



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4873

Introduced 01/19/06, by Rep. Randall M. Hultgren

SYNOPSIS AS INTRODUCED:

New Act

Creates the Notice and Opportunity to Repair Act. Provides that a construction professional shall be liable to a homeowner for damages caused by the acts or omissions of the professional and his or her agents, employees, or subcontractors. Requires the service of notice to the professional of the complained-of defect in the construction by the homeowner prior to commencement of a lawsuit. Allows the professional to make an offer of repair or settlement and to rescind this offer if the claimant fails to respond within 30 days. Requires the claimant to file with the court a list of known construction defects. Directs the professional to provide a statutory notice to the homeowner upon the execution of a contract. Applies to construction defect claims that arise before, on, or after July 15, 2007, if the claim is the subject of an action commenced on or after July 15, 2007.

LRB094 17849 AJ0 53150 b

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning real estate.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Notice and Opportunity to Repair Act.

6 Section 5. Findings. The General Assembly finds that
7 limited changes in the law are necessary and appropriate
8 concerning actions claiming damages, indemnity, or
9 contribution in connection with alleged residential
10 construction defects.

11 Section 10. Purpose. It is the intent of the General
12 Assembly that this Act apply to the types of civil actions
13 described in Section 5 while preserving adequate rights and
14 remedies for property owners who bring and maintain those
15 actions.

16 Section 15. Definitions. In this Act:

17 "Action" means any civil lawsuit or action in contract or
18 tort for damages or indemnity brought against a construction
19 professional to assert a claim, whether by complaint,
20 counterclaim, or cross-claim, for damage or the loss of use of
21 real or personal property caused by a defect in the
22 construction of a residence or in the substantial remodel of a
23 residence. "Action" does not include any civil action in tort
24 alleging personal injury or wrongful death to a person or
25 persons resulting from a construction defect.

26 "Claimant" means a homeowner who asserts a claim against a
27 construction professional concerning a defect in the
28 construction of a residence or in the substantial remodel of a
29 residence.

30 "Construction professional" means an architect, builder,

1 builder-vendor, contractor, subcontractor, engineer, or
2 inspector, including, but not limited to, any person performing
3 or furnishing the design, supervision, inspection,
4 construction, or observation of the construction of any
5 improvement to real property, whether operating as a sole
6 proprietor, partnership, corporation, or other business
7 entity.

8 "Homeowner" means any person, company, firm, partnership,
9 corporation, or association who contracts with a construction
10 professional for the construction, sale, or construction and
11 sale of a residence. "Homeowner" includes, but is not limited
12 to, a subsequent purchaser of a residence from any homeowner.

13 "Residence" means a single family house, duplex, triplex,
14 quadraplex, or a unit in a multiunit residential structure in
15 which title to each individual unit is transferred to the owner
16 under the Condominium Property Act and includes general and
17 limited common elements as defined in that Act.

18 "Serve" or "service" means personal service or delivery by
19 certified mail to the last known address of the addressee.

20 "Substantial remodel" means a remodel of a residence for
21 which the total cost exceeds the maximum amount for a small
22 claim under Supreme Court Rules.

23 Section 20. Applicability.

24 (a) This Act:

25 (1) Applies to any claim that arises before, on, or
26 after July 15, 2007, as the result of a construction
27 defect, except a claim for personal injury or wrongful
28 death, if the claim is the subject of an action commenced
29 on or after July 15, 2007.

30 (2) Prevails over any conflicting law otherwise
31 applicable to the claim or cause of action.

32 (b) This Act does not:

33 (1) bar or limit any defense otherwise available
34 except, as otherwise provided in this Act; or

35 (2) create a new theory upon which liability may be

1 based.

2 Section 25. Contractor liability. In a claim to recover
3 damages resulting from a construction defect, a contractor is
4 liable for his or her acts or omissions or the acts or
5 omissions of his or her agents, employees, or subcontractors
6 and is not liable for any damages caused by:

7 (1) the acts or omissions of a person other than the
8 contractor or his or her agent, employee, or subcontractor;

9 (2) the failure of a person other than the contractor
10 or his or her agent, employee, or subcontractor to take
11 reasonable action to reduce the damages or maintain the
12 residence;

13 (3) normal wear, tear, or deterioration;

14 (4) normal shrinkage, swelling, expansion, or
15 settlement; or

16 (5) any construction defect disclosed to a claimant
17 before his purchase of the residence, if the disclosure was
18 provided in writing and in language that is understandable
19 and was signed by the claimant.

20 Section 30. Notice of claim of construction defects;
21 response by construction professional.

22 (a) In every construction defect action brought against a
23 construction professional, the claimant shall, no later than 60
24 days before filing an action, serve written notice of claim on
25 the construction professional. The notice of claim shall state
26 that the claimant asserts a construction defect claim against
27 the construction professional and shall describe the claim in
28 reasonable detail sufficient to determine the general nature of
29 the defect.

