

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1334

By: Adkins

AS INTRODUCED

An Act relating to contracts; enacting the Construction Defect Remediation Act; providing definitions; providing certain notice procedure; providing method of contractor response; providing method of purchaser response; providing for contractor inspection; providing certain items inadmissible as evidence; providing certain items admissible as evidence; providing limitation of liability; providing certain limit on damages; providing for recovery of certain fees; providing for extension of time periods; declaring the Construction Defect Remediation Act procedures as an exclusive remedy; prohibiting extension of certain limitation periods; providing for codification; 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 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;

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

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

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

5. "Residence" means any new 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 765.6 of Title 15, unless there is created a duplication in numbering, reads as follows:

A. A purchaser who has a complaint against a contractor for construction defects must send a notice of defects to the contractor via certified mail, return receipt requested, to the contractor's last known address no less than ninety (90) days prior to commencing a lawsuit alleging construction defects. Notice of defects shall include:

1. Name, address, and telephone number of purchaser;

2. Address of residence;

3. Itemized list of every item which comprises the construction defect; and

4. Copies of any and all documentation produced by a third party who inspected the construction defect for the purchaser.

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.7 of Title 15, 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 with either:

1. Offers to repair, replace, or compensate purchaser. If such event occurs, then the purchaser proceeds pursuant to Section 5 of this act; or

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

B. The offer of a contractor to repair, replace, or compensate shall provide reasonable details of the repairs or replacements the 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 765.8 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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 the Construction Defect Remediation Act is entitled to take reasonable steps to document the repair and to have it inspected.

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

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

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

1. The notice of defects from a purchaser;
2. A good-faith response to the notice of defects from a contractor;
3. A good-faith response from a purchaser to an offer from a contractor;
4. A good-faith best and final offer from a contractor; and
5. Any extension of deadlines and time periods as mutually agreed upon and pursuant to Section 11 of this act.

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

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

1. A failure to provide a notice of defects by the purchaser;
2. A failure by the purchaser to allow access for a reasonable inspection;
3. A failure by the contractor to provide a good-faith written response to the notice of defects; or
4. A failure by the purchaser to provide a good-faith written response to an offer by the contractor.

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

- A. A contractor shall not be liable for any damages caused by:
 1. Negligence or by a person other than the contractor or an agent, employee, or subcontractor of the contractor;
 2. The failure of a person other than a 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. Reliance by a contractor 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 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.13 of Title 15, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

49-1-5061 MD 01/02/03