
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2761 Session of
2004

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TURZAI, WEBER, WILT, WRIGHT, GILLESPIE AND LEWIS,
JUNE 28, 2004

REFERRED TO COMMITTEE ON COMMERCE, JUNE 28, 2004

AN ACT

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

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
14 proceeding asserting a claim, in whole or in part, for damages

1 or other relief in connection with a dwelling, caused by a
2 construction defect.

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

6 "Claimant." Any person who asserts a claim concerning a
7 construction defect.

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

23 "Contractor." A person, firm, partnership, corporation,
24 association or other organization that is engaged in the
25 business of developing, constructing or selling newly
26 constructed dwellings or constructing additions or appurtenances
27 to an existing dwelling. The term includes: an owner, officer,
28 director, shareholder, partner or employee of a contractor. The
29 term does not include a real estate agent or broker.

30 "Dwelling." A single-family house or duplex. The term

1 includes a multifamily unit designed for residential use in
2 which title to each individual unit is transferred to the owner.
3 Under a condominium or cooperative system, the term includes
4 common areas and improvements that are owned or maintained by an
5 association or by members of an association. The term includes
6 the systems, other components, improvements, other structures
7 and recreational facilities that are appurtenant to the house,
8 duplex or multifamily unit at the time of its initial sale but
9 not necessarily a part of the house, duplex or multifamily unit.

10 "Serve" or "service." For an individual, delivery by
11 certified mail, return receipt requested, to the last known
12 address of an addressee. For a corporation, limited partnership,
13 limited liability company or other registered business
14 organization, the term shall mean delivery on the registered
15 agent or other agent for service of process authorized by the
16 laws of the Commonwealth.

17 Section 3. Prerequisites for action.

18 If a claimant files an action without first complying with
19 the requirements of this act, on application by a party to the
20 action, the court or arbitrator shall enforce the terms of this
21 act.

22 Section 4. Act not applicable to personal injury or death
23 claims.

24 This act shall not apply to any claim for personal injury or
25 death.

26 Section 5. Procedure.

27 (a) Contents of notice.--

28 (1) In an action subject to this act, the claimant must,
29 at least 90 days before initiating the action against a
30 contractor, provide service of written notice of claim on

1 that contractor. The notice of claim shall:

2 (i) State that the claimant asserts a construction
3 defect claim and is providing notice of the claim
4 pursuant to requirements of this act.

5 (ii) Describe the claim in detail sufficient to
6 explain the nature of the construction defect and the
7 result of the defect.

8 (iii) Include any reports that describe the
9 construction defect that would be discoverable under the
10 law and that the claimant possesses.

11 (2) Service under this subsection shall toll all
12 applicable statutes of limitations until 90 days after the
13 receipt of the notice of claim.

14 (b) Response.--Except as otherwise provided for under
15 subsection (g), within 30 days after service of the notice of
16 claim under subsection (a), the contractor that has received the
17 notice of claim may serve on the claimant and on any other
18 contractor that has received the notice of claim a written
19 response to the claim, which either:

20 (1) offers to settle the claim by monetary payment, the
21 making of repairs or a combination of both, without
22 inspection, including a timetable for the making of the
23 payment or repairs;

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

26 (3) rejects the claim.

27 (c) Inspection of dwelling.--

28 (1) If the contractor requests the opportunity to
29 inspect the dwelling under subsection (b)(2), the claimant
30 shall, within 21 days of receiving the contractor's request,

1 provide the contractor and its consultants complete access to
2 inspect the dwelling in order to document the defect and
3 perform any destructive or nondestructive tests necessary to
4 evaluate the claim. If testing is performed, the contractor
5 shall return the dwelling to its pretesting condition.

6 (2) If an inspection reveals a condition that requires
7 additional testing, the contractor shall provide notice to
8 the claimant of the need for the additional testing and the
9 claimant shall provide access to the dwelling.

10 (3) If a claim is asserted on behalf of owners of
11 multiple dwellings or multiple owners of units within a
12 multifamily complex, the contractor shall be entitled to
13 inspect each of the dwellings or units.

14 (d) Process following inspection.--Within 14 days following
15 completion of an inspection or testing under subsection (c), the
16 contractor may serve a written response on the claimant which:

17 (1) offers to settle the claim by monetary payment, the
18 making of repairs or a combination of both, and includes a
19 timetable for making the payment or repairs; or

20 (2) rejects the claim.