30 (b) Within 21 days after service of the notice of claim,
31 the construction professional shall serve a written response on
32 the claimant by registered mail or personal service. The
33 written response shall:

34 (1) propose to inspect the residence that is the

1 subject of the claim and to complete the inspection within
2 a specified time frame; including the statement that the
3 construction professional shall, based on the inspection,
4 offer to remedy the defect, compromise by payment, or
5 dispute the claim;

6 (2) offer to compromise and settle the claim by
7 monetary payment without inspection; which may include,
8 but is not limited to, an express offer to purchase the
9 claimant's residence that is the subject of the claim, and
10 to pay the claimant's reasonable relocation costs; or

11 (3) state that the construction professional disputes
12 the claim and will neither remedy the construction defect
13 nor compromise and settle the claim.

14 (c) If the construction professional disputes the claim
15 or does not respond to the claimant's notice of claim within
16 the time stated in subsection (b) of this Section, the claimant
17 may bring an action against the construction professional for
18 the claim described in the notice of claim without further
19 notice.

20 If the claimant rejects the inspection proposal or the
21 settlement offer made by the construction professional
22 pursuant to subsection (b), the claimant shall serve written
23 notice of the claimant's rejection on the construction
24 professional. After service of the rejection, the claimant may
25 bring an action against the construction professional for the
26 construction defect claim described in the notice of claim. If
27 the construction professional has not received from the
28 claimant, within 30 days after the claimant's receipt of the
29 construction professional's response, either an acceptance or
30 rejection of the inspection proposal or settlement offer, then
31 at any time thereafter the construction professional may
32 terminate the proposal or offer by serving written notice to
33 the claimant, and the claimant may thereafter bring an action
34 against the construction professional for the construction
35 defect claim described in the notice of claim.

36 (d) If the claimant elects to allow the construction

1 professional to inspect in accordance with the construction
2 professional's proposal pursuant to paragraph (1) of
3 subsection (b) of this Section, the claimant shall provide the
4 construction professional and its contractors or other agents
5 reasonable access to the claimant's residence during normal
6 working hours to inspect the premises and the claimed defect.

7 (e) Within 14 days following completion of the
8 inspection, the construction professional shall serve on the
9 claimant:

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

16 (2) a written offer to compromise and settle the claim
17 by monetary payment pursuant to paragraph (2) of subsection
18 (b) of this Section; or

19 (3) a written statement that the construction
20 professional will not proceed further to remedy the defect.

21 (f) If the construction professional does not proceed
22 further to remedy the construction defect within the agreed
23 timetable, or if the construction professional fails to comply
24 with the provisions of subsection (e), the claimant may bring
25 an action against the construction professional for the claim
26 described in the notice of claim without further notice.

27 (g) If the claimant rejects the offer made by the
28 construction professional pursuant to paragraph (1) of
29 subsection (e) or paragraph (2) of subsection (e) of this
30 Section to either remedy the construction defect or compromise
31 and settle the claim by monetary payment, the claimant shall
32 serve written notice of the claimant's rejection on the
33 construction professional. After service of the rejection
34 notice, the claimant may bring an action against the
35 construction professional for the construction defect claim
36 described in the notice of the claim. If the construction

1 professional has not received from the claimant, within 30 days
2 after the claimant's receipt of the construction
3 professional's response, either an acceptance or rejection of
4 the offer made pursuant to paragraph (1) of subsection (e) or
5 paragraph (2) of subsection (e) of this Section, then at any
6 time thereafter the construction professional may terminate
7 the offer by serving written notice to the claimant.

8 (h) Any claimant accepting the offer of a construction
9 professional to remedy the construction defect pursuant to
10 paragraph (1) of subsection (e) of this Section shall do so by
11 serving the construction professional with a written notice of
12 acceptance within a reasonable time period after receipt of the
13 offer, and no later than 30 days after receipt of the offer.
14 The claimant shall provide the construction professional and
15 its contractors or other agents reasonable access to the
16 claimant's residence during normal working hours to perform and
17 complete the construction by the timetable stated in the offer.
18 The claimant and construction professional may, by written
19 mutual agreement, alter the extent of construction or the
20 timetable for completion of construction stated in the offer,
21 including, but not limited to, repair of additional defects.

22 (i) Any action commenced by a claimant prior to compliance
23 with the requirements of this Section shall be subject to
24 dismissal without prejudice and shall not be recommenced until
25 the claimant has complied with the requirements of this
26 Section.

27 (j) Nothing in this Section may be construed to prevent a
28 claimant from commencing an action on the construction defect
29 claim described in the notice of claim if the construction
30 professional fails to perform the construction agreed upon,
31 fails to remedy the defect, or fails to perform by the
32 timetable agreed upon pursuant to paragraph (1) of subsection
33 (b) or subsection (h) of this Section.

