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THE STATE SENATE
Thursday, April 8, 2004

ENGROSSED
House Bill No. 2136
As Amended

ENGROSSED HOUSE BILL NO. 2136 - By: MILLER (Ray) and ADKINS of the House and LERBLANCE of the Senate.

[**contracts - Construction Defect Remediation Act - codification - effective date**]

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.4 of Title 15, unless there is created a duplication in numbering, reads as follows:

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 765.5 of Title 15, unless there is created a duplication in numbering, reads as follows:

As used in the Construction Defect Remediation Act:

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

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

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

7 4. "Purchaser" means the person or entity who purchased the
8 residence from the contractor or engaged the contractor to perform
9 alterations or repairs to an existing residence; and

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

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 765.6 of Title 15, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A purchaser who has a complaint against a contractor for
21 construction defects must send a notice of defects to the contractor
22 via certified mail, return receipt requested, to the contractor's
23 last-known address no less than ninety (90) days prior to commencing

1 a lawsuit alleging construction defects. Notice of defects shall
2 include:

- 3 1. Name, address, and telephone number of purchaser;
- 4 2. Address of residence;
- 5 3. Itemized list of every item which comprises the construction
6 defect; and
- 7 4. Copies of any and all documentation produced by a third
8 party who inspected the construction defect for the purchaser.

9 B. If the purchaser files a lawsuit against the contractor
10 alleging damages as a result of the construction defect before
11 giving a notice of defect, or before the end of the ninety-day
12 period set forth in this section, or if the notice of defects does
13 not contain the items as set forth in this section, the court shall
14 dismiss the lawsuit without prejudice.

15 C. If a purchaser asserts a claim of a construction defect in a
16 counterclaim or cross-claim, then such claim shall identify the
17 nature and extent of the construction defect with the same level of
18 specificity as a notice of defects. In such event, the contractor
19 shall have the same opportunity to inspect the residence pursuant to
20 Section 6 of this act and the parties shall follow the procedures
21 and responses and offers to remedy the construction defect pursuant
22 to Sections 4 and 5 of this act. Either party may make a motion for
23 the court to abate the lawsuit pending responses and offers.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 765.7 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

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

7 1. An offer to repair, replace, or compensate purchaser. If
8 such event occurs, then the purchaser proceeds pursuant to Section 5
9 of this act; or

10 2. A request for an inspection of the residence, in which case
11 Section 6 of this act would apply.

12 B. The offer of a contractor to repair, replace, or compensate
13 shall provide reasonable details of the repairs or replacements the
14 contractor will make and a reasonable estimate of when the repair,
15 replacement, or compensation will be made.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 765.8 of Title 15, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Within fifteen (15) days of the response of the contractor,
20 the purchaser shall provide a good-faith written response to the
21 contractor and may include a counteroffer to the original offer made
22 by the contractor to repair, replace, or compensate the purchaser
23 for any of the alleged defects.

1 B. Within fifteen (15) days of the response of the purchaser,
2 the contractor may make a final offer to repair, replace, or
3 compensate the purchaser for the construction defects.

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 765.9 of Title 15, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A purchaser must ensure the residence is available for
8 inspection by the contractor within fifteen (15) days after the
9 purchaser receives the request for inspection from the contractor.

10 B. The contractor may inspect the dwelling, as provided herein,
11 and undertake reasonable measures, including but not limited to
12 testing, to determine the nature and cause of the construction
13 defects and the appropriate remedy.

14 C. A contractor who makes or provides for repairs or
15 replacement under the Construction Defect Remediation Act is
16 entitled to take reasonable steps to document the repair and to have
17 it inspected.

18 D. Within fifteen (15) days after inspection by the contractor
19 of the residence, the contractor shall provide a response pursuant
20 to Section 5 of this act.

21 SECTION 7. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 765.10 of Title 15, unless there
23 is created a duplication in numbering, reads as follows:

1 The following are inadmissible as evidence in a construction
2 defect lawsuit:

3 1. The notice of defects from a purchaser;

4 2. A good-faith response to the notice of defects from a
5 contractor;

6 3. A good-faith response from a purchaser to an offer from a
7 contractor;

8 4. A good-faith best and final offer from a contractor; and

9 5. Any extension of deadlines and time periods as mutually
10 agreed upon and pursuant to Section 11 of this act.

11 SECTION 8. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 765.11 of Title 15, unless there
13 is created a duplication in numbering, reads as follows:

14 The following are admissible as evidence in any action
15 concerning a dwelling:

16 1. A failure to provide a notice of defects by the purchaser;

17 2. A failure by the purchaser to allow access for a reasonable
18 inspection;

19 3. A failure by the contractor to provide a good-faith written
20 response to the notice of defects; or

21 4. A failure by the purchaser to provide a good-faith written
22 response to an offer by the contractor.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 765.12 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A contractor shall not be liable for any damages caused by:

5 1. Negligence or by a person other than the contractor or an
6 agent, employee, or subcontractor of the contractor;

7 2. The failure of a person other than a contractor:

8 a. to take reasonable action to mitigate damages, or

9 b. to take reasonable action to maintain the residence;

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

11 4. Normal shrinkage, swelling, or expansion;

12 5. Reliance by a contractor upon written information relating
13 to the residence that was obtained from official government records
14 or provided by an employee of a governmental entity; or

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

17 B. Litigation arising as a result of construction defects shall
18 be limited to actual damages only and shall not include punitive
19 damages.

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

1 original purchase price of the residence or the amount of alteration
2 or addition.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 765.13 of Title 15, unless there
5 is created a duplication in numbering, reads as follows:

6 The prevailing party shall be entitled to reasonable attorney
7 fees, expert witness fees, and taxable litigation costs. Unless the
8 contractor does not respond to the notice of defects, a
9 determination of the prevailing party is based on whether the
10 judgment obtained is more or less favorable to the purchaser than
11 the offer to repair made by the contractor.

12 SECTION 11. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 765.14 of Title 15, unless there
14 is created a duplication in numbering, reads as follows:

15 A. All time periods provided in the Construction Defect
16 Remediation Act may be extended by written agreement of the
17 purchaser and contractor.

18 B. The procedures set forth in the Construction Defect
19 Remediation Act are the exclusive remedy for the construction defect
20 claims against contractors.

21 C. The Construction Defect Remediation Act does not create a
22 cause of action or extend any applicable limitations period.

1 SECTION 12. This act shall become effective November 1, 2004.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-30-04 - DO
3 PASS, As Amended.