



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1114

by Rep. Careen M Gordon

SYNOPSIS AS INTRODUCED:

New Act

Creates the Notice and Opportunity to Repair Act. Provides that a construction professional shall be liable to a homeowner for damages caused by the acts or omissions of the professional and his or her agents, employees, or subcontractors. Requires the service of notice to the professional of the complained-of defect in the construction by the homeowner prior to commencement of a lawsuit. Allows the professional to make an offer of repair or settlement and to rescind this offer if the claimant fails to respond within 30 days. Requires the claimant to file with the court a list of known construction defects. Directs the professional to provide a statutory notice to the homeowner upon the execution of a contract. Applies to construction defect claims that arise before, on, or after July 15, 2008, if the claim is the subject of an action commenced on or after July 15, 2008.

LRB095 10510 AJ0 30725 b

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning real estate.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Notice and Opportunity to Repair Act.

6 Section 5. Findings. The General Assembly finds that
7 limited changes in the law are necessary and appropriate
8 concerning actions claiming damages, indemnity, or
9 contribution in connection with alleged residential
10 construction defects.

11 Section 10. Purpose. It is the intent of the General
12 Assembly that this Act apply to the types of civil actions
13 described in Section 5 while preserving adequate rights and
14 remedies for property owners who bring and maintain those
15 actions.

16 Section 15. Definitions. In this Act:

17 "Action" means any civil lawsuit or action in contract or
18 tort for damages or indemnity brought against a construction
19 professional to assert a claim, whether by complaint,
20 counterclaim, or cross-claim, for damage or the loss of use of
21 real or personal property caused by a defect in the

1 construction of a residence or in the substantial remodel of a
2 residence. "Action" does not include any civil action in tort
3 alleging personal injury or wrongful death to a person or
4 persons resulting from a construction defect.

5 "Claimant" means a homeowner who asserts a claim against a
6 construction professional concerning a defect in the
7 construction of a residence or in the substantial remodel of a
8 residence.

9 "Construction professional" means an architect, builder,
10 builder-vendor, contractor, subcontractor, engineer, or
11 inspector, including, but not limited to, any person performing
12 or furnishing the design, supervision, inspection,
13 construction, or observation of the construction of any
14 improvement to real property, whether operating as a sole
15 proprietor, partnership, corporation, or other business
16 entity.

17 "Homeowner" means any person, company, firm, partnership,
18 corporation, or association who contracts with a construction
19 professional for the construction, sale, or construction and
20 sale of a residence. "Homeowner" includes, but is not limited
21 to, a subsequent purchaser of a residence from any homeowner.

22 "Residence" means a single family house, duplex, triplex,
23 quadraplex, or a unit in a multiunit residential structure in
24 which title to each individual unit is transferred to the owner
25 under the Condominium Property Act and includes general and
26 limited common elements as defined in that Act.

1 "Serve" or "service" means personal service or delivery by
2 certified mail to the last known address of the addressee.

3 "Substantial remodel" means a remodel of a residence for
4 which the total cost exceeds the maximum amount for a small
5 claim under Supreme Court Rules.

6 Section 20. Applicability.

7 (a) This Act:

8 (1) Applies to any claim that arises before, on, or
9 after July 15, 2008, as the result of a construction
10 defect, except a claim for personal injury or wrongful
11 death, if the claim is the subject of an action commenced
12 on or after July 15, 2008.

13 (2) Prevails over any conflicting law otherwise
14 applicable to the claim or cause of action.

15 (b) This Act does not:

16 (1) bar or limit any defense otherwise available
17 except, as otherwise provided in this Act; or

18 (2) create a new theory upon which liability may be
19 based.

20 Section 25. Contractor liability. In a claim to recover
21 damages resulting from a construction defect, a contractor is
22 liable for his or her acts or omissions or the acts or
23 omissions of his or her agents, employees, or subcontractors
24 and is not liable for any damages caused by:

1 (1) the acts or omissions of a person other than the
2 contractor or his or her agent, employee, or subcontractor;

3 (2) the failure of a person other than the contractor
4 or his or her agent, employee, or subcontractor to take
5 reasonable action to reduce the damages or maintain the
6 residence;

7 (3) normal wear, tear, or deterioration;

8 (4) normal shrinkage, swelling, expansion, or
9 settlement; or

10 (5) any construction defect disclosed to a claimant
11 before his purchase of the residence, if the disclosure was
12 provided in writing and in language that is understandable
13 and was signed by the claimant.

14 Section 30. Notice of claim of construction defects;
15 response by construction professional.

16 (a) In every construction defect action brought against a
17 construction professional, the claimant shall, no later than 60
18 days before filing an action, serve written notice of claim on
19 the construction professional. The notice of claim shall state
20 that the claimant asserts a construction defect claim against
21 the construction professional and shall describe the claim in
22 reasonable detail sufficient to determine the general nature of
23 the defect.

