

## SPRING HAS SPRUNG....A LEAK?

By Christopher R. Jones, Esq.

Spring is upon us and with it comes the change of seasons from the cold days of winter to the warm days of summer. With that transition comes melting snow, frequent rain and even flooding. For property owners, this is the time to pay close attention to homes, office buildings and other structures. It should come as no surprise that too much water in places where it shouldn't be can be a significant problem. Water can be one of the most damaging things in nature if it gets into areas where it does not belong and is not promptly removed. With more consistent rain and other water events, property owners may become aware of concerns with their property including, but not limited to, water leakage or other water damage caused by rain and flooding. During this time, if such problems are discovered, property owners should be aware of the need to take action to address such an issue for a variety of different reasons.

First and foremost, is the idea of simply protecting your own property, whether it is commercial,

residential or some other type. If any leaking or other damage is seen during the rainy months when seasons change, immediate steps must be taken to find and determine the source of the problem and address it to avoid more serious future problems. There can be many different ways to investigate the source, including, but not limited to, full-scale property inspections, site specific moisture testing, opening up walls or some other means to determine the how, why and where of the problem and get it repaired as quickly and effectively as possible. More importantly, owners must be aware of steps that need to be taken in the event water intrusion or damage is observed to help protect one's legal rights, especially as they pertain to residential property.

Promptly addressing water intrusion and limiting the damage it could cause is extremely important. However, if the problem is somehow connected to a defect in construction or workmanship in the property, jumping into repairs too quickly could affect the ability to pursue later claims against the parties potentially responsible. Repairing a problem and attempting to require someone else pay for the repairs later can be a difficult process. When a problem is discovered, the property owner needs to

balance the need for immediate repairs with the need to preserve evidence for use in a future dispute. The legal concept of "spoliation of evidence" can come into play and have a significant effect on a property owner's right to be compensated for problems caused by faulty construction. Spoliation of evidence refers to destroying or altering evidence of wrong doing or defect workmanship before the opposing party has an opportunity to see it. Therefore, be careful not to "spoil" evidence by eliminating the cause of the problem too quickly-before providing interested parties a chance to inspect the area affected. Property owners must carefully balance protecting the property and protecting one's legal rights; finding the balance can be difficult.

In addition, Minnesota law contains very strict timelines within which problems must be brought to the attention of a contractor, landlord or other


representative in order to protect the owners' rights. As it pertains to residential structures, Minnesota law has a number of timelines for taking action; these timelines sometimes conflict and are often misunderstood by homeowners. In a basic sense, once an issue is discovered, a homeowner essentially has six (6) months in which to notify the builder and/or contractor of the problem in order to preserve the right to pursue a claim under the home warranty statute. Further, a homeowner has two (2) years from the time of learning of a problem in which to pursue legal recovery (i.e. file a lawsuit) for that problem or lose the right to do so forever. This is a simple and basic explanation of possible timelines in the State of Minnesota; each situation must be judged on a case by case basis, and there is no "one-size-fits-all" analysis when it comes to these types of issues. The important point is determining when a problem is first "discovered" for purposes of legal analysis. There should be no delay when water-related or other construction problems are discovered, as delays could greatly affect an owner's right to pursue legal claims.

For commercial/business property owners, it is no less important to be aware of other timelines that

may apply, including those in the language of any contracts related to the construction, repair or ownership of such a building. There may well be provisions in commercial construction contracts that could affect when and how claims for damage to property could be brought, e.g., time limitations, indemnification provisions, notification periods, etc. In addition, there may be specific insurance provisions which require certain action to be taken to protect property within a certain amount of time in order to preserve a property owner's rights.

From a contractor's perspective, it is much better to receive prompt notice of an issue such as a water intrusion problem or related damage so that steps can be taken to determine what may be necessary to solve the problem upfront if possible and avoid a more serious issue or a potential lawsuit and insurance claim. It is in both the homeowner's and the contractor's best interest to open a dialogue at the earliest possible opportunity and seek to address a problem in the early stages and avoid a much larger problem later. Taking a proactive approach to try and address a customer's problem at the outset can not only avoid a potentially bigger cost later, but also build good rapport with one's customer base.

Regardless of the issue, structures are much more likely to show signs of a possible problem during a change in season. This is the time at which many problems are discovered and should be addressed. Knowing that there are timelines that can affect one's legal rights and what those timelines may be can help resolve a problem before it turns into something more significant. Indeed, taking action quickly when these problems come up not only protects the property but also protects one's legal rights and may enable the parties to resolve the issues without resorting to legal action.

The attorneys in our Construction and Real Estate Law Departments are very familiar with these issues and can help both property owners and contractors attempt to find the best way to investigate and resolve such problems. If you should have any questions concerning these types of issues, please contact our office. 

This newsletter provides general information on legal matters, and should not be relied upon as legal advice. A qualified attorney must analyze the relevant facts and apply the applicable law to provide specific legal advice. If you require legal advice or want additional information regarding the services we offer, please contact us at 952-941-4005.

## NEW YARD WASTE REQUIREMENTS IN EFFECT


By J. Matthew Berner, Esq.

On January 1, 2010, new Minnesota Law went into effect that requires yard waste to be disposed of in compostable yard waste bags for those living in the seven-county (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington) metropolitan areas of St. Paul and Minneapolis. (Those living in the city of Minneapolis are exempt from this requirement until 2013.) A person may not place yard waste or source-separated compostable materials that are intended to be taken to a compost facility in a plastic bag unless the bag meets all the specifications in ASTM Standard Specification for Compostable Plastics. This means that only paper bags or compostable plastic bags may be used.

It is important to use compostable bags because,

previously, the waste at composting facilities had to be debagged, which increased costs and was less efficient. Now, in an attempt to save natural resources, some compost sites will shred the bag with the contents.

Compostable bags can be purchased at grocery stores, hardware stores and home improvement stores. Compostable plastic bags are usually clear or tinted in translucent shades, and will state that they are "compostable" on the packaging. Be sure to look for the word "compostable" on the package, as bags designated simply as "lawn and leaf" bags might not guarantee the bag is compostable; unless the bags are identified as compostable, they don't disintegrate.

Hellmuth & Johnson strives to bring our clients timely and relevant news on a continual basis. If you have further questions about this new law, please contact Matthew Berner at [jberner@hjlawfirm.com](mailto:jberner@hjlawfirm.com) or your local waste removal company. 



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Hellmuth & Johnson, PLLC is pleased to announce that *Minnesota Lawyer* has named **Carol Moss** as a 2010 Up & Coming Attorney. This honor is given to attorneys who have been in practice 10 years or less, and whose work clearly has made a difference to an individual, organization, practice or the profession. These attorneys have been selected as counsel who have distinguished themselves by their leadership, professional accomplishment, and service to their community and/or profession.

To learn more about Carol, please view her biography on our website at [www.hjlawfirm.com](http://www.hjlawfirm.com).

## ELECTRONIC NEWSLETTERS

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