

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

4TH CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL 524

By: Snyder of the Senate

and

O'Neal of the House

4TH CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to property; creating the Construction Defect Remediation Act; providing short title; defining terms; requiring certain procedures and establishing time period for notice of defects; setting out contents of notice of defects; providing for dismissal without prejudice under certain conditions; providing procedures for counter claim or cross claim; requiring contractor to make good faith response within specified time period; requiring purchaser to make good faith response within specified time period; authorizing contractor to make final offer; requiring purchaser to make residence available for inspection; authorizing contractor to inspect property and document repairs; requiring contractor to respond within specified time period; establishing inadmissible and admissible evidence; limiting contractor's liability; awarding fees and costs to prevailing party; providing for extension of time periods; providing exclusive remedy; specifying that no cause of action is created; creating the Task Force on Service Warranty Insurance; stating membership and providing for officers; providing for meetings and staffing; stating purpose of Task Force; requiring recommendations; providing for travel reimbursement; providing for codification; providing for noncodification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 840 of Title 60, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 10 of this act shall be known and may be cited as the "Construction Defect Remediation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 841 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in the Construction Defect Remediation Act:

1. "Construction defect" means a defect arising directly or indirectly out of the design, construction or repair of a new residence, or an alteration or repair or addition to an existing residence, or of an appurtenance to a residence, upon which a purchaser has a complaint against a contractor;

2. "Contractor" means a person or entity contracting with a purchaser for the design, construction or repair of a new residence, or alteration or repair or addition to an existing residence, or of an appurtenance to an existing residence;

3. "Notice of defects" means written notice from a purchaser to a contractor alleging construction defects. Such notice must comply with the requirements of Section 3 of this act;

4. "Purchaser" means a person or entity who purchases a residence from a contractor or engages a contractor to design, construct, alter or repair a new residence, or alter or repair an existing residence, or an appurtenance to a residence; and

5. "Residence" means any structure designed and used only for residential purposes, together with all attached and unattached structures, constructed by the contractor, regardless of whether the real property upon which the residence is located was purchased from the contractor. Such term also includes a residence upon which alterations or repairs were performed by the contractor at the direction of the purchaser.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 842 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A purchaser who has a complaint against a contractor for construction defects shall send a written notice of defects to the

contractor via certified mail with return receipt requested to the contractor's last known address no less than ninety (90) days prior to commencing a lawsuit alleging construction defects.

B. The notice of defects must include:

1. The name, address and telephone number of the purchaser;
2. The address of the residence;
3. An itemized list of every item which comprises the construction defects; and
4. Copies of any and all documentation concerning the defects produced by a third party who inspected the construction defects for the purchaser.

C. If the purchaser commences a lawsuit against the contractor alleging damages as a result of construction defects before the end of the ninety-day period set forth in subsection A of this section, or if the notice of defects does not contain the items set forth in subsection B of this section, the court shall dismiss the lawsuit without prejudice.

D. In the event that a lawsuit is commenced by someone other than the purchaser but where the purchaser asserts a claim of construction defects in a counter claim or cross claim, then such claim shall specify the nature and extent of the construction defects as provided in subsection B of this section. In such event, the contractor shall have the same opportunity to inspect the residence as provided in Section 6 of this act and the parties shall follow the procedures provided in Sections 4 and 5 of this act. Either party may move the court to abate the lawsuit pending responses and offer.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 843 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Within fifteen (15) days after receipt of the notice of defects, the contractor shall provide a good faith written response to the purchaser which either:

1. Offers to repair, replace or compensate the purchaser, in which case Section 5 of this act applies; or

2. Requests an inspection of the residence, in which case Section 6 of this act applies.

B. The contractor's offer to repair, replace or compensate must provide reasonable details of the repairs or replacements contractor will make and a reasonable estimate of when the repair, replacement or compensation will be made.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 844 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Within fifteen (15) days of the contractor's response as provided for in Section 4 of this act, the purchaser shall provide a good faith written response to the contractor and may include a counteroffer to the contractor's offer to compensate for, repair, or replace any alleged defects.

B. Within fifteen (15) days of the purchaser's response, the contractor shall either make a good faith final written offer to repair, replace or otherwise compensate the purchaser for alleged construction defects or reject the claim in writing.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 845 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The purchaser shall ensure that the residence is available at reasonable times for inspection by the contractor within fifteen (15) days after the purchaser receives the contractor's request for inspection.

B. The contractor may inspect the dwelling, as provided herein, and undertake reasonable measures, including but not limited to

testing, to determine the nature and cause of the construction defects and the appropriate remedy.