24 (b) Within 21 days after service of the notice of claim,
25 the construction professional shall serve a written response on

1 the claimant by registered mail or personal service. The
2 written response shall:

3 (1) propose to inspect the residence that is the
4 subject of the claim and to complete the inspection within
5 a specified time frame; including the statement that the
6 construction professional shall, based on the inspection,
7 offer to remedy the defect, compromise by payment, or
8 dispute the claim;

9 (2) offer to compromise and settle the claim by
10 monetary payment without inspection; which may include,
11 but is not limited to, an express offer to purchase the
12 claimant's residence that is the subject of the claim, and
13 to pay the claimant's reasonable relocation costs; or

14 (3) state that the construction professional disputes
15 the claim and will neither remedy the construction defect
16 nor compromise and settle the claim.

17 (c) If the construction professional disputes the claim
18 or does not respond to the claimant's notice of claim within
19 the time stated in subsection (b) of this Section, the claimant
20 may bring an action against the construction professional for
21 the claim described in the notice of claim without further
22 notice.

23 If the claimant rejects the inspection proposal or the
24 settlement offer made by the construction professional
25 pursuant to subsection (b), the claimant shall serve written
26 notice of the claimant's rejection on the construction

1 professional. After service of the rejection, the claimant may
2 bring an action against the construction professional for the
3 construction defect claim described in the notice of claim. If
4 the construction professional has not received from the
5 claimant, within 30 days after the claimant's receipt of the
6 construction professional's response, either an acceptance or
7 rejection of the inspection proposal or settlement offer, then
8 at any time thereafter the construction professional may
9 terminate the proposal or offer by serving written notice to
10 the claimant, and the claimant may thereafter bring an action
11 against the construction professional for the construction
12 defect claim described in the notice of claim.

13 (d) If the claimant elects to allow the construction
14 professional to inspect in accordance with the construction
15 professional's proposal pursuant to paragraph (1) of
16 subsection (b) of this Section, the claimant shall provide the
17 construction professional and its contractors or other agents
18 reasonable access to the claimant's residence during normal
19 working hours to inspect the premises and the claimed defect.

20 (e) Within 14 days following completion of the
21 inspection, the construction professional shall serve on the
22 claimant:

23 (1) a written offer to remedy the construction defect
24 at no cost to the claimant, including a report of the scope
25 of the inspection, the findings and results of the
26 inspection, a description of the additional construction

1 necessary to remedy the defect described in the claim, and
2 a timetable for the completion of such construction;

3 (2) a written offer to compromise and settle the claim
4 by monetary payment pursuant to paragraph (2) of subsection
5 (b) of this Section; or

6 (3) a written statement that the construction
7 professional will not proceed further to remedy the defect.

8 (f) If the construction professional does not proceed
9 further to remedy the construction defect within the agreed
10 timetable, or if the construction professional fails to comply
11 with the provisions of subsection (e), the claimant may bring
12 an action against the construction professional for the claim
13 described in the notice of claim without further notice.

14 (g) If the claimant rejects the offer made by the
15 construction professional pursuant to paragraph (1) of
16 subsection (e) or paragraph (2) of subsection (e) of this
17 Section to either remedy the construction defect or compromise
18 and settle the claim by monetary payment, the claimant shall
19 serve written notice of the claimant's rejection on the
20 construction professional. After service of the rejection
21 notice, the claimant may bring an action against the
22 construction professional for the construction defect claim
23 described in the notice of the claim. If the construction
24 professional has not received from the claimant, within 30 days
25 after the claimant's receipt of the construction
26 professional's response, either an acceptance or rejection of

1 the offer made pursuant to paragraph (1) of subsection (e) or
2 paragraph (2) of subsection (e) of this Section, then at any
3 time thereafter the construction professional may terminate
4 the offer by serving written notice to the claimant.

5 (h) Any claimant accepting the offer of a construction
6 professional to remedy the construction defect pursuant to
7 paragraph (1) of subsection (e) of this Section shall do so by
8 serving the construction professional with a written notice of
9 acceptance within a reasonable time period after receipt of the
10 offer, and no later than 30 days after receipt of the offer.
11 The claimant shall provide the construction professional and
12 its contractors or other agents reasonable access to the
13 claimant's residence during normal working hours to perform and
14 complete the construction by the timetable stated in the offer.
15 The claimant and construction professional may, by written
16 mutual agreement, alter the extent of construction or the
17 timetable for completion of construction stated in the offer,
18 including, but not limited to, repair of additional defects.

19 (i) Any action commenced by a claimant prior to compliance
20 with the requirements of this Section shall be subject to
21 dismissal without prejudice and shall not be recommenced until
22 the claimant has complied with the requirements of this
23 Section.

