

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H4/2/03
A Bill

HOUSE BILL 2824

5 By: Representatives R. Smith, Bright
6 By: Senator Salmon
7

8
9 **For An Act To Be Entitled**

10 AN ACT RELATING TO CONSTRUCTION DEFECT CLAIMS;
11 AND FOR OTHER PURPOSES.
12

13 **Subtitle**

14 AN ACT RELATING TO CONSTRUCTION DEFECT
15 CLAIMS.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Legislative Intent.

21 (a) The General Assembly finds, declares, and determines that limited
22 changes in the law are necessary and appropriate concerning actions claiming
23 damages, indemnity, or contribution in connection with alleged construction
24 defects.

25 (b) It is the intent of the General Assembly that this act apply to
26 the types of civil actions listed in subsection (a) of this section while
27 preserving adequate rights and remedies for property owners.
28

29 SECTION 2. Definitions.

30 For the purpose of this act:

31 (1)(A) "Action" means any civil lawsuit or action in contract or tort
32 for damage or indemnity brought against a construction professional to assert
33 a claim, whether by complaint, counterclaim, or cross-claim, for damage or
34 the loss of use of real or personal property caused by a defect in the
35 construction of a residence or in the substantial remodel of a residence.

36 (B) "Action" does not include any civil action in tort alleging



1 personal injury or wrongful death to a person or persons resulting from a
2 construction defect;

3 (2) "Association" means a unit owners organization or a non-profit
4 corporation created to own and operate portions of a planned community which
5 has the power to assess association members to pay the costs and expenses
6 incurred in the performance of the association's obligations;

7 (3) "Claimant" means a homeowner or association who asserts a claim
8 against a construction professional concerning a defect in the construction
9 of a residence or in the substantial remodel of a residence;

10 (4) "Construction professional" means a builder, contractor, or
11 subcontractor performing or furnishing the design, supervision, inspection,
12 construction, or observation of the construction of any improvement to real
13 property, whether operating as a sole proprietor, partnership, corporation,
14 or other business entity;

15 (5)(A) "Homeowner" means any person, company, firm, partnership,
16 corporation, or association who contracts with a construction professional
17 for the construction, sale, or construction and sale of a residence.

18 (B) "Homeowner" includes, but is not limited to, a subsequent
19 purchaser of a residence from any homeowner;

20 (6) "Residence" means a single-family house, duplex, triplex,
21 quadraplex, or a unit in a multiunit residential structure in which title to
22 each individual unit is transferred to the owner under a condominium or
23 cooperative system;

24 (7) "Serve" or "service" means personal service or delivery by
25 certified mail to the last known address of the addressee;

26 (8) "Substantial completion of construction" means the state of
27 completion reached when an improvement upon real property may be used or
28 occupied for its intended use; and

29 (9) "Substantial remodel" means a remodel of a residence, for
30 which the total cost exceeds one-half (1/2) of the assessed value of the
31 residence for property tax purposes at the time the contract for the remodel
32 work was made.

33
34 SECTION 3. Notice & Opportunity to Repair.

35 (a) In every construction defect action brought against a construction
36 professional, the claimant shall, no later than sixty (60) days before filing

1 an action, serve written notice of claim on the construction professional.
2 The notice of claim shall state that the claimant asserts a construction
3 defect claim against the construction professional and shall describe the
4 claim in reasonable detail sufficient to determine the general nature of the
5 defect.

6 (b) Within twenty-one (21) days after service of the notice of claim,
7 the construction professional shall serve a written response on the claimant
8 by registered mail or personal service. The written response shall:

9 (1) Propose to inspect the residence that is the subject of the
10 claim and to complete the inspection within a specified time frame. The
11 proposal shall include the statement that the construction professional
12 shall, based on the inspection, offer to remedy the defect, compromise by
13 payment, or dispute the claim;

14 (2) Offer to compromise and settle the claim by monetary payment
15 without inspection; and

16 (3) State that the construction professional disputes the claim
17 and will neither remedy the construction defect nor compromise and settle the
18 claim.

19 (c)(1) If the construction professional disputes the claim or does not
20 respond to the claimant's notice of claim within the time stated in
21 subsection (b) of this section, the claimant may bring an action against the
22 construction professional for the claim described in the notice of claim
23 without further notice.

24 (2)(A) If the claimant rejects the inspection proposal or the
25 settlement offer made by the construction professional pursuant to subsection
26 (b) of this section, the claimant shall serve written notice of the
27 claimant's rejection on the construction professional.

28 (B) After service of the rejection, the claimant may bring
29 an action against the construction professional for the construction defect
30 claim described in the notice of claim.

31 (C) If the construction professional has not received from
32 the claimant, within thirty (30) days after the claimant's receipt of the
33 construction professional's response, either an acceptance or rejection of
34 the inspection proposal or settlement offer, then at anytime thereafter the
35 construction professional may terminate the proposal or offer by serving
36 written notice to the claimant, and the claimant may thereafter bring an

1 action against the construction professional for the construction defect
2 claim described in the notice of claim.