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

22 (1) The claimant shall accept or reject an offer by a
23 contractor under subsection (b)(1) or (2) within 30 days of
24 receipt of the offer.

25 (2) If the claimant rejects the settlement offer made by
26 the contractor under subsection (b) or (d), the claimant
27 shall provide written notice of the claimant's rejection to
28 the contractor and include the specific reasons for the
29 claimant's rejection.

30 (3) Upon receipt of the rejection, the contractor may,

1 within ten days of receipt of the rejection, make a
2 supplemental offer to the claimant of monetary payment or
3 offer to repair.

4 (4) If the claimant fails to respond as required under
5 paragraph (1), the contractor's offer of monetary payment or
6 offer to repair shall be deemed to be accepted.

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

9 (1) rejects the claim;

10 (2) does not respond to a notice of claim made under
11 subsection (a); or

12 (3) does not make monetary payment or repair within the
13 proposed timetable,

14 the claimant may bring an action against the contractor for the
15 defect described in the notice of claim without further notice
16 and notwithstanding the 90-day time period set forth under
17 subsection (a).

18 (g) Construction defects involving physical safety of
19 occupants.--

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

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

28 (3) If the contractor determines there is an imminent
29 threat to physical safety, the contractor shall provide the
30 claimant with a proposal for a monetary offer or offer to

1 repair within three days of the determination. If the
2 contractor determines there is no imminent threat to public
3 safety, the contractor shall respond as provided in
4 subsection (d).

5 (4) During the course of any notice to an inspection by
6 the contractor, the claimant or contractor may take such
7 interim repair steps to maintain the structural integrity of
8 the dwelling without prejudicing its claims or defenses.

9 (h) Right of action.--

10 (1) If a claimant rejects a reasonable monetary offer or
11 reasonable supplemental monetary offer or does not permit the
12 contractor to repair the defect pursuant to an accepted offer
13 to repair under subsection (e), the claimant may not recover
14 an amount in excess of:

15 (i) the fair market value of an offer to repair the
16 construction defect or the actual cost of the repairs,
17 whichever is less; or

18 (ii) the amount of the monetary offer of settlement.

19 (2) For purposes of this subsection, the trier of fact
20 shall determine the reasonableness of a monetary offer or
21 offer to repair made under subsection (b). If the claimant
22 has rejected a reasonable monetary offer or offer to repair,
23 including any reasonable supplemental offer under subsection
24 (j), the claimant may not recover costs or attorney fees
25 incurred after the date of rejection.

26 (i) Timely access for repairs.--If a claimant accepts a
27 contractor's offer to repair a construction defect, the claimant
28 shall provide the contractor and its subcontractors, agents,
29 experts and consultants access to the dwelling to complete the
30 repairs within the timetable set forth under this section.

1 (j) Supplemental offer.--Upon receipt of a claimant's
2 rejection, the contractor may, within 15 days of receiving the
3 rejection, make a supplemental monetary offer or offer to repair
4 to the claimant.

5 (k) Agreement between claimant and contractor.--Following
6 service under subsection (a), a claimant and a contractor may
7 alter the procedures under this act by mutual written agreement.

8 (l) Limitation of liability.--In an action involving a
9 construction defect, a contractor shall not be liable for
10 damages caused by:

11 (1) Normal shrinkage due to drying or settlement of
12 construction components within the tolerance of building
13 standards.

14 (2) The contractor's reliance on written information
15 relating to the dwelling that was obtained from official
16 government records or provided by a government entity.

17 (3) Refusal of another person to allow the contractor or
18 the contractor's agents to perform their warranty service
19 work.

20 Section 6. Additional construction defects.

21 A construction defect that is discovered after a claimant has
22 served notice under subsection (a) may not be alleged in an
23 action until the claimant has complied with the requirements of
24 section 5.

25 Section 7. Obligation to repair.

26 If a claimant accepts an offer made in compliance with this
27 act and the contractor fulfills the offer in compliance with
28 this act, the contractor shall be deemed, for insurance
29 purposes, to have been legally obligated to make the repairs or
30 the monetary payment as if the claimant had recovered a judgment

1 against the contractor in the amount of the monetary payment or
2 the cost of the repairs.

