

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2761 Session of 2004

INTRODUCED BY FEESE, DALLY, CAPPELLI, THOMAS, ARMSTRONG, BALDWIN, BASTIAN, BOYD, BUNT, BUXTON, CIVERA, S. E. CORNELL, COSTA, CRAHALLA, CREIGHTON, DENLINGER, FAIRCHILD, FLEAGLE, GEIST, GINGRICH, GODSHALL, GOODMAN, GRUCELA, GRUITZA, HANNA, HARHAI, HARPER, HENNESSEY, HERMAN, HERSHEY, HESS, HICKERNELL, HORSEY, HUTCHINSON, LaGROTTA, MAHER, MANN, MARKOSEK, MARSICO, McCALL, MILLARD, R. MILLER, S. MILLER, MUSTIO, NAILOR, PICKETT, REED, REICHLEY, ROSS, SAYLOR, SCAVELLO, STEIL, R. STEVENSON, T. STEVENSON, E. Z. TAYLOR, TIGUE, TRUE, TURZAI, WEBER, WILT, WRIGHT, GILLESPIE, LEWIS AND BENNINGHOFF, JUNE 28, 2004

AS REPORTED FROM COMMITTEE ON URBAN AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 18, 2004

AN ACT

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

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

7 Section 1. Short title.

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

10 Section 2. Definitions.

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

14 "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.

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, then the term shall mean a matter
14 concerning the design, ~~construction or repair~~ OR CONSTRUCTION of <—
15 a dwelling, of an alteration of ~~or repair~~ or addition to an <—
16 existing dwelling or of an appurtenance to a dwelling on which a
17 person has a complaint against a contractor. The term may
18 include any physical damage to the dwelling, any appurtenance or
19 the real property on which the dwelling or appurtenance is
20 affixed, proximately caused by a construction defect.

21 "Consultant." An engineer, architect, contractor, inspector
22 or other person purporting to have expertise relating to
23 residential construction.

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. The
30 term does not include a real estate agent or broker.

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

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

18 Section 3. Prerequisites for action.

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

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

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

27 Section 5. Procedure.

28 (a) Contents of notice.--

29 (1) In an action subject to this act, the claimant must,
30 at least ~~90~~ 120 days before initiating the action against a ←

1 contractor, provide service of written notice of claim on
2 that contractor. The notice of claim shall:

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

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

9 (iii) Include any reports BY CONSULTANTS that <—
10 describe the construction defect ~~that would be~~ <—
11 ~~discoverable under the law and~~ that the claimant
12 possesses.

13 (2) Service under this subsection shall toll all
14 applicable statutes of limitations until ~~90~~ 120 days after <—
15 the receipt of the notice of claim.

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

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

26 (2) proposes to inspect the dwelling that is the subject
27 of the claim; or

28 (3) rejects the claim.

29 (c) Inspection of dwelling.--

30 (1) If the contractor requests the opportunity to

1 inspect the dwelling under subsection (b)(2), the claimant
2 shall, within 21 days of receiving the contractor's request,
3 provide the contractor and its consultants complete access to
4 inspect the dwelling in order to document the defect and
5 perform any destructive or nondestructive tests necessary to
6 evaluate the claim. If testing is performed, the contractor
7 shall return the dwelling to its pretesting condition.

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

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

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

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

22 (2) rejects the claim.

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

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

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

1 claimant's rejection.

2 (3) Upon receipt of the rejection, the contractor may,
3 within ten days of receipt of the rejection, make a
4 supplemental offer to the claimant of monetary payment or
5 offer to repair.

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

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

11 (1) rejects the claim;

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

14 (3) does not make monetary payment or repair within the
15 proposed timetable,

16 the claimant may bring an action against the contractor for the
17 defect described in the notice of claim without further notice
18 and notwithstanding the ~~90-day~~ 120-DAY time period set forth ←
19 under subsection (a).

20 (g) Construction defects involving physical safety of
21 occupants.--

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

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

30 (3) If the contractor determines there is an imminent

1 threat to physical safety, the contractor shall provide the
2 claimant with a proposal for a monetary offer or offer to
3 repair within three days of the determination. If the
4 contractor determines there is no imminent threat to public
5 safety, the contractor shall respond as provided in
6 subsection (d).