34 (k) Prior to commencing any action alleging a
35 construction defect, or after the dismissal of any action
36 without prejudice pursuant to subsection (i) of this Section,

1 the claimant may amend the notice of claim to include
2 construction defects discovered after the service of the
3 original notice of claim and must otherwise comply with the
4 requirements of this Section for the additional claims. The
5 service of an amended notice of claim shall relate back to the
6 original notice of claim for purposes of tolling statutes of
7 limitations and repose. Claims for defects discovered after the
8 commencement or recommencement of an action may be added to
9 such action only after providing notice to the construction
10 professional of the defect and allowing for response under
11 subsection (b) of this Section.

12 Section 35. Effect of non-compliance.

13 (a) If a claimant unreasonably rejects a reasonable
14 written offer of settlement made as part of a response made
15 pursuant to Section 30 of this Act or does not permit the
16 contractor or independent contractor a reasonable opportunity
17 to inspect or to repair the defect pursuant to an accepted
18 offer of settlement and thereafter commences an action governed
19 by this Act, the court in which the action is commenced may:

20 (1) deny the claimant's attorney's fees and costs;

21 and

22 (2) award attorney's fees and costs to the
23 contractor.

24 (b) Any sums paid under a homeowner's warranty, other than
25 sums paid in satisfaction of claims that are collateral to any
26 coverage issued to or by the contractor, shall be deducted from
27 any recovery.

28 (c) If a contractor fails to comply with the requirements
29 of this Act, the claimant shall not be obligated to further
30 comply with the provisions of this Act and shall be allowed to
31 commence an action without satisfying any other requirement of
32 this Act; none of the provisions of this Act shall be applied
33 to the detriment of the claimant.

34 Section 40. Construction defect list.

1 (a) In every action brought against a construction
2 professional, the claimant, including a construction
3 professional asserting a claim against another construction
4 professional, shall file with the court and serve on the
5 defendant a list of known construction defects in accordance
6 with this Section.

7 (b) The list of known construction defects shall contain a
8 description of the construction that the claimant alleges to be
9 defective. The list of known construction defects shall be
10 filed with the court and served on the defendant within 30 days
11 after the commencement of the action or within such longer
12 period as the court in its discretion may allow.

13 (c) The list of known construction defects may be amended
14 by the claimant to identify additional construction defects as
15 they become known to the claimant.

16 (d) The list of known construction defects shall specify,
17 to the extent known to the claimant, the construction
18 professional responsible for each alleged defect identified by
19 the claimant.

20 (e) If a subcontractor or supplier is added as a party to
21 an action under this Section, the party making the claim
22 against such subcontractor or supplier shall serve on the
23 subcontractor or supplier the list of construction defects in
24 accordance with this Section within 30 days after service of
25 the complaint against the subcontractor or supplier or within
26 such period as the court in its discretion may allow.

27 Section 45. Mandatory notice.

28 (a) The construction professional shall provide notice to
29 each homeowner, upon entering into a contract for sale,
30 construction, or substantial remodel of a residence, of the
31 construction professional's right to offer to cure
32 construction defects before a homeowner may commence
33 litigation against the construction professional. The notice
34 shall be conspicuous and may be included as part of the
35 underlying contract signed by the homeowner.

1 (b) The notice required by subsection (a) of this Section
2 shall be in substantially the following form:

3 SECTIONS 1 THROUGH 40 OF THE NOTICE AND OPPORTUNITY TO
4 REPAIR ACT CONTAIN IMPORTANT REQUIREMENTS YOU MUST FOLLOW
5 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION
6 AGAINST THE SELLER OR BUILDER OF YOUR HOME. SIXTY (60) DAYS
7 BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE
8 SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION
9 CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER
10 OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR
11 PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY
12 OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT
13 DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO
14 FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

15 (c) This Act shall not preclude or bar any action if
16 notice is not given to the homeowner as required by this
17 Section.

18 Section 50. No effect on other rights. Nothing in this Act
19 shall be construed to hinder or otherwise affect the
20 employment, agency, or contractual relationship between
21 homeowners and construction professionals during the process
22 of construction or remodeling and does not preclude the
23 termination of those relationships as allowed under the law.
24 Nothing in this Act shall negate or otherwise restrict a
25 construction professional's right to access or inspection
26 provided by law, covenant, easement, or contract.

27 Section 55. Tolling of statutes of limitations and repose.
28 If a written notice of claim is served under Section 30 of this
29 Act within the time prescribed for the filing of an action
30 under this Act, the statutes of limitations for
31 construction-related claims are tolled until 75 days after the
32 period of time during which the filing of an action is barred
33 under the applicable statute of limitations.