
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1875 Session of
2003

INTRODUCED BY DALLY, ARMSTRONG, BASTIAN, BROWNE, BUNT, BUXTON,
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AND HARHART, JULY 16, 2003

REFERRED TO COMMITTEE ON JUDICIARY, JULY 16, 2003

AN ACT

1 Providing for civil actions or arbitration proceedings for
2 damages or indemnity for injury or loss to a dwelling or
3 personal property arising out of or related to the design,
4 construction, condition, sale or remodeling of a dwelling,
5 for notice and opportunity to repair, for insurance
6 requirements, for contract of sale, for contractor
7 notification requirements and for actions of associations.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Construction
12 Disputes Act.

13 Section 2. Declaration of policy.

14 The General Assembly finds, declares and determines that this
15 Commonwealth needs an alternative method to resolve legitimate
16 construction disputes that would reduce the need for litigation
17 while adequately protecting the rights of homeowners. The
18 General Assembly declares that an effective alternative dispute
19 resolution mechanism in certain construction defect matters

1 should involve the claimant filing a notice of claim with the
2 construction professional that the claimant asserts is
3 responsible for the defect, and providing the construction
4 professional with the opportunity to resolve the claim without
5 litigation.

6 Section 3. Definitions.

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

10 "Action." A civil lawsuit or action or arbitration
11 proceeding for damages or indemnity for injury or loss to a
12 dwelling or personal property caused by an alleged defect
13 arising out of or related to the design, construction,
14 condition, sale or remodeling of a dwelling.

15 "Association."

16 (1) When used in any statute finally enacted before
17 December 7, 1994, any form of unincorporated enterprise owned
18 by two or more persons other than a partnership or limited
19 partnership.

20 (2) When used in any statute finally enacted on or after
21 December 7, 1994, an association as defined in 15 Pa.C.S. §
22 102 (relating to definitions).

23 "Claimant." A homeowner, including a subsequent purchaser,
24 or association that asserts a claim against a construction
25 professional concerning a defect in the design, construction,
26 condition, sale or remodeling of a dwelling.

27 "Construction defect." A deficiency in or a deficiency
28 arising out of the design, specifications, surveying, planning,
29 supervision, construction or observation of construction of
30 residential improvements that results from any of the following:

1 (1) Defective material, products or components used in
2 the construction of residential improvements.

3 (2) Violation of the applicable codes in effect at the
4 time of construction of residential improvements.

5 (3) Failure of the design of residential improvements to
6 meet applicable professional standards of care at the time of
7 the governmental approval of the design of residential
8 improvements.

9 (4) Failure to construct residential improvements in
10 accordance with accepted trade standards for good and
11 workmanlike construction at the time of construction.

12 Compliance with the applicable codes in effect at the time of
13 construction shall conclusively establish construction in
14 accordance with accepted trade standards for good and
15 workmanlike construction with respect to all matters
16 specified in those codes.

17 "Contractor." A person, firm, partnership, corporation,
18 association or other organization that is engaged in the
19 business of designing, developing, constructing or selling
20 dwellings.

21 "Design professional." A person licensed in the State as an
22 architect, interior designer, landscape architect, engineer or
23 surveyor.

24 "Dwelling." A single-family house, duplex or multifamily
25 unit designed for residential use in which title to each
26 individual unit is transferred to the owner under a condominium
27 or cooperative system, including common areas and improvements
28 that are owned or maintained by an association or by members of
29 an association. A dwelling includes the systems, other
30 components and improvements that are part of a single or

1 multifamily unit at the time of construction.

2 "Service." Personal service or delivery by certified mail,
3 return receipt requested, to the last known address of the
4 addressee.

5 "Subcontractor." A contractor who performs work on behalf of
6 another contractor in the construction of a dwelling.

7 "Supplier." The provider of materials, equipment or other
8 supplies for the construction of a dwelling.

9 Section 4. Dismissal of dwelling action without prejudice.

10 If a claimant files an action relating to a dwelling without
11 first complying with the provisions of this act, on application
12 by a party to the action, the court shall dismiss the action
13 without prejudice, and the action may not be refiled unless the
14 claimant complies with the requirements of this act.

15 Section 5. Act not applicable to personal injury or death
16 claims.

17 This act shall not apply to actions arising out of claims for
18 personal injury or death.

19 Section 6. Notice and opportunity to repair.

20 (a) Notice.--In every action brought against a contractor
21 arising out of the construction of a dwelling, the claimant
22 shall, no later than 90 days before filing an action, serve
23 written notice of claim on the contractor. The notice of claim
24 shall state that the claimant asserts a construction defect
25 claim and shall describe the claim in reasonable detail
26 sufficient to determine the general nature of any alleged
27 construction defects and include a description of the results of
28 the defects, if known.

