the contractor and not necessarily the bottom line.
- Keep in mind that the lowest bid may not necessarily be the best bid, and that an unusually low bid may be cause for alarm. In that case, the contractor may not fully understand the project's scope; may be inexperienced and is underestimating the amount of labor and materials required; or may be planning to cut corners by using inferior materials or low-paid, inexperienced workers.

- If you are hiring a contractor who offers “architectural planning” or “structural design,” be sure the contractor is licensed by the Board of Architecture.
- Make sure your contractor has liability insurance. Ask to see a copy of the contractor’s workers’ compensation policy. You may be liable if a worker is injured on your property. Check with your insurance agent to find out whether your homeowner’s insurance will cover you and to what extent.

Licensed Contractors

Residential building contractors, remodelers, and roofers who contract with an owner to build or remodel a house (including buildings that house up to four families) must have a license to operate in Minnesota. But there are exceptions to this rule, including: contractors who only do work in Minneapolis (the city has its own requirements); contractors that make less than \$15,000 annually and obtain a certificate of exemption; specialty contractors that provide only one "special skill"; and homeowners doing work on their own homes. A contractor who does not need a state license may still be required to have a city license. If you have questions about whether a contractor must be licensed, call the Minnesota Department of Labor and Industry.

If you hire an unlicensed contractor, even one that is legally exempt, be aware that you may have less protection if something goes wrong. Unlicensed contractors might not carry liability or property insurance that licensed contractors are required to have; and you will not have access to the Contractor's Recovery Fund if you obtain a judgment against the contractor.

The Contractor's Recovery Fund compensates people who have suffered losses due to a licensed contractor’s fraudulent, deceptive or dishonest practices, misuse of funds, or failure to do the work the contractor was hired to do. All licensed contractors are required to pay into the fund. Beware that nothing may obligate the fund more than \$50,000 per claimant, nor more than \$75,000 per contractor. After December 1st, 2007 these amounts change to \$75,000 maximum per claimant and \$150,000 maximum per contractor (licensee).(For more information, see page 9.)

Beware of Con Artists

Here are some possible tip-offs to “fly-by-night” home improvement scams. Be wary of working with contractors who do the following:

- Arrive in an unmarked truck or van.
- Claim, “We’ve just done a job nearby and have material left over so we can do the job for half the price.”
- Can only provide a post office box address, with no street address (and even a street address should be checked), or a telephone number that is just an answering service.
- Use high pressure sales tactics.
- Refuse to give you a written estimate or contract.
- Request that you obtain any necessary permits.
- Refuse to provide their license number (if they are required to be licensed).
- Require full or substantial payment before work begins.



Step Two: CONSUMER PROTECTIONS

Once you have chosen the best bid, it is time to write the contract. While many homeowners simply sign the bid and let that serve as a contract, the bid or proposal is rarely detailed enough to give you adequate protection should a dispute arise. Many contractors use prepared contract forms, but again, these may not be detailed enough. Remember that the contract can be revised, but only before you sign it.

The contract should be detailed about the kinds of materials to be used and the work to be done. Wherever possible, specify brand names, colors, grades, styles and model numbers. The contract should also include the names of any subcontractors and all material suppliers. Keep in mind that any item not included in the contract can be considered an extra that may end up costing you more.

State law also provides additional consumer protections when you have work done on your home: every contract for home construction or a home improvement project includes a state mandated warranty against defects, and, if something really goes wrong with your project, you may be able to recover money from the Contractor's Recovery Fund.

What to Include in Your Contract



Building Permits and Inspections.

The contractor should obtain the necessary permits and inspections so the contractor will be responsible that the work meets all building codes. If you obtain the permits, you will be responsible.



Starting and completion date.

Delays can and do occur, so a general statement allowing for “reasonable” delays, while establishing an anticipated starting and completion date, is a good idea.



Change order clause.

This is an agreement that the contract cannot be modified without the written consent of both parties. Protect yourself: put major changes in writing.



Schedule of payments.

