



## Levin & Edin Attorneys at Law

### Levin & Edin Spring 2011 Update

We have discussed with you in the past the legal climate here in Minnesota. The bigger news this past winter and spring has been the actual climate. At Levin & Edin, we have experienced a wave of inquiries related to frost heaving and ice dams.

High snow fall, saturated ground water conditions, and an up-and-down freeze/thaw cycle have combined to make these issues the preeminent complaints reaching our desks over the past 6 months. Some projects approaching 10 years old have just experienced their first season of these problems.

Make no mistake-- ice dams and frost heaving are not “par for the course” because we live in Minnesota. They can be symptomatic of construction defect issues which, if left unchecked, get worse over time. Anyone observing a deck pulling away from a unit can verify that structural damage can occur as well.

Ice dams are formed when excessive heat in the attic space causes the roof to heat, snow to melt, and the resulting water to re-freeze on the roof edge, building up in some cases to a foot or more of ice. This ice then slowly melts, wicks under the shingles and onto the roof sheathing. It gets into the attic space and ultimately into the unit below, often through light fixtures or other penetrations.

Simply blowing in more insulation is not the solution. An equally important component of the problem is lack of ventilation. Inappropriately placed vents, hot air ducting occupying the attic space, and blown in insulation blocking soffit or other venting keeps the hot air trapped in the attic space. An optimal attic is cold because of airflow between the soffit and ridge or higher placed vents. Insulation keeps all warmth below the insulation layer. If the attic is cold, then the snow on top

of the roofs doesn't melt and create the ice dams.

Investigation of the attic and roof system is necessary to determine appropriate venting, insulation depth, and isolation of hot air sources such as ducting or dryer vents. Also, the condition of the ice and water shield barrier under the shingles should be investigated. Often it is installed incorrectly.

Frost heaving has been a little more consistently observed over the past few years, but this past winter was especially notable. Frost heaving results from excessive soil moisture which forms an “ice lens”. This lens collects even more moisture through capillary action in fine grain soils like clay. Ice expands, and pushes up sidewalks or patio slabs. In the case of footings, it can adhere to the sides of a deep footing and move it.

The solution is to investigate the soil composition and drainage plan to determine whether free draining soils are present, whether drainage planes are effective, and whether other elements such as drain tile are functioning effectively. Also, the condition of the heaved portion of the structure must be investigated. A thorough article on this topic may be found in the “Publications” tab on our website: [www.mncondodefacts.com](http://www.mncondodefacts.com).

These issues are best approached with legal guidance. Rather than accept the problems as part of living in Minnesota, warranties exist which can take the financial burden off the Association and place it on the responsible parties. Acting promptly avoids loss of rights!

We welcome the opportunity to be of service on any construction defect matter and are always happy to talk to you.

*Jonathan Edin*