29 (b) Notice to subcontractors.--Within 15 days after the
30 initial service of the notice of claim under subsection (a), the

1 contractor shall forward a copy of the notice to each
2 subcontractor, supplier and design professional who the
3 contractor reasonably believes is responsible for a defect
4 specified in the notice and include with the notice the specific
5 defect for which the contractor believes the subcontractor,
6 supplier or design professional is responsible.

7 (c) Evidence.--Upon the request of the contractor,
8 subcontractor, supplier or design professional who has received
9 a notice under subsection (a) or (b), the claimant shall provide
10 to the contractor, subcontractor, supplier or design
11 professional any evidence that depicts the nature and cause of
12 the construction defect and the nature and extent of repairs
13 necessary to remedy the claim, including expert reports,
14 photographs and video tapes if that evidence would be
15 discoverable under the applicable rules of evidence.

16 (d) Response.--Within 30 days after service of the notice of
17 the claim under subsection (a) or (b), each contractor,
18 subcontractor, supplier or design professional that has received
19 a notice of the claim shall serve a written response on the
20 claimant by registered mail or personal service. The written
21 response shall:

22 (1) offer to compromise and settle the claim by monetary
23 payment without inspection;

24 (2) propose to inspect the dwelling that is the subject
25 of the claim; or

26 (3) state that the contractor, subcontractor, supplier
27 or design professional disputes the claim and will neither
28 remedy the alleged construction defect nor compromise and
29 settle the claim.

30 (e) Dispute of claim or failure to remedy, compromise or

1 respond.--If the contractor, subcontractor, supplier or design
2 professional disputes the claim and will neither remedy the
3 alleged construction defect nor compromise and settle the claim
4 or does not respond to the claimant's notice of claim within the
5 time stated in subsection (d), the claimant may bring an action
6 against the contractor, subcontractor, supplier or design
7 professional for the claim described in the notice of claim
8 without further notice.

9 (f) Notice of claimant's rejection.--If the claimant rejects
10 the settlement offer made by the contractor, subcontractor,
11 supplier or design professional under subsection (d), the
12 claimant shall serve written notice of the claimant's rejection
13 on the contractor, subcontractor, supplier or design
14 professional. The notice shall include the basis for the
15 claimant's rejection of the contractor, subcontractor, supplier
16 or design professional's proposal or offer.

17 (g) Action by claimant.--After service of the rejection
18 required under subsection (f), the claimant may bring an action
19 against the contractor, subcontractor, supplier or design
20 professional for the claim described in the initial notice of
21 claim without further notice.

22 (h) Access for inspection.--If the claimant elects to allow
23 the contractor, subcontractor, supplier or design professional
24 to inspect the dwelling in accordance with the contractor,
25 subcontractor, supplier or design professional's proposal under
26 subsection (d)(2), the claimant shall provide the contractor,
27 subcontractor, supplier or design professional and its
28 contractors or other agents reasonable access to the claimant's
29 residence during normal working hours to inspect the premises
30 and the claimed defect to determine the nature and cause of the

1 alleged defects and the nature and extent of any repairs or
2 replacements necessary to remedy the alleged defects.

3 (i) Service on claimant.--Within 14 days following
4 completion of the inspection, the contractor, subcontractor,
5 supplier or design professional shall serve on the claimant:

6 (1) a written offer to remedy the construction defect at
7 no cost to the claimant, including a report of the scope of
8 the inspection, the findings and results of the inspection, a
9 description of the additional construction necessary to
10 remedy the defect described in the claim and a timetable for
11 the completion of the remedy;

12 (2) a written offer to compromise and settle the claim
13 by monetary payment; or

14 (3) a written statement that the contractor,
15 subcontractor, supplier or design professional will not
16 remedy the alleged defects.

17 (j) Failure to pay or remedy as promised.--If a claimant
18 accepts a contractor, subcontractor, supplier or design
19 professional's offer made under subsection (i)(1) or (2) and the
20 contractor, subcontractor, supplier or design professional does
21 not proceed to make the monetary payment or remedy the
22 construction defect within the agreed timetable, the claimant
23 may bring an action against the contractor, subcontractor,
24 supplier or design professional for the claim described in the
25 initial notice of claim without further notice.

26 (k) Written statement that remedy will not be forthcoming.--
27 If a claimant receives a written statement that the contractor,
28 subcontractor, supplier or design professional will not proceed
29 further to remedy the defect, the claimant may bring an action
30 against the contractor, subcontractor, supplier or design

1 professional for the claim described in the initial notice of
2 claim without further notice.