C. A contractor who makes or provides for repairs or replacement under this act is entitled to take reasonable steps to document the repair and to have it inspected.

D. Within fifteen (15) days after inspection of the residence by the contractor, the contractor shall either make a good faith offer to repair, replace or otherwise compensate the purchaser for the alleged defects or reject the claim. Failure of the contractor to make a final offer shall be deemed a rejection of the claim.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 846 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The following are inadmissible in a construction defect lawsuit:

1. Purchaser's notice of defects;
2. Contractor's good faith response to notice of defects;
3. Purchaser's good faith response to contractor's offer;
4. Contractor's good faith best and final offer; and
5. Any extensions of deadlines and time periods as mutually agreed upon and as provided in subsection A of Section 10 of this act.

B. The following are admissible in any construction defect lawsuit:

1. Purchaser's failure to provide notice of defects as described in Section 3 of this act;
  2. Purchaser's failure to permit a reasonable inspection as described in Section 6 of this act;
  3. Contractor's failure to provide a good faith, written response to notice of defects as described in Section 4 of this act;
- and

4. Purchaser's failure to provide a good faith, written response to the contractor's offer as described in Section 5 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 847 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In a construction defect lawsuit, the contractor shall not be liable for any damages caused by:

1. Negligence by a person other than the contractor or the contractor's agent, employee or subcontractor;

2. Failure of a person other than the contractor:

a. to take reasonable action to mitigate damages, or

b. to take reasonable action to maintain the residence;

3. Normal wear, tear and deterioration of the residence;

4. Normal shrinkage, swelling or expansion;

5. The contractor's reliance upon written information relating to the residence that was obtained from official government records or provided by an employee of a governmental entity; or

6. Any damage which does not result in actual physical damage to the residence.

B. Litigation arising as a result of construction defects shall be limited to actual damages only, and shall not include consequential or punitive damages.

C. Damages shall not exceed the reasonable cost of repair or replacement necessary to cure the construction defects, and damages with respect to all defects in a residence shall not exceed the original purchase price of the residence.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 848 of Title 60, unless there is created a duplication in numbering, reads as follows:

In a construction defect lawsuit, the prevailing party shall be awarded attorney fees, expert witness fees and taxable litigation

costs. Unless the contractor does not respond to the notice of defects, the prevailing party is determined based on whether the judgment obtained is more or less favorable to the purchaser than the contractor's offer to repair.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 849 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. All time periods provided in this act may be extended by written agreement of the purchaser and the contractor.

B. The procedures set forth in this act shall be followed for all construction defect claims against a contractor.

C. This act does not create a cause of action or extend any applicable limitations period.

SECTION 11. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. There is hereby created until December 12, 2003, the Task Force on Service Warranty Insurance. The Task Force shall consist of the following members:

1. The Oklahoma Insurance Commissioner;

2. Three members to be appointed by the President Pro Tempore of the Oklahoma State Senate, as follows:

a. two members of the Oklahoma State Senate, one of whom shall be designated by the President Pro Tempore of the Senate to serve as chair of the Task Force, and

b. one member representing a service warranty association; and

3. Three members to be appointed by the Speaker of the Oklahoma House of Representatives, as follows:

a. two members of the Oklahoma House of Representatives, one of whom shall be designated by the Speaker of the House to serve as co-chair of the Task Force, and

b. one member representing the service contract industry.

B. The first meeting of the Task Force shall take place no later than October 6, 2003. The Task Force shall meet at such times and places as deemed necessary to perform its duties. Meetings shall be held at the call of the chair. Staffing for the Task Force shall be provided by the staff of the House of Representatives and the Senate, and by the State Department of Insurance.

C. The purpose of the Task Force is to study issues raised by exclusions from the Service Warranty Insurance Act, including statutory definitions, consumer protection and industry practices.

D. The Task Force shall make recommendations to the Legislature by December 12, 2003, regarding any statutory changes which might be necessary to protect consumers and provide regulatory certainty to the industry.

E. The members of the Task Force shall receive no compensation for serving on the Task Force, but shall receive travel reimbursement as follows:

1. Legislative members of the Task Force shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes, from the legislative body in which they serve;

2. Agency members of the Task Force shall be reimbursed for travel expenses incurred in the performance of their duties by the employing agency in accordance with the State Travel Reimbursement Act; and

3. Other members of the Task Force shall be reimbursed for travel expenses incurred in the performance of their duties by their respective appointing authorities in accordance with the State Travel Reimbursement Act.

SECTION 12. This act shall become effective November 1, 2003.