24 (j) Nothing in this Section may be construed to prevent a
25 claimant from commencing an action on the construction defect
26 claim described in the notice of claim if the construction

1 professional fails to perform the construction agreed upon,
2 fails to remedy the defect, or fails to perform by the
3 timetable agreed upon pursuant to paragraph (1) of subsection
4 (b) or subsection (h) of this Section.

5 (k) Prior to commencing any action alleging a
6 construction defect, or after the dismissal of any action
7 without prejudice pursuant to subsection (i) of this Section,
8 the claimant may amend the notice of claim to include
9 construction defects discovered after the service of the
10 original notice of claim and must otherwise comply with the
11 requirements of this Section for the additional claims. The
12 service of an amended notice of claim shall relate back to the
13 original notice of claim for purposes of tolling statutes of
14 limitations and repose. Claims for defects discovered after the
15 commencement or recommencement of an action may be added to
16 such action only after providing notice to the construction
17 professional of the defect and allowing for response under
18 subsection (b) of this Section.

19 Section 35. Effect of non-compliance.

20 (a) If a claimant unreasonably rejects a reasonable
21 written offer of settlement made as part of a response made
22 pursuant to Section 30 of this Act or does not permit the
23 contractor or independent contractor a reasonable opportunity
24 to inspect or to repair the defect pursuant to an accepted
25 offer of settlement and thereafter commences an action governed

1 by this Act, the court in which the action is commenced may:

2 (1) deny the claimant's attorney's fees and costs;

3 and

4 (2) award attorney's fees and costs to the
5 contractor.

6 (b) Any sums paid under a homeowner's warranty, other than
7 sums paid in satisfaction of claims that are collateral to any
8 coverage issued to or by the contractor, shall be deducted from
9 any recovery.

10 (c) If a contractor fails to comply with the requirements
11 of this Act, the claimant shall not be obligated to further
12 comply with the provisions of this Act and shall be allowed to
13 commence an action without satisfying any other requirement of
14 this Act; none of the provisions of this Act shall be applied
15 to the detriment of the claimant.

16 Section 40. Construction defect list.

17 (a) In every action brought against a construction
18 professional, the claimant, including a construction
19 professional asserting a claim against another construction
20 professional, shall file with the court and serve on the
21 defendant a list of known construction defects in accordance
22 with this Section.

23 (b) The list of known construction defects shall contain a
24 description of the construction that the claimant alleges to be
25 defective. The list of known construction defects shall be

1 filed with the court and served on the defendant within 30 days
2 after the commencement of the action or within such longer
3 period as the court in its discretion may allow.

4 (c) The list of known construction defects may be amended
5 by the claimant to identify additional construction defects as
6 they become known to the claimant.

7 (d) The list of known construction defects shall specify,
8 to the extent known to the claimant, the construction
9 professional responsible for each alleged defect identified by
10 the claimant.

11 (e) If a subcontractor or supplier is added as a party to
12 an action under this Section, the party making the claim
13 against such subcontractor or supplier shall serve on the
14 subcontractor or supplier the list of construction defects in
15 accordance with this Section within 30 days after service of
16 the complaint against the subcontractor or supplier or within
17 such period as the court in its discretion may allow.

18 Section 45. Mandatory notice.

19 (a) The construction professional shall provide notice to
20 each homeowner, upon entering into a contract for sale,
21 construction, or substantial remodel of a residence, of the
22 construction professional's right to offer to cure
23 construction defects before a homeowner may commence
24 litigation against the construction professional. The notice
25 shall be conspicuous and may be included as part of the

1 underlying contract signed by the homeowner.

2 (b) The notice required by subsection (a) of this Section
3 shall be in substantially the following form:

4 SECTIONS 1 THROUGH 40 OF THE NOTICE AND OPPORTUNITY TO
5 REPAIR ACT CONTAIN IMPORTANT REQUIREMENTS YOU MUST FOLLOW
6 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION
7 AGAINST THE SELLER OR BUILDER OF YOUR HOME. SIXTY (60) DAYS
8 BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE
9 SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION
10 CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER
11 OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR
12 PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY
13 OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT
14 DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO
15 FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

16 (c) This Act shall not preclude or bar any action if
17 notice is not given to the homeowner as required by this
18 Section.

19 Section 50. No effect on other rights. Nothing in this Act
20 shall be construed to hinder or otherwise affect the
21 employment, agency, or contractual relationship between
22 homeowners and construction professionals during the process
23 of construction or remodeling and does not preclude the
24 termination of those relationships as allowed under the law.
25 Nothing in this Act shall negate or otherwise restrict a

1 construction professional's right to access or inspection
2 provided by law, covenant, easement, or contract.

3 Section 55. Tolling of statutes of limitations and repose.
4 If a written notice of claim is served under Section 30 of this
5 Act within the time prescribed for the filing of an action
6 under this Act, the statutes of limitations for
7 construction-related claims are tolled until 75 days after the
8 period of time during which the filing of an action is barred
9 under the applicable statute of limitations.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.