3 (l) Rejection of proposed remedy by claimant.--If the
4 claimant rejects the offer made by the contractor,
5 subcontractor, supplier or design professional to either remedy
6 the construction defect or to compromise and settle the claim by
7 monetary payment, the claimant shall serve written notice of the
8 claimant's rejection on the contractor, subcontractor, supplier
9 or design professional. The notice shall include the basis for
10 the claimant's rejection of the contractor, subcontractor,
11 supplier or design professional's offer. After service of the
12 rejection the claimant may bring an action against the
13 contractor, subcontractor, supplier or design professional for
14 the claim described in the notice of claim without further
15 notice.

16 (m) Rejected offer.--If a claimant unreasonably rejects an
17 offer made as provided by this section or does not permit the
18 contractor, subcontractor, supplier or design professional a
19 reasonable opportunity to repair the defect pursuant to an
20 accepted offer of settlement, the claimant may not recover an
21 amount in excess of:

22 (1) the reasonable cost of the offered repairs which are
23 necessary to cure the construction defect and which are the
24 responsibility of the contractor, subcontractor, supplier or
25 design professional; or

26 (2) the amount of the monetary settlement offered by the
27 contractor, subcontractor, supplier or design professional.

28 (n) Acceptance of remedy.--Any claimant accepting the offer
29 of the contractor, subcontractor, supplier or design
30 professional to remedy the construction defects shall do so by

1 serving the contractor, subcontractor, supplier or design
2 professional with a written notice of acceptance within a
3 reasonable period of time after receipt of the offer but no
4 later than 30 days after receipt of the offer.

5 (o) Acceptance of offer to repair.--If a claimant accepts a
6 contractor, subcontractor, supplier or design professional's
7 offer to repair a defect described in an initial notice of
8 claim, the claimant shall provide the contractor, subcontractor,
9 supplier or design professional and its contractors or other
10 agents reasonable access to the claimant's residence during
11 normal working hours to perform and complete the construction by
12 the timetable stated in the offer.

13 (p) Presumption that damages could have been mitigated.--A
14 claimant's failure to do any of the following is admissible in
15 any dwelling action and creates a rebuttable presumption that
16 the claimant's damages could have been mitigated:

17 (1) Allow a reasonable inspection requested by the
18 contractor, subcontractor, supplier or design professional.

19 (2) Provide a good faith, written response to a
20 contractor, subcontractor, supplier or design professional's
21 offer.

22 (q) Failure to respond to claimant's notice.--Absent good
23 cause, the contractor, subcontractor, supplier or design
24 professional's failure to respond in good faith to the
25 claimant's notice under subsection (a) shall preclude the
26 contractor, subcontractor, supplier or design professional from
27 asserting that the claimant did not comply with the provisions
28 of this act.

29 (r) Toll of statute of limitations.--A claimant's written
30 notice under subsection (a) tolls the applicable statute of

1 limitations until 90 days after the contractor, subcontractor,
2 supplier or design professional receives the notice.

3 Section 7. Additional construction defects.

4 A construction defect which is discovered after a claimant
5 has provided a contractor with the claim notice required under
6 section 6 may not be alleged until the claimant has given the
7 contractor, subcontractor, supplier or design professional that
8 performed the original construction:

9 (1) written notice of the alleged defect required under
10 section 6; and

11 (2) a reasonable opportunity to repair the alleged
12 construction defect in the manner provided under section 6.

13 Section 8. Insurance requirements.

14 (a) General rule.--A contractor, subcontractor, supplier or
15 design professional that receives notice of a constructional
16 defect under section 6 may present the notice to an insurer that
17 issued a policy of insurance covering all or part of the conduct
18 or business of the contractor, subcontractor, supplier or design
19 professional.

20 (b) Notice.--Notice provided to an insurer under subsection
21 (a):

22 (1) Constitutes the making of a claim under the policy.

23 (2) Requires the contractor, subcontractor, supplier or
24 design professional and the insurer to perform any
25 obligations or duties required by the policy.

26 Section 9. Contract of sale.

27 (a) Notice of right to offer to cure defects.--Upon entering
28 into a contract for sale, construction or substantial remodeling
29 of a dwelling, the contractor, subcontractor, supplier or design
30 professional shall provide notice to the owner of the dwelling

1 of the contractor, subcontractor, supplier or design
2 professional's right to offer to cure construction defects
3 before a claimant may commence litigation against the
4 contractor, subcontractor, supplier or design professional.
5 Notice shall be conspicuous and may be included as part of the
6 underlying contract.