While a token “good faith” down payment is customary, this should not be more than a small percentage of the total job. Any contractor who insists on a large down payment should be avoided. On the other hand, many contractors are small businesses with the need for cash flow to buy material and pay wages. If this is the case, you might set up a payment schedule that reflects work done to date.



Holdback clause.

This allows you to withhold a final payment until sometime after the job is completed. This allows you time to inspect the job. If there are any problems, this can serve as incentive for the contractor to remedy them.



Cleanup.

This item is often neglected, but it should be considered, particularly if a good deal of debris will be generated.

There are many other items that can be part of your contract, depending on the type and size of the project. If the project involves a large amount of money, it may be in your best interest to have an attorney review the contract for possible problems and to suggest additional provisions for your protection. Most importantly, be sure the contract is written in plain language to help minimize the possibility of misinterpretation.

Home Warranties

Minnesota law mandates that contracts for new-home construction and home improvement projects include statutory warranties against defects. The provisions of these statutory warranties are set forth in Minnesota Statutes, chapter 327A. **These statutory warranties are in addition to other warranties to which the parties agree, and are in place even if no written warranty is provided to the homeowner.** They are also transferable to subsequent purchasers of the home.

In every sale of a new home, in every contract for new-home construction, and in home improvement contracts for major structural changes or additions to a home, a statutory warranty is provided to the homeowner. For new homes, the statutory warranty coverage begins when the buyer takes possession of the home. For home improvements, the statutory warranty begins when the project is completed. Statutory warranties provide that:

1. For one year the home shall be free from defects caused by faulty workmanship and defective materials due to noncompliance with building codes.
2. For two years the home shall be free from defects caused by faulty installation of plumbing, electrical, heating and cooling systems due to noncompliance with building standards.
3. For ten years the home shall be free from major construction defects.
4. For remodeling projects, work not specifically covered above is covered for a one-year period. During this period the contractor warrants that the home shall be free from defects caused by faulty workmanship or defective materials due to noncompliance with building standards.

In new-home construction, the homeowner can take action against the contractor for breach of warranty and recover either the amount necessary to fix the defect, or the difference between the value of the home without the defect and the value of the home with the defect. In remodeling projects, the homeowner can take action against the contractor for breach of warranty and may recover damages up to the amount necessary to fix the problem.

In both new-home and home improvement construction, the contractor is not liable for problems caused by work for which they were not responsible, or products they did not furnish; damage not reported by the homeowner within six months of discovering the problem; damage such as personal injury or loss of personal property; damage due to normal wear and tear; loss or damage due to negligence; and, in the case of home improvements, loss or damage due to defects in the existing structure not caused by the home improvement. There are additional exclusions spelled out in state law as well.

These statutory warranties are in addition to any other warranties that the contractor agrees to provide as part of the contract. You should, therefore, be sure that you have read and understand the extent of any contractual warranties that your contractor agrees to provide. You should also be sure that you understand what steps you must take to exercise your rights under any contractual warranties that the contractor agrees to provide.

Contractor's Recovery Fund

If a homeowner hires a licensed contractor who fails to perform the agreed upon duties, or breaches the contract, the homeowner may take legal action and obtain a judgment against the contractor. If the homeowner is unable to collect on this judgment from the contractor, the homeowner may be eligible to have part of the judgment paid by the Contractor's Recovery Fund, provided that the contractor is properly licensed with the State of Minnesota. The fund is established and administered by the Minnesota Department of Labor and Industry as a safety net for consumers. As such, both the amounts of possible recovery and the circumstances under which the fund will provide recovery are limited. These limits mean that, if multiple claims are filed, your claim may be subject to proration or reduction.

There are several steps in the process between suing a contractor and recovering money from the Contractor's Recovery Fund. The steps in the process that you, the homeowner, must take include:

- ✓ Obtaining a judgment in your favor against your contractor;
- ✓ Searching for assets to satisfy the judgment. You will probably look at the assets of the contractor, the owner of the contracting company, the bondholders, the insurance company, and anyone else that may be liable;
- ✓ Applying to the Contractor's Recovery Fund. If no assets are found during your search, you must apply to the fund within one year of the date of your judgment. You will submit an application form, supporting documents and a copy of your judgment to the Minnesota Department of Labor and Industry;
- ✓ Seeking payment from the fund;
 - If your application for payment is accepted, payment is generally made in the following fiscal year. For claims under \$7,500, you can seek an accelerated payment;
 - If your application is not accepted, you can make a written request for a hearing before a judge to determine whether you are entitled to payment.

