

---

## Judiciary Committee

---

### HB 2831

**Title:** An act relating to construction defect actions.

**Brief Description:** Concerning construction defect actions.

**Sponsors:** Representatives Senn, Chapman, Clibborn, Vick, Springer, Appleton and Barkis.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Requires increased notice, a meeting, and a majority vote of the homeowners before the board of a condominium or homeowners' association may commence a construction defect action.</li></ul>
---



**Hearing Date:** 1/31/18

**Staff:** Cece Clynch (786-7195).

**Background:**

**Construction Defect Action.**

In 2002, a mandatory prelitigation claim process was adopted for claims brought against a construction professional for property damage due to alleged defects in the construction of a residence. These requirements apply to the new construction of a residence and to any remodel that costs more than half of the assessed value of the residence and must be met before a lawsuit can be filed.

Requirements Before Suit is Filed: Notice and Opportunity to Cure.

Before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence, a claimant must serve notice on the construction professional alleged to be responsible for the defect. The claimant's notice must be given at least 45 days before a suit is filed and must describe the claim in reasonable detail.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Within 21 days of receiving the notice, the construction professional must respond to the claimant. In the response, the construction professional must do one of the following:

- offer to inspect the alleged defect and then, based on the inspection, either remedy the defect, pay for it, or dispute the claim;
- offer to settle the claim by paying for the defect, including possibly buying the residence back from the homeowner; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the claimant rejects an offer of inspection or settlement, then the claimant may file a lawsuit. Procedures are also laid out for situations in which the claimant agrees to an inspection or agrees to an offer of settlement. If the construction professional fails to perform agreed repairs, or fails to meet an agreed timetable, the claimant may file the lawsuit.

If a claimant discovers another defect after a suit has been commenced, the claimant must notify the construction professional and give the construction professional an opportunity to respond in the manner described previously. The new claim may then be added to a pending lawsuit.

The timely service of a notice of claim tolls any applicable statutes of limitations and repose until 60 days after the end of the notice and opportunity to cure period during which bringing a lawsuit is barred.

#### Additional Requirements Applicable to Condominium and Homeowners' Associations.

Prior to serving a summons and complaint in a construction defect action, the board of directors of a condominium or homeowners' association must substantially comply with a requirement to mail or deliver written notice of the commencement or anticipated commencement of the action to each homeowner. The notice must include a general description of:

- the nature of the action and the relief sought; and
- the expenses and fees that are anticipated to be incurred in prosecuting the action.

#### **Summary of Bill:**

Prior to the service of a summons and complaint in a construction defect action, the board of directors of a condominium or homeowners' association is required to mail or deliver notice to homeowners that includes a general description of the notice and opportunity to cure process that has occurred and the nature of the action and the relief to be sought in the event that the homeowners vote to authorize proceeding with a construction defect action. The notice must call a meeting of the homeowners at which certain information must be provided, and after which voting as to whether to proceed with suit commences. With limited exceptions, the board may initiate the action only if authorized to do so by a majority vote of the homeowners.

The notice must:

- state that at the conclusion of the meeting the voting period will commence;
- state that the construction professional will be invited to attend and have an opportunity to address the homeowners concerning the alleged defect;
- contain a description of the nature of the action, identification of the alleged defects, relief sought, a good faith estimate of the benefits and risks involved, the expenses and fees that the board anticipates will be incurred, and any other pertinent information; and

- include disclosures that:
  - the construction defects might result in increased costs in maintenance or repair or cause an increase in assessments;
  - if the association does not file a claim before applicable legal deadlines, the claim will expire;
  - until the alleged defects are repaired, sellers might owe buyers a duty to disclose known defects;
  - if the association does not prevail, a court or arbitrator might order the association to pay the opposing party's costs and fees;
  - there is no guarantee that the association will recover enough funds to repair the defects;
  - until the defects are repaired, or the action concluded, the market value of the residences might be adversely affected; and
  - until the defects are repaired, or the action concluded, homeowners might encounter difficulties refinancing.

At least five business days before the mailing of the notice, the association must notify each construction professional against whom suit is proposed of the date and time of the meeting. Additionally, the notice provided the homeowners must also be provided to construction professionals against whom suit is proposed to be brought.

The association must maintain a verified homeowner mailing list that identifies the homeowners to whom the notice was mailed and must provide a copy of the list to each construction professional who is sent the notice. In the event a construction defect action is commenced, the list together with records of votes during the voting period must be filed with the court under seal.

The meeting must be held no less than 20 and no more than 30 days after the mailing date of the notice. A failure to hold the meeting within the prescribed time period voids the subsequent vote. A quorum is not required at the meeting. In no event shall the time period for providing the notice, holding the meeting, and voting exceed 90 days.

For purposes of calculating the required majority vote, the votes allocated to units owned by a development party, such as a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair, are excluded. A vote allocated to a unit owned by a banking institution is excluded unless it is actually received by the association.

A majority vote is not required before commencing an action:

- if the alleged defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair does not exceed \$100,000; or
- if the association was the contracting party for the performance of labor or purchase of services or materials.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.