7 (b) Notice.--The notice required by subsection (a) shall be
8 in substantially the following form:

9 STATE LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW
10 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION
11 AGAINST THE CONTRACTOR WHO CONSTRUCTED YOUR HOME. NINETY DAYS
12 BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE
13 CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS
14 YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY
15 SUBCONTRACTORS, SUPPLIERS OR DESIGN PROFESSIONALS THE
16 OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE
17 DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY
18 THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS OR DESIGN
19 PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES
20 UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR
21 ABILITY TO FILE A LAWSUIT.

22 Section 10. Contractor notification requirements.

23 A contractor that constructs a new residential dwelling shall
24 within 30 days after the close of sale provide in writing to the
25 initial purchaser of the residence:

26 (1) The name, license number, business address and
27 telephone number of each subcontractor or design professional
28 who performed any work related to the design or construction
29 of the dwelling.

30 (2) A brief description of the work performed by each

1 subcontractor.

2 Section 11. Actions of associations.

3 (a) Encouragement or discouragement of damage claim.--

4 (1) A person shall not provide or offer to provide
5 anything of value to the property manager of an association
6 or to a member or officer of an executive board to induce the
7 property manager, member or officer to encourage or
8 discourage the association to file a claim for damages
9 arising from a construction defect.

10 (2) A property manager shall not accept anything of
11 value in exchange for encouraging or discouraging the
12 property manager's association to file a claim for damages
13 arising from a construction defect.

14 (3) A member or officer of an executive board shall not
15 accept anything of value in exchange for encouraging or
16 discouraging the member's or officer's association to file a
17 claim for damages arising from a constructional defect.

18 (4) A person who willfully violates subsection (a)
19 commits a misdemeanor.

20 (b) Recovery by association of damages.--An association may
21 bring an action to recover damages resulting from construction
22 defects in any of the units, common elements or limited common
23 elements of the common-interest community only:

24 (1) If the association first obtains the written
25 approval of the owner of each unit or interest in the common
26 elements or limited common elements that will be the subject
27 of the action or claim.

28 (2) Upon a vote of the units' owners to which at least a
29 majority of the votes of the members of the association are
30 allocated.

1 (3) Upon a vote of the executive board of the
2 association.

3 (c) Statement by attorney.--If an action is brought by an
4 association to recover damages resulting from construction
5 defects in any of the units, common elements or limited common
6 elements of the common-interest community, the attorney
7 representing the association shall provide to the executive
8 board of the association and to each unit's owner a statement
9 that includes in reasonable detail:

10 (1) The defects and damages or injuries to the units,
11 common elements or limited common elements.

12 (2) The cause of the defects, if known.

13 (3) The nature and the extent that is known of the
14 damage or injury resulting from the defects.

15 (4) The location of each defect within the units, common
16 elements or limited common elements, if known.

17 (5) A reasonable estimate of the cost of the action or
18 mediation, including reasonable attorney fees.

19 (6) An explanation of the potential benefits of the
20 action or mediation and the potential adverse consequences if
21 the association does not commence the action or submit the
22 claim to mediation, or if the outcome is not favorable to the
23 association.

24 (7) All disclosures that the unit owners are required to
25 make upon the sale of the property.

26 (d) Destructive tests.--An association or an attorney for an
27 association shall not employ a person to perform destructive
28 tests to determine any damage or injury to a unit, common
29 element or limited common element caused by a constructional
30 defect unless:

1 (1) The person is licensed as a contractor under State
2 law.

3 (2) The association has obtained the prior written
4 approval of each unit's owner whose unit or interest in the
5 common element or limited common element will be affected by
6 the testing.

7 (3) The person performing the tests has provided a
8 written schedule for repairs.

9 (4) The person performing the tests is required to
10 repair all damage resulting from the tests in accordance with
11 State law and local ordinances.

12 (5) The association or the person so employed obtains
13 all permits required to conduct the tests and to repair any
14 damage resulting from the tests.

15 (e) Commencement of action.--An association may commence an
16 action only upon a vote or written agreement of the owners of
17 the units to which at least a majority of the votes of the
18 members of the association are allocated. The association shall
19 provide written notice to the owner of each unit of the meeting
20 at which the commencement of an action is to be considered or
21 action is to be taken within 21 calendar days before the
22 meeting.

23 (f) Option of executive board.--The executive board of an
24 association may, without giving notice to the units' owners,
25 employ a contractor and such other persons as are necessary to
26 make repairs to a unit or common element within the common-
27 interest community required to protect the health, safety and
28 welfare of the units' owners.

29 Section 12. Effective date.

30 This act shall take effect in 60 days.