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

11 (h) Right of action.--

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

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

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

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

28 (i) Timely access for repairs.--If a claimant accepts a
29 contractor's offer to repair a construction defect, the claimant
30 shall provide the contractor and its subcontractors, agents,

1 experts and consultants access to the dwelling to complete the
2 repairs within the timetable set forth under this section.

3 ~~(j) Supplemental offer. Upon receipt of a claimant's~~ <—
4 ~~rejection, the contractor may, within 15 days of receiving the~~
5 ~~rejection, make a supplemental monetary offer or offer to repair~~
6 ~~to the claimant.~~

7 ~~(k)~~ (J) Agreement between claimant and contractor.-- <—
8 Following service under subsection (a), a claimant and a
9 contractor may alter the procedures under this act by mutual
10 written agreement.

11 ~~(l)~~ (K) Limitation of liability.--In an action involving a <—
12 construction defect, a contractor shall not be liable for
13 damages caused by:

14 (1) Normal shrinkage due to drying or settlement of
15 construction components within the tolerance of building
16 standards.

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

20 (3) Refusal of ~~another person~~ THE CLAIMANT to allow the <—
21 contractor or the contractor's agents to perform their
22 warranty service work.

23 Section 6. Additional construction defects.

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

28 ~~Section 7. Obligation to repair.~~ <—

29 ~~If a claimant accepts an offer made in compliance with this~~
30 ~~act and the contractor fulfills the offer in compliance with~~

1 ~~this act, the contractor shall be deemed, for insurance~~
2 ~~purposes, to have been legally obligated to make the repairs or~~
3 ~~the monetary payment as if the claimant had recovered a judgment~~
4 ~~against the contractor in the amount of the monetary payment or~~
5 ~~the cost of the repairs.~~

6 Section 7. Sales contract provisions. ←

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

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

25 Section 8. Actions of homeowner associations. ←

26 (a) General prohibition.--No person may provide or offer to
27 provide anything of value, directly or indirectly, to a property
28 manager of an association or to a member or officer of an
29 association to induce the property manager, member or officer to
30 encourage or discourage the association to file a claim for

1 damages arising from a construction defect.

2 (b) Property managers.--No property manager retained by an
3 association or member or officer of an association may accept
4 anything of value, directly or indirectly, in exchange for
5 encouraging or discouraging the association to file a claim for
6 damages arising from a construction defect.

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

9 Section ~~10~~ 9. Right of action for association. ←

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

15 (1) A vote of the unit owners to which at least a
16 majority of the votes of the members of the association are
17 allocated.

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

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

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

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

30 (2) The nature, extent and cause of the construction

1 defects, if the cause is known.

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

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

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

9 Section ~~11~~ 10. Destructive tests. ←

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

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

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

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

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

25 Section ~~12~~ 11. Contractor employed by association. ←

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

1 Section ~~13~~ 12. Construction. <—

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

4 Section ~~14~~ 13. Applicability. <—

5 ~~This act does not apply:~~ <—

6 ~~(1) To a contractor's right to seek contribution,~~

7 THIS ACT SHALL APPLY AS FOLLOWS: <—

8 (1) THIS ACT SHALL NOT APPLY TO A CONTRACTOR'S RIGHT TO
9 SEEK CONTRIBUTION, indemnity or recovery against a
10 subcontractor, supplier or design professional for any claim
11 made against the contractor by a claimant.

12 (2) THIS ACT SHALL NOT RESTRICT, MODIFY OR ALTER OR <—
13 OTHERWISE INTERFERE WITH THE OBLIGATIONS, TERMS OR CONDITIONS
14 OF AN INSURANCE POLICY.

15 (3) THIS ACT SHALL NOT APPLY TO AN INSURER ASSERTING A
16 CLAIM AGAINST A CONTRACTOR FOR PAYMENTS MADE BY THE INSURER
17 PURSUANT TO AN INSURANCE POLICY COVERING THE DWELLING. A
18 CLAIM UNDER THIS PARAGRAPH SHALL NOT BE PREJUDICED, REDUCED
19 OR OTHERWISE MODIFIED BECAUSE OF THE FAILURE OF THE CLAIMANT
20 TO COMPLY WITH THIS ACT.

21 ~~(2) Regardless~~ <—

22 (4) THIS ACT SHALL APPLY REGARDLESS of the date of sale <—
23 or substantial completion of a dwelling, consistent with 42
24 Pa.C.S. § 5536 (relating to construction projects).

25 Section ~~15~~ 14. Effective date. <—

26 This act shall take effect in 60 days.