3 (d)(1) If the claimant elects to allow the construction professional to
4 inspect in accordance with the construction professional's proposal pursuant
5 to subdivision (b)(1) of this section, the claimant shall provide the
6 construction professional and its contractors or other agents reasonable
7 access to the claimant's residence during normal working hours to inspect the
8 premises and the claimed defect.

9 (2) Within fourteen (14) days following completion of the
10 inspection, the construction professional shall serve on the claimant:

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

16 (B) A written offer to compromise and settle the claim by
17 monetary payment pursuant to subdivision (b)(2) of this section; or

18 (C) A written statement that the construction professional
19 will not proceed further to remedy the defect.

20 (3) If the construction professional does not proceed further to
21 remedy the construction defect within the agreed timetable, or if the
22 construction professional fails to comply with subdivision (d)(2) of this
23 subsection, the claimant may bring an action against the construction
24 professional for the claim described in the notice of claim without further
25 notice.

26 (4)(A) If the claimant rejects the offer made by the
27 construction professional pursuant to subdivision (d)(2)(A) or (B) of this
28 section to either remedy the construction defect or to compromise and settle
29 the claim by monetary payment, the claimant shall serve written notice of the
30 claimant's rejection on the construction professional.

31 (B) After service of the rejection notice, the claimant
32 may bring an action against the construction professional for the
33 construction defect claim described in the notice of claim.

34 (C) If the construction professional has not received from
35 the claimant, within thirty days after the claimant's receipt of the
36 construction professional's response, either an acceptance or rejection of

1 the offer made pursuant to subdivision (d)(2)(A) or (B) of this section, then
2 at anytime thereafter the construction professional may terminate the offer
3 by serving written notice to the claimant.

4 (e)(1)(A) Any claimant accepting the offer of a construction
5 professional to remedy the construction defect pursuant to subdivision
6 (d)(2)(A) of this section shall do so by serving the construction
7 professional with a written notice of acceptance within a reasonable time
8 period after receipt of the offer, and no later than thirty days after
9 receipt of the offer.

10 (B) The claimant shall provide the construction
11 professional and its contractors or other agents reasonable access to the
12 claimant's residence during normal working hours to perform and complete the
13 construction by the timetable stated in the offer.

14 (b) The claimant and construction professional may, by written
15 mutual agreement, alter the extent of construction or the timetable for
16 completion of construction stated in the offer, including, but not limited
17 to, repair of additional defects.

18 (f) Any action commenced by a claimant prior to compliance with the
19 requirements of this section shall be subject to dismissal without prejudice,
20 and may not be recommenced until the claimant has complied with the
21 requirements of this section.

22 (g) Nothing in this section may be construed to prevent a claimant
23 from commencing an action on the construction defect claim described in the
24 notice of claim if the construction professional fails to perform the
25 construction agreed upon, fails to remedy the defect, or fails to perform by
26 the timetable agreed upon pursuant to subdivision (b)(1) or subsection (e) of
27 this section.

28
29 SECTION 4. Limitation on Damages.

30 (a) If a claimant unreasonably rejects an offer made as provided for
31 in section 3 or does not permit the construction professional a reasonable
32 opportunity to repair the defect pursuant to an accepted offer of settlement,
33 the claimant:

34 (1) May not recover an amount in excess of:

35 (A) The reasonable cost of the offered repairs which are
36 necessary to cure the construction defect and which are the responsibility of

1 the construction professional; or

2 (B) The amount of a reasonable monetary settlement offer
3 made under section 3, subdivision (b)(2); and

4 (2) May recover only the amount of reasonable and necessary
5 attorney's fees and costs incurred before the offer was rejected or
6 considered rejected.

7 (b) If a construction professional fails to make a reasonable offer as
8 required under section 3, or fails to make a reasonable attempt to complete
9 the repairs specified in an accepted offer made under this section, or fails
10 to complete, in a good and workmanlike manner, the repairs specified in an
11 accepted offer made under this section, the limitations on damages and
12 defenses to liability provided for in this section shall not apply.

13 (c) Except as provided in subsection (a) or (b) in a suit subject to
14 this act the claimant may recover only the following damages proximately
15 caused by a construction defect:

16 (1) The reasonable cost of repairs necessary to cure any
17 construction defect, including any reasonable and necessary engineering or
18 consulting fees required to evaluate and cure the construction defect, that
19 the contractor is responsible for repairing under this act;

20 (2) The reasonable expenses of temporary housing reasonably
21 necessary during the repair period;

22 (3) The reduction in market value, if any, to the extent the
23 reduction is due to structural failure; and

24 (4) reasonable and necessary attorney's fees.

25 (d) The total damages awarded in a suit subject to this act may not
26 exceed the greater of the claimant's purchase price for the residence or the
27 current fair market value of the residence without the construction defect.

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29 SECTION 5. Contract for Sale Requirements.

30 (a)(1) The construction professional shall provide notice to each
31 homeowner upon entering into a contract for sale, construction, or
32 substantial remodel of a residence, of the construction professional's right
33 to offer to cure construction defects before a homeowner may commence
34 litigation against the construction professional.

35 (2) The notice shall be conspicuous and may be included as part
36 of the underlying contract signed by the homeowner.