- ✓ Receiving an order for payment from the fund. Payments are limited to actual and direct out-of-pocket losses from the transaction with your contractor;
- ✓ Recovering your money. If you receive an order in your favor, you can recover the funds the following calendar year (*i.e.*, your order must become final by December 31st to be eligible for payment by July 15th the following year).
 - Prior to December 1st, 2007 claims are limited to a maximum of no more than \$50,000 per claimant, nor more than \$75,000 per contractor (licensee).
 - After December 1st, 2007 claims are limited to \$75,000 maximum per claimant and \$150,000 maximum per contractor (licensee).



Step Three: UNDERSTANDING MECHANIC'S LIENS

If you have never heard about a mechanic's lien, or you have heard the term but do not really know what a mechanic's lien is, you are not alone.

If you are planning to build or have work done on your home or property, take time to first understand Minnesota's mechanic's lien law (Minnesota Statutes, chapter 514). Understanding the law now can save you time, money and frustration later.

What Is a Mechanic's Lien?

Every person or firm that has furnished work or provided material to build or improve your property is entitled to a mechanic's lien on the property. This means that the contractor and any subcontractor or material supplier for a building project can go to court and try to take possession of your property if they are not paid. However, there are a number of items you should be aware of in order to avoid liens or determine if a lien is valid and enforceable.

Contractor Must Be Licensed By the State

A contractor who is supposed to be licensed, but is not, cannot file a mechanic's lien, even if all other provisions of the contract have been met.

Contractor Must Give You Notice

In most cases, your contractor must give you written notice of an intent to file a lien if the contractor is not paid. This notice is required whenever subcontractors or material suppliers are employed to provide labor, skill or materials for the improvement. If subcontractors are used, the notice is prescribed by law and must be included in a written contract, or, if there is no written contract, must be delivered to you separately within 10 days after the work is agreed upon. The notice must explain that subcontractors and suppliers may also have a lien on your property if they are not paid, even though they do not have a contract directly with you. The notice must state that Minnesota law allows you to either:

- Pay any subcontractor directly and deduct that amount from the contract price; or
- Withhold from the contractor for 120 days after all work is completed as much of the contract price as is necessary to pay those subcontractors directly unless the contractor has given you lien waivers signed by the subcontractors. A lien waiver is a written statement signed by a subcontractor giving up the subcontractor's right to file a lien against your property.

If the contractor's notice is not given properly, the contractor does not have the right to a lien against your property.

Subcontractors Must Give You Notice

Subcontractors must also give you a specific notice in order to protect their right to file a lien if they are not paid by the contractor. The notice must give the name and address of the subcontractor, the name of the contractor who hired the subcontractor, and the type of service or material provided and its estimated value. The subcontractor's notice must be given to you within 45 days of the time the subcontractor first furnishes labor or materials or it is not enforceable.

The notice required from both the general contractor and the subcontractors must be delivered personally or by certified mail to either you or your authorized agent.

You Only Have to Pay Once

If you obtain a valid lien waiver from the subcontractor, or if you pay the general contractor in full before receiving the notice from the subcontractor, you cannot be forced to pay for the services or material a second time if the contractor fails to pay the subcontractor.

Protect Yourself

To protect yourself from having liens filed against your property, you should have the contractor list in the contract the names of all anticipated subcontractors and material suppliers. In addition, keep track of any subcontractor notices you may receive before your final payment, since some subcontractors may not be listed in the contract. Then, before making final payment, be certain you receive lien waivers signed by each of the subcontractors.

Apportioning Your Payment

Minnesota law gives you, as a property owner, two ways to reduce the risk that a subcontractor will file a mechanic's lien against your property. First, if you have not yet paid the general contractor in full when you receive the subcontractor's notice, you have the right to deduct the price of the subcontractor's goods or services from the amount you owe to the general contractor. You can then pay that amount directly to the subcontractor. If you pay the subcontractor directly, be sure to get a lien waiver from the subcontractor.

