ENGROSSED SENATE
BILL NO. 431

By: Lamb of the Senate

and

Case of the House

[ contracts - Homeowner Construction Defect Protection Act - codification - 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 765.5 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 "Homeowner Construction Defect Protection Act".

SECTION 2. 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:

As used in the Homeowner Construction Defect Protection Act:

1. "Action" means any civil lawsuit, judicial action or arbitration proceeding asserting a claim, in whole or in part, for damages or other relief in connection with a residence, caused by an alleged construction defect.

2. "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 repair or addition to an existing residence, or of an appurtenance to a residence, upon which a purchaser has a complaint against a contractor;

3. "Contractor" means a person or entity providing labor, services or materials in the construction of a new residence or alteration or repair to an existing residence;

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

5. “Purchaser” means the person or entity who asserts a construction defect claim against the contractor or engaged the contractor to perform alterations or repairs to an existing residence; and

6. “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 765.7 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 shall 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 an action alleging construction defects. The notice of defects shall state that the purchaser asserts a construction defect claim or claims and is providing notice of the claim or claims pursuant to the requirements of this act. The notice of defects shall 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 produced by a third party who inspected the construction defect for the purchaser.

B. If the purchaser files an action against the contractor alleging damages as a result of the construction defect before giving notice of the defect, or before the end of the ninety-day period set forth in this section, the court or arbitrator shall abate the action and the action may not proceed until the purchaser has complied with such requirements.

C. If a purchaser asserts a claim of a construction defect in a counterclaim or cross-claim, such claim shall identify the nature and extent of the construction defect with the same specificity as a notice of defects. 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 and responses and offers to remedy the construction defect as provided in Sections 4 and 5 of this act. Either party may make a motion for the court to abate the action pending responses and offer.

SECTION 4. 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 thirty (30) days after receipt of the notice of defects, the contractor shall provide a good faith written response to the purchaser with:

1. An offer to repair, replace or compensate the purchaser. If such event occurs, then the purchaser proceeds as provided in Section 5 of this act; or

2. A request for an inspection of the residence, as provided in Section 6 of this act.

B. The offer of a contractor to repair, replace or compensate shall provide reasonable details of the repair, replacement or compensation the contractor will make, a reasonable estimate of the actual costs of such repairs or replacement and a reasonable estimate of when the repair, replacement or compensation will be completed. The purchaser shall be entitled to settle the claim for

repair or replacement by accepting a monetary payment equal to the amount of the contractor's reasonable estimate of actual costs.

C. If the contractor wholly rejects the claim and will neither remedy the alleged construction defect nor settle the claim, or does not respond to the purchaser's notice of claim within the time stated in subsection A of this section, the purchaser may bring an action against the contractor for the claims described in the notice of claim without further notice except as otherwise provided by law.

SECTION 5. 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. Within thirty (30) 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 of the contractor to repair, or replace or compensate the purchaser for the alleged construction defects.

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

C. Any purchaser accepting the offer of the contractor to remedy a construction defect shall provide the contractor with a written notice of acceptance within a reasonable period of time after receipt of the settlement offer of the contractor, but no later than thirty (30) days after receipt of the offer. If no response is provided to the contractor within the thirty-day period, then the purchaser is prohibited from pursuing any action until a response is provided to the contractor.

D. If the purchaser rejects the settlement offer made by the contractor, the purchaser shall provide written notice of the rejection of the purchaser to the contractor and, if represented by legal counsel, his or her attorney. The notice shall include the specific, factual and, if known, legal reasons for the rejection by

the purchaser of the proposal or offer of the contractor. If the purchaser believes that the settlement offer either:

1. Omits reference to any portion of the claim; or

2. Is unreasonable in any manner;

the purchaser shall in his or her written notice include those items that the purchaser believes were omitted and shall set forth in detail all reasons why the purchaser believes the settlement offer is unreasonable. In any subsequent action where the purchaser asserts that the settlement offer was unreasonable, the purchaser shall not be able to raise any reasons that were not included in the response to the contractor.

SECTION 6. 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:

A. The purchaser shall ensure that the residence is available for inspection by or on behalf of the contractor within thirty (30) days after the purchaser receives the request for inspection from the contractor.

B. The contractor may inspect or cause to be inspected the residence, 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 following completion of the inspection and testing as provided in this section, the contractor may provide to the purchaser:

1. A written offer to fully or partially remedy the construction defect at no cost to the purchaser. Such offer shall include a description of any additional construction necessary to

remedy the defect described in the claim, and an anticipated timetable for the completion of such construction;

2. A written offer to settle the claim by monetary payment;

3. A written offer including a combination of repairs and monetary payment; or

4. A written statement that the contractor will not proceed further to remedy the defect.

SECTION 7. 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:

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

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 9 of this act.

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

1. Purchaser’s failure to provide notice of defects;

2. Purchaser’s failure to allow access for a reasonable inspection;

3. Contractor’s failure to provide a good faith, written response to notice of defects; and

4. Purchaser’s failure to provide a good faith, written response to the contractor’s response.

SECTION 8. 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:

The prevailing party shall be entitled to reasonable attorney 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 9. 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:

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

B. The procedures set forth in this act are the exclusive remedy for the construction defect claims against contractors.

C. This act does not create a cause of action nor extend any applicable limitations period.

SECTION 10. 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:

This act does not apply to the right of a contractor to seek contribution, indemnity or recovery against a subcontractor, supplier or design professional for any claim made against a contractor by a purchaser.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.15 of Title 15, unless there is created a duplication in numbering, reads as follows:

A construction defect that is discovered after a purchaser has provided a contractor with the initial claim notice shall not be alleged in an action until the purchaser has given the contractor who performed the original construction:

1. Written notice of claim regarding the alleged defect as required by Section 3 of this act; and

2. An opportunity to resolve the notice of claim in the manner provided in Section 4 of this act.

SECTION 12. This act shall become effective November 1, 2005.

Passed the Senate the 16th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives