
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1467 Session of
2005

INTRODUCED BY T. STEVENSON, DALLY, ARGALL, BALDWIN, BARRAR,
BOYD, BUNT, CALTAGIRONE, CAPPELLI, CLYMER, CREIGHTON,
DENLINGER, FAIRCHILD, GERGELY, GILLESPIE, GINGRICH, GRELL,
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SONNEY, R. STEVENSON, E. Z. TAYLOR, TIGUE, TRUE, TURZAI,
WALKO, WILT, GEIST, MCGILL, FRANKEL, BUXTON, REICHLEY, PYLE
AND ALLEN, MAY 2, 2005

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
FEBRUARY 14, 2006

AN ACT

1 Providing for dispute resolution procedures relating to
2 residential construction defects between contractors and
3 homeowners or members of associations.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Residential
8 Construction Dispute Resolution Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Action." A civil lawsuit, judicial action or arbitration

1 proceeding asserting a claim, in whole or in part, for damages
2 or other relief in connection with a dwelling caused by a
3 construction defect.

4 "Association." An association as defined under 68 Pa.C.S. §§
5 3103 (relating to definitions), 4103 (relating to definitions)
6 and 5103 (relating to definitions).

7 "Claimant." Any person who asserts a claim concerning a
8 construction defect. The term includes an association.

9 "Construction defect." The term shall have the same meaning
10 assigned by a written express warranty either provided by the
11 contractor or required by applicable statutory law. If no
12 written express warranty or applicable statutory warranty
13 provides a definition, the term shall mean a matter concerning
14 the design or construction of a dwelling or addition to a
15 dwelling or an appurtenance to a dwelling on which a person has
16 a complaint against a contractor. The term may include any
17 physical damage to the dwelling or any appurtenance, or the real
18 property on which the dwelling or appurtenance is affixed,
19 proximately caused by a construction defect.

20 "Consultant." An engineer, architect, contractor, inspector
21 or other person purporting to have expertise relating to
22 residential construction or having that expertise as a result of
23 training or profession.

24 "Contractor." A person, firm, partnership, corporation,
25 association or other organization that is engaged in the
26 business of developing, constructing or selling newly
27 constructed dwellings or constructing additions or appurtenances
28 to an existing dwelling. The term includes an owner, officer,
29 director, shareholder, partner or employee of a contractor. For
30 purposes of this act, the term also includes an industrialized

1 housing manufacturer. The term does not include a real estate
2 agent, broker or a contractor that installs a new device or
3 appurtenance which costs less than \$2,000.

4 "Dwelling." A single-family house or duplex. The term
5 includes a multifamily structure designed for residential use in
6 which title to each individual unit is transferred to the owner.
7 Under a condominium or cooperative system, the term includes
8 common areas and improvements that are owned or maintained by an
9 association or by members of an association. The term also
10 includes the systems, other components, improvements, other
11 structures and recreational facilities that are appurtenant to
12 the house, duplex or multifamily structure but not necessarily a
13 part of the house, duplex or multifamily structure. For purposes
14 of this act, the term also includes industrialized housing.

15 "Industrialized housing." A structure designed primarily for
16 residential occupancy, and which is wholly or in substantial
17 part made, constructed, fabricated, formed or assembled in
18 manufacturing facilities for installation or assembly and
19 installation on the building site so that concealed parts or
20 processes of manufacture cannot be inspected at the site without
21 disassembly, damage or destruction. The term does not include a
22 structure or building classified as an institutional building or
23 manufactured home, as defined by the National Manufactured
24 Housing Construction and Safety Standards Act of 1974 (42 U.S.C.
25 §§ 5401-5426).

26 "Industrialized housing manufacturer." A person, firm,
27 partnership, corporation, association or other organization
28 involved in the process of making, constructing, fabricating,
29 forming or assembling, in a manufacturing facility, for
30 installation or assembly and installation on the building site,

1 industrialized housing from raw, unfinished or semifinished
2 materials.

