

CS for SB 431

THE STATE SENATE
Monday, February 28, 2005

Committee Substitute for
Senate Bill No. 431

COMMITTEE SUBSTITUTE FOR 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

1 a new residence, or an alteration or repair or addition to an
2 existing residence, or of an appurtenance to a residence, upon which
3 a purchaser has a complaint against a contractor;

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

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

10 5. "Purchaser" means the person or entity who asserts a
11 construction defect claim against the contractor or engaged the
12 contractor to perform alterations or repairs to an existing
13 residence; and

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

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

1 A. A purchaser who has a complaint against a contractor for
2 construction defects shall send a notice of defects to the
3 contractor via certified mail, return receipt requested, to the
4 contractor's last known address no less than ninety (90) days prior
5 to commencing an action alleging construction defects. The notice
6 of defects shall state that the purchaser asserts a construction
7 defect claim or claims and is providing notice of the claim or
8 claims pursuant to the requirements of this act. The notice of
9 defects shall include:

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

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

22 C. If a purchaser asserts a claim of a construction defect in a
23 counterclaim or cross-claim, such claim shall identify the nature

1 and extent of the construction defect with the same specificity as a
2 notice of defects. In such event, the contractor shall have the
3 same opportunity to inspect the residence as provided in Section 6
4 of this act and the parties shall follow the procedures and
5 responses and offers to remedy the construction defect as provided
6 in Sections 4 and 5 of this act. Either party may make a motion for
7 the court to abate the action pending responses and offer.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 765.8 of Title 15, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Within thirty (30) days after receipt of the notice of
12 defects, the contractor shall provide a good faith written response
13 to the purchaser with:

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

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

19 B. The offer of a contractor to repair, replace or compensate
20 shall provide reasonable details of the repair, replacement or
21 compensation the contractor will make and a reasonable estimate of
22 when the repair, replacement or compensation will be made.

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

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

10 A. Within thirty (30) days of the response of the contractor,
11 the purchaser shall provide a good faith written response to the
12 contractor and may include a counteroffer to the original offer of
13 the contractor to repair, or replace or compensate the purchaser for
14 the alleged construction defects.

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

18 C. Any purchaser accepting the offer of the contractor to
19 remedy a construction defect shall provide the contractor with a
20 written notice of acceptance within a reasonable period of time
21 after receipt of the settlement offer of the contractor, but no
22 later than thirty (30) days after receipt of the offer. If no
23 response is provided to the contractor within the thirty-day period,

1 then the purchaser is prohibited from pursuing any action until a
2 response is provided to the contractor.

3 D. If the purchaser rejects the settlement offer made by the
4 contractor, the purchaser shall provide written notice of the
5 rejection of the purchaser to the contractor and, if represented by
6 legal counsel, his or her attorney. The notice shall include the
7 specific, factual and, if known, legal reasons for the rejection by
8 the purchaser of the proposal or offer of the contractor. If the
9 purchaser believes that the settlement offer either:

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

11 2. Is unreasonable in any manner;

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

19 SECTION 6. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 765.10 of Title 15, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The purchaser shall ensure that the residence is available
23 for inspection by or on behalf of the contractor within thirty (30)

1 days after the purchaser receives the request for inspection from
2 the contractor.

3 B. The contractor may inspect or cause to be inspected the
4 residence, as provided herein, and undertake reasonable measures
5 including, but not limited to, testing to determine the nature and
6 cause of the construction defects and the appropriate remedy.

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

10 D. Within fifteen (15) days following completion of the
11 inspection and testing as provided in this section, the contractor
12 may provide to the purchaser:

13 1. A written offer to fully or partially remedy the
14 construction defect at no cost to the purchaser. Such offer shall
15 include a description of any additional construction necessary to
16 remedy the defect described in the claim, and an anticipated
17 timetable for the completion of such construction;

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

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

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

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 765.11 of Title 15, unless there
3 is created a duplication in numbering, reads as follows:

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

- 6 1. Purchaser's notice of defects;
- 7 2. Contractor's good faith response to notice of defects;
- 8 3. Purchaser's good faith response to contractor's offer;
- 9 4. Contractor's good faith best and final offer; and
- 10 5. Any extensions of deadlines and time periods as mutually
11 agreed upon and as provided in subsection A of Section 9 of this
12 act.

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

- 15 1. Purchaser's failure to provide notice of defects;
- 16 2. Purchaser's failure to allow access for a reasonable
17 inspection;
- 18 3. Contractor's failure to provide a good faith, written
19 response to notice of defects; and
- 20 4. Purchaser's failure to provide a good faith, written
21 response to the contractor's response.

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

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 765.13 of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

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

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

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

19 SECTION 10. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 765.14 of Title 15, unless there
21 is created a duplication in numbering, reads as follows:

22 This act does not apply to the right of a contractor to seek
23 contribution, indemnity or recovery against a subcontractor,

1 supplier or design professional for any claim made against a
2 contractor by a purchaser.

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

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

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO
16 PASS, As Amended and Coauthored.