

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1361

By: Case

AS INTRODUCED

An Act relating to contracts; enacting the Homeowner Construction Defect Protection Act; providing definitions; providing notice procedure; specifying method for contractor response; specifying method for purchaser response; authorizing contractor to make inspection upon request; providing certain options for remedy; enumerating certain items as inadmissible as evidence; providing limitation of liability; providing limitation on damages; allowing the recovery of certain fees under certain circumstances; providing for extension of time periods by written agreement; declaring the Homeowner Construction Defect Protection Act procedures as an exclusive remedy; prohibiting the extension of certain limitation periods; providing limitation of the Homeowner Construction Defect Protection Act on certain rights of a contractor; specifying procedures for defects discovered after initial claim; providing effect of compliance; 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 765.5 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 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 contracting with a purchaser for 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 regarding construction defects. Such notice shall comply with the requirements of Section 3 of this act;

5. "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

6. "Residence" means any structure designed and used 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 that has a complaint against a contractor for construction defects shall send a notice of defects to the contractor by certified mail, return receipt requested, to the last-known address of the contractor 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 the Homeowner Construction Defect Protection Act. It 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 an action 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 action without prejudice, and the action may not proceed until the purchaser has complied with the requirements.

C. If a purchaser asserts a claim of a construction defect in a counterclaim or cross-claim, then that 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 dismiss the action pending responses and offers.

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 either:

1. An offer to repair the defect, replace an item, or compensate the purchaser. If that event occurs, then the purchaser proceeds with Section 5 of this act; or

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

B. The offer of a contractor to repair a defect, replace an item, or compensate the purchaser shall provide reasonable details of the repairs or replacements the contractor will make and a reasonable estimate of when the repair of the defect, replacement of an item, or compensation of the purchaser will be made.

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 notice of claim of the purchaser with 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 under applicable 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 made by the contractor to repair a defect, replace an item, 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 the defect, replace an item, or compensate the purchaser for the construction defects.

C. Any purchaser accepting the offer of the contractor to remedy a construction defect shall do so by serving 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 served upon the contractor within the thirty-day period, then the offer shall be deemed accepted.

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, the attorney of the contractor. The notice shall include the specific factual and, if known, legal reasons for the rejection of the purchaser of the proposal or offer of the contractor. If the purchaser believes that the settlement offer either omits reference to any portion of the claim, or was unreasonable in any manner, the purchaser shall, in the written notice, include those items that purchaser believes were omitted and set forth in detail all reasons why the purchaser believes 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 10, unless there is created a duplication in numbering, reads as follows:

A. A purchaser shall ensure the residence is available for inspection by the contractor and/or agents of the contractor within thirty (30) 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 defect or defects and the appropriate remedy.

C. A contractor that makes or provides for repairs or replacement under the Homeowner Construction Defect Protection Act is entitled to take reasonable steps to document the repair and to have the repair or replacement inspected.

D. Within fifteen (15) days following completion of the inspection and testing set forth in this section, the contractor may serve on the claimant:

1. A written offer to fully or partially remedy the construction defect at no cost to the purchaser. An 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 the 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:

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

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 made 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 765.12 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 765.13 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 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 or the amount of alteration or addition.

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:

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

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

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

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

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.16 of Title 15, unless there is created a duplication in numbering, reads as follows:

The Homeowner Construction Defect Protection 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 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.17 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 may not be alleged in an action until the purchaser has given the contractor that 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 765.18 of Title 15, unless there is created a duplication in numbering, reads as follows:

If a purchaser accepts an offer made in compliance with the Homeowner Construction Defect Protection Act and the contractor fulfills the offer in compliance with this act then:

1. The purchaser shall thereafter be barred from bringing an action for the claim described in the notice of claim; and
2. The contractor shall be deemed, for insurance purposes, to have been legally obligated to make the repairs or the monetary payment as if the purchaser had recovered a judgment against the contractor in the amount of the cost of the repair and/or the amount of the monetary payment.

SECTION 15. This act shall become effective November 1, 2005.

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