3 "Serve" or "service." For an individual, delivery by
4 certified mail, return receipt requested, to the last known
5 address of an addressee. For a corporation, limited partnership,
6 limited liability company or other business organization, the
7 term shall mean delivery to the registered agent or other agent
8 for service of process authorized by the laws of this
9 Commonwealth.

10 Section 3. Notice and opportunity to repair.

11 (a) Notice.--In every action subject to this act, the
12 claimant shall, no later than 75 days before initiating an
13 action against a contractor, provide service of written notice
14 of claim on the contractor. The notice of claim shall state that
15 the claimant asserts a construction defect claim or claims and
16 is providing notice of the claim or claims pursuant to the
17 requirements of this act. The notice of claim shall describe the
18 claim or claims sufficiently to explain the nature of the
19 alleged construction defects and if known the results of the
20 defects.

21 (b) Service.--Service of the notice of the claim shall be
22 the equivalent of service of a lawsuit or demand for arbitration
23 with respect to imposing on the contractor a legal obligation to
24 pay as damages the cost of any repairs and/or monetary payment
25 made to settle the claim.

26 (c) Evidence.--In addition, the claimant shall provide to
27 the contractor any evidence known to the claimant or in the
28 claimant's possession that depicts the nature and cause of the
29 construction defect, including expert reports, photographs and
30 videotapes. If evidence of the claimant is discovered, disclosed

1 or produced after a contractor's offer, the contractor may make
2 a new offer under section 5 which shall be the basis of the
3 determination of its reasonableness under section 5(h) and (i).

4 Section 4. Personal injury or death claims.

5 This act shall not apply to any claim for personal injury or
6 death.

7 Section 5. Procedure.

8 (a) Contents of notice.--

9 (1) In an action under this act, the claimant shall, at
10 least 75 days before initiating the action against a
11 contractor, provide service of written notice of claim on the
12 contractor. The notice of claim shall:

13 (i) State that the claimant asserts a construction
14 defect claim and is providing notice of the claim
15 pursuant to the requirements of this act.

16 (ii) Describe the claim sufficiently to explain the
17 nature of the construction defect and the result of the
18 defect.

19 (iii) Include any evidence that describes the
20 construction defect that the claimant possesses.

21 (2) Service under this subsection shall toll all
22 applicable statutes of limitation until 75 days after receipt
23 of notice of the claim.

24 (b) Response.--Except as otherwise provided for under
25 subsection (g), within 15 days after service of the notice of
26 claim, the contractor that has received the notice of claim
27 shall serve on the claimant a written response to the claim
28 which:

29 (1) offers to settle the claim by monetary payment, the
30 making of repairs or a combination of both, without

1 inspection, including a timetable for the making of the
2 payment or repairs;

3 (2) proposes to inspect at the contractor's expense the
4 dwelling that is the subject of the claim within 15 days; or

5 (3) rejects the claim.

6 (c) Inspection of dwelling.--

7 (1) If the contractor requests the opportunity to
8 inspect the dwelling under subsection (b)(2), the claimant
9 shall provide the contractor and its consultants reasonable
10 and timely access to inspect the dwelling in order to
11 document the defect and perform any destructive or
12 nondestructive tests necessary to evaluate the claim. If
13 testing is performed, the claimant shall be notified of
14 testing and shall be provided the opportunity to be present
15 during testing. The contractor shall return the dwelling to
16 its pretesting condition.

17 (2) If an inspection reveals a condition that requires
18 additional testing, the contractor shall provide prompt
19 notice to the claimant of the need for the additional
20 testing, and the claimant shall provide reasonable and timely
21 access to the dwelling. Additional testing, if necessary,
22 shall be completed within 15 days of the notice.

23 (3) If a claim is asserted on behalf of owners of
24 multiple dwellings or multiple owners of units within a
25 multifamily complex, the contractor shall be entitled to
26 inspect each of the dwellings or units for which a defect has
27 been claimed.