Second, for 120 days after all work is completed, you have the right to withhold from the contractor as much of the contract price as is necessary to pay subcontractors unless the contractor has given you lien waivers signed by the subcontractors.

When and Where Liens Are Filed

If a lien is filed against your property (in the form of a lien statement), it must be filed with the county recorder and a copy delivered to you, the property owner, either personally or by certified mail, within 120 days after the last material or labor is furnished for the job. If the lienholder wants to foreclose on your property — i.e., wants to enforce a lien — the lienholder must start that process within one year after providing the last item described on the lien statement.

To Enforce a Lien

To enforce a lien, the lienholder, who has filed a lien statement with the county recorder and delivered a copy to you, must bring a civil complaint against you in district court. When one lienholder begins such an action, all other lienholders become defendants with you, the property owner. These other lienholders must file an answer to the complaint just as you must do. At the time the lienholder files the complaint, the lienholder must also send you and all other lienholders a summons announcing the filing of the suit. The summons will contain the amount of the lien, a description of the property, a description of the improvements made by the lienholder, and a requirement that each defendant file with the court his or her answer to the complaint within 20 days after the summons is served.

Complainant's Notice of *Lis Pendens*

In addition to filing a lien statement, a complaint, a bill of particulars, and sending out summonses, the lienholder bringing suit must also file with the county recorder a Notice of *Lis Pendens* ("litigation pending"). The notice must also be filed within one year after the lienholder provided the last item described on the lienholder's lien statement. This notice is attached to the title of your property and serves to notify buyers (should you decide to sell your property before the matter is settled) that there is a lien on the property. The *lis pendens* does not, however, extend the one-year deadline for filing the complaint.

Usually the lienholder begins the action at the same time the lienholder files the Notice of *Lis Pendens*. If the lienholder fails to file the notice within the one year deadline, the lien cannot be enforced against a buyer or mortgage holder who does not know about the lien, regardless of how far the lawsuit has gone.

Action You Can Take

If a mechanic's lien has been filed against your property, you need to consider your options. First, you can wait for the lienholder to file suit against you to enforce the lien. Then, you can raise any defenses to the lien in your answer. If the lienholder does not file suit and the Notice of *Lis Pendens* within the one-year timeframe, the lien is unenforceable.

If you think the lien was filed without justification, you can also bring an action in court to have the lien removed from your title. This type of lawsuit is called an action to determine "adverse claims" in real estate. An action to determine adverse claims on your property may be necessary if you want to have the validity of a mechanic's lien determined before the one-year deadline. For example, this may be necessary if you want to sell your home before the one year is up. Your private attorney can help you determine whether you need to file an action to determine adverse claims if a mechanic's lien is filed against your property.

Settlement

There are several ways a lien might be settled after an action is begun by the lienholder. You may settle out of court. If this happens, you, the property owner, should make sure that as a condition of settlement, the lienholder removes the Notice of *Lis Pendens* from the title and files a Satisfaction of Mechanic's Lien form with the county registrar of deeds. If you do not settle out of court, you may receive a judgment by the court. A judgment takes precedence over lien statements and notices of *lis pendens*. The lien statements and

notices of *lis pendens* are removed from the title to the property when a judgment is issued. In the event the court finds in favor of the lienholder, it may order the sale of the property to satisfy the lien.

Civil Action

If a lienholder fails to complete any of the steps involved, the lienholder may still try to recover his or her claim in an ordinary civil action, that is, the lienholder can sue anyone with whom the lienholder has a contract (usually the general contractor or you, the property owner).