3 Section 8. Sales contract provisions.

4 All contracts for the construction of a dwelling, the sale by
5 a contractor of a newly constructed dwelling or the construction
6 of additions or appurtenances to an existing dwelling shall
7 provide notice to the owner of the dwelling in ten-point,
8 capitalized boldface type in substantially the following form:

9 The Construction Dispute Resolution Act contains
10 important requirements you must follow before you may
11 file a lawsuit or other action for defective construction
12 against the contractor who constructed your home. Ninety
13 days before you file your lawsuit or other action, you
14 must serve on the contractor a written notice of any
15 construction conditions you allege are defective. Under
16 the law, a contractor has the opportunity to make an
17 offer to repair or to pay for the defects. You are not
18 obligated to accept any offer made by a contractor. There
19 are strict deadlines and procedures under the law, and
20 failure to follow them may affect your ability to file a
21 lawsuit or other action.

22 Section 9. Actions of homeowner associations.

23 (a) General prohibition.--No person may provide or offer to
24 provide anything of value, directly or indirectly, to a property
25 manager of an association or to a member or officer of an
26 association to induce the property manager, member or officer to
27 encourage or discourage the association to file a claim for
28 damages arising from a construction defect.

29 (b) Property managers.--No property manager retained by an
30 association or member or officer of an association may accept

1 anything of value, directly or indirectly, in exchange for
2 encouraging or discouraging the association to file a claim for
3 damages arising from a construction defect.

4 (c) Penalty.--A person who knowingly violates subsection (a)
5 or (b) commits a misdemeanor of the third degree.

6 Section 10. Right of action for association.

7 (a) General rule.--An association may bring an action
8 against a contractor to recover damages resulting from
9 construction defects in any of the common elements or limited
10 common elements of a common-interest community. The action may
11 be maintained only after:

12 (1) A vote of the unit owners to which at least a
13 majority of the votes of the members of the association are
14 allocated.

15 (2) The full board of directors of the association and
16 the contractor have met in person and conferred in a good
17 faith attempt to resolve the association's claim or the
18 contractor has definitively declined or ignored the requests
19 to meet with the board of directors of the association.

20 (3) The association has complied with section 5.

21 (b) Notice to unit owners.--At least 14 days in advance of
22 any vote under subsection (a)(1), the association shall provide
23 to each unit owner a written statement that includes, in
24 reasonable detail:

25 (1) The construction defects and damages or injuries to
26 the common elements or limited common elements.

27 (2) The nature, extent and cause of the construction
28 defects, if the cause is known.

29 (3) The location of each construction defect within the
30 common elements or limited common elements, if known.

1 (4) A reasonable estimate of the cost of the action or
2 mediation, including reasonable attorney fees and costs,
3 expert fees and the costs of testing.

4 (5) All disclosures that the unit owner is required to
5 make upon the sale of the unit.

6 Section 11. Destructive tests.

7 No association may employ a person to perform destructive
8 tests to determine any damage or injury to a unit, common
9 element or limited common element caused by a construction
10 defect unless:

11 (1) The person performing the test has provided a
12 written schedule for repairs.

13 (2) The person performing the test is required to repair
14 all damage resulting from the tests in accordance with State
15 laws and local ordinances relating thereto.

16 (3) The association or the person so employed obtains
17 all permits required to conduct the tests and to repair any
18 damage resulting from the tests.

19 (4) Reasonable prior notice and opportunity to observe
20 the tests is given to the contractor against whom an action
21 may be brought as a result of the tests.

22 Section 12. Contractor employed by association.

23 The board of directors of an association may, without giving
24 notice to the unit owners, employ a contractor and such other
25 persons as are necessary to make such immediate repairs to a
26 unit or common element within the association as are required to
27 protect the health, safety and welfare of the units' owners.

28 Section 13. Construction.

29 Nothing in the act shall be construed as establishing a cause
30 of action on behalf of any claimant or contractor.

1 Section 14. Applicability.

2 This act does not apply:

3 (1) To a contractor's right to seek contribution,
4 indemnity or recovery against a subcontractor, supplier or
5 design professional for any claim made against the contractor
6 by a claimant.

7 (2) Regardless of the date of sale or substantial
8 completion of a dwelling, consistent with 42 Pa.C.S. § 5536
9 (relating to construction projects).

10 Section 15. Effective date.

11 This act shall take effect in 60 days.