28 (d) Process following inspection.--Within 15 days following
29 completion of an inspection or testing under subsection (c), the
30 contractor shall serve a written response, including copies of

<—

1 all test reports, expert reports, photographs and video tapes
2 THAT ARE NOT OTHERWISE PRIVILEGED FROM DISCOVERY UNDER LAW AND <—
3 WOULD BE DISCOVERABLE IN A SUBSEQUENT LEGAL ACTION BY THE
4 CLAIMANT on the claimant which:

5 (1) offers to settle the claim by monetary payment, the
6 making of repairs or a combination of both, including a
7 timetable for making the payment and/or repairs; or

8 (2) rejects the claim.

9 (e) Notice of claimant's response.--

10 (1) The claimant shall accept or reject an offer by a
11 contractor under subsection (b)(1) or (d)(1) within 30 days
12 of receipt of the offer.

13 (2) If the claimant rejects the settlement offer made by
14 the contractor under subsection (b) or (d), the claimant
15 shall provide written notice of the claimant's rejection to
16 the contractor.

17 (3) If the claimant fails to respond as required under
18 paragraph (1), the contractor's offer of monetary payment or
19 offer to repair shall be deemed to be rejected.

20 (4) After submitting notice under section 3, a claimant
21 may not initiate an action without conducting an in-person
22 meeting with the contractor in a good faith attempt to
23 resolve the dispute. In the case of an association claimant,
24 a majority of the association's board of directors shall
25 attend the meeting. A meeting is not required if the
26 contractor has failed to timely respond to a claimant's
27 notice or refused or ignored a request for a meeting.

28 (f) Claimant's ability to bring an action.--If the
29 contractor:

30 (1) rejects the claim;

1 (2) does not respond to a notice of claim within the
2 time frames under this section; or

3 (3) does not make monetary payment or repair within the
4 proposed timetable of an accepted offer, the claimant may
5 bring an action against the contractor for the defect
6 described in the notice of claim without further notice,
7 notwithstanding the 75-day time period set forth under
8 subsection (a).

9 (g) Construction defects involving physical safety of
10 occupants.--

11 (1) If a construction defect poses an imminent threat to
12 the physical safety of the occupants of the dwelling, the
13 notice shall so advise the contractor, and the deadline for
14 the contractor's initial response under subsection (b) shall
15 be seven days after receipt of the notice.

16 (2) If the contractor's response under subsection (b)
17 contains a request to inspect the dwelling, the contractor
18 shall arrange for the inspection within five days.

19 (3) If the contractor determines there is an imminent
20 threat to physical safety, the contractor shall provide the
21 claimant with a proposal for a monetary offer or offer to
22 repair within three days of the determination.

23 (4) Prior to the submission of an offer by the
24 contractor under this subsection, either the claimant or
25 contractor may take interim repair steps to maintain the
26 structural integrity of the dwelling without prejudicing the
27 claimant's or contractor's claims or defenses. A claimant
28 may, without giving notice to the contractor, employ a
29 contractor and such other persons as are necessary to make
30 such immediate repairs to a dwelling as are required to

1 protect the health, safety and welfare of the occupants.

2 (h) Right of action.--If a claimant rejects a reasonable
3 offer or does not permit the contractor to repair the defect
4 pursuant to an accepted offer to repair under subsection (e),
5 the claimant may not recover an amount in excess of:

6 (1) the fair market value of the offer to repair the
7 construction defect or the actual cost of the repairs,
8 whichever is less; or

9 (2) the amount of the monetary offer of settlement.

10 (i) Reasonableness of monetary offer or offer to repair.--

11 (1) For purposes of this section, the trier of fact
12 shall determine the reasonableness of an offer. If the
13 claimant has rejected a reasonable offer, the claimant may
14 not recover costs or attorney fees incurred after the date of
15 rejection.

16 (2) If the contractor, through no fault of the claimant,
17 fails to make a reasonable offer, this act shall not limit
18 the remedies available to a claimant.

19 (j) Timely access for repairs.--If a claimant accepts a
20 contractor's offer to repair a construction defect, the claimant
21 shall provide the contractor and its subcontractors, agents,
22 experts and consultants reasonable and timely access to the
23 dwelling to complete the repairs within the timetable set forth
24 under the contractor's offer.