Chronology of Events in a Lien Process

-  Sign contract. Subcontractors should be listed on the contract.
-  The general contractor gives notice to you, the property owner. Notice must be given in the written contract, or by separate notice delivered within 10 days after work is agreed upon if there is no written contract.
-  Work begins. Liens of general contractor and all subcontractors attach.
-  Subcontractor gives notice to property owner within 45 days after subcontractor first begins work.
-  All work is completed.
-  (Optional.) If property owner requests, lienholders must furnish within 15 days an itemized list of amounts claimed and lienholders may not take steps to enforce liens for 10 days.
-  Property owner may pay:
 - (1) general contractor (owner must get lien waivers from subcontractors and general contractor); or
 - (2) each lienholder (owner should get lien waivers from each one as owner pays them).
-  Property owner may withhold payment from the general contractor for 120 days after all work is completed as much of the contract price as is necessary to pay subcontractors directly unless the owner is furnished with valid lien waivers by the general contractor.
-  If not paid, a lienholder files a lien statement within 120 days after work is completed.
-  Lienholder must begin action to enforce a lien within one year after lienholder's work is completed.



FURTHER INFORMATION

Minnesota Attorney General's Office

The Minnesota Attorney General's Office answers consumer questions, mediates consumer complaints to resolve disputes between Minnesota consumers and businesses, and enforces the State's civil laws. Staff can answer questions and provide consumer publications about landlord and tenant rights, mobile homes, mortgages, cars, credit, scams, unwanted mail and phone calls, and other consumer issues. For further information, or to file a complaint, contact:

Minnesota Attorney General's Office Consumer Protection

445 Minnesota Street, Suite 1400

St. Paul, MN 55101

Helpline: (651) 296-3353

1-800-657-3787

TTY: (651) 297-7206

TTY 1-800-366-4812

(TTY numbers are for callers using teletypewriter devices.)

www.ag.state.mn.us

Minnesota Department of Labor and Industry

If you want information about a licensed contractor, or wish to check whether a contractor is licensed, contact:

Minnesota Department of Labor and Industry Construction Codes and Licensing Division

443 Lafayette Road North

St. Paul, MN 55155

(651) 284-5069

(800) 342-5354

www.doli.state.mn.us

You can also file a complaint about licensed contractors or unlicensed activity. Your complaint will be assigned to an investigator. The contractor will be contacted and asked for a timely written response to your complaint. The investigator will decide whether the department will take administrative disciplinary action against the contractor. You will be notified in writing when the investigation is done. Send a written complaint, clearly detailing the problem and attaching copies of contracts, canceled checks or any pertinent document or evidence, to the Department of Labor and Industry at the address listed above.

City of Minneapolis

For questions about contractors licensed by the City of Minneapolis, contact:

City of Minneapolis
250 South 4th St., Rm. 300
Minneapolis, MN 55415
(612) 673-3000
www.ci.minneapolis.mn.us/mdr/FindLicCont/

Board of Architecture

If you are considering hiring a contractor who purports to provide design or architectural services, contact the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design to make sure the contractor is licensed to do this type of work:

**Board of Architecture, Engineering, Land Surveying,
Landscape Architecture, Geoscience and Interior Design**
85 East 7th Place, Suite 160
St. Paul, MN 55101
(651) 296-2388
www.aelslagid.state.mn.us

Better Business Bureau

To find out if other consumers have filed complaints against a contractor, contact:

Better Business Bureau
2706 Gannon Road
St. Paul, MN 55116
(651) 699-1111
1-800-646-6222
www.bbb.org

Builders Association of Minnesota

There are 15 local builder associations in Minnesota. Contact your local association directly for more information about member contractors. To determine your local association, contact:

Builders Association of Minnesota
525 Park Street, Suite 150
St. Paul, MN 55103
(651) 646-7959
1-800-654-7783
www.bamn.org

Additional Consumer Information

Consumer publications listed below are available free of charge from the Attorney General's Office.

- The Car Handbook
- Citizen's Guide to Home Building and Remodeling
- Conciliation Court
- Guarding Your Privacy: Tips to Prevent Identity Theft
- The Home Buyer's Handbook
- The Home Seller's Handbook
- Landlords and Tenants: Rights and Responsibilities
- Managing Your Health Care
- The Manufactured Home Parks Handbook
- Minnesota's Car Laws
- The Phone Handbook
- Probate and Planning Guide: A Guide for Planning for the Future
- Pyramid Schemes
- Seniors' Legal Rights
- Other Consumer Information



From the Office of
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Consumer Protection
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