25 (k) Agreement between claimant and contractor.--Following
26 service under subsection (a), a claimant and a contractor may
27 alter the procedures under this act, including the tolling of
28 the statute of limitations, by mutual written agreement.

29 (l) Limitation of liability.--In an action involving a
30 construction defect, a contractor shall not be liable for

1 damages caused by:

2 (1) Normal shrinkage due to drying or settlement of
3 construction components with the tolerance of building
4 standards.

5 (2) The contractor's reasonable reliance on written
6 information relating to the dwelling that was obtained from
7 official government records or provided by a government
8 entity.

9 (3) Refusal of the claimant to reasonably allow the
10 contractor or the contractor's agents to perform their
11 warranty service work.

12 Section 6. Additional construction defects.

13 A construction defect that is discovered after a claimant has
14 served notice under section 3(a) (relating to notice and
15 opportunity to repair) may be alleged in an action provided the
16 claimant complies with the requirements of section 5 (relating
17 to procedure) with respect to the defect.

18 Section 7. Destructive test.

19 No claimant may employ a person to perform destructive tests
20 to determine any damage or injury to a dwelling caused by a
21 construction defect unless reasonable prior notice and
22 opportunity to observe the tests are given to the contractor
23 against whom an action may be brought as a result of the test.

24 Section 8. Construction.

25 Nothing in this act shall be construed as establishing a
26 cause of action on behalf of any claimant or contractor.

27 Section 9. Notice required at time of contracting.

28 (a) Form of notice.--Upon entering into a contract to
29 construct a dwelling, the contractor shall give the owner or
30 buyer, as the case may be, notice of the contractor's rights to

1 offer to cure construction defects or pay to settle a claim
2 against the contractor for construction defects under this act
3 before a claimant may commence an action for the construction
4 defects. The notice shall be in 10-point bold type or greater,
5 shall be included as part of the contract and shall be in
6 substantially the following form:

7 NOTICE CONCERNING CONSTRUCTION DEFECTS

8 Pennsylvania law contains important requirements you must
9 follow before you may file a legal action for defective
10 construction against the contractor who constructed your
11 dwelling or constructed your addition or appurtenance.

12 Pennsylvania law requires that you provide the contractor
13 with written notice by certified mail of any construction
14 conditions you allege are defective, with any evidence in
15 your possession that described the alleged defect so that
16 the contractor has the opportunity to make an offer to
17 repair or pay for the alleged construction defects.

18 You are not obligated to accept any offer made by the
19 contractor, but failure to accept a reasonable offer, as
20 determined by a court or other trier of fact, may limit
21 your recoverable damages. There are strict deadlines and
22 procedures under Pennsylvania law, and failure to follow
23 them may affect your ability to file a legal action to
24 seek recovery for the defects. There may also be
25 requirements which must be followed in a written
26 warranty. It is recommended that you consult with an
27 attorney of your choosing if you have any questions about
28 your rights and obligations under the law.

29 (b) Failure to include notice.--Failure to include the
30 notice in contracts entered into after the effective date of

1 this act shall deprive the contractor of the benefits of this
2 act.

3 Section 10. Applicability.

4 This act shall apply as follows:

5 (1) This act shall not affect a contractor's right to
6 seek contribution, indemnity or recovery against a
7 subcontractor, supplier or design professional for any claim
8 made against the contractor by a claimant.

9 (2) This act shall not restrict, modify or alter or
10 otherwise interfere with the obligations, terms or conditions
11 of an insurance policy.

12 (3) This act shall not apply to an insurer asserting a
13 claim against a contractor for payments made by the insurer
14 pursuant to an insurance policy covering the dwelling. A
15 claim under this paragraph shall not be prejudiced, reduced
16 or otherwise modified because of the failure of the claimant
17 to comply with this act.

18 Section 20. Effective date.

19 This act shall take effect in 60 days.