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SENATE BILL 5961

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State of Washington

64th Legislature

2015 Regular Session

By Senators Benton and Hobbs

Read first time 02/13/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to modifying certain construction defect action  
2 procedures; and amending RCW 64.50.020.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to  
5 read as follows:

6 (1) In every construction defect action brought against a  
7 construction professional, the claimant shall, no later than forty-  
8 five days before filing an action, serve written notice of claim on  
9 the construction professional. The notice of claim shall state that  
10 the claimant asserts a construction defect claim against the  
11 construction professional and shall describe the claim in reasonable  
12 detail sufficient to determine the general nature of the defect.

13 (2) Within twenty-one days after service of the notice of claim,  
14 the construction professional shall serve a written response on the  
15 claimant by registered mail or personal service. The written response  
16 shall:

17 (a) Propose to inspect the residence that is the subject of the  
18 claim and to complete the inspection within a specified time frame.  
19 The proposal shall include the statement that the construction  
20 professional shall, based on the inspection, offer to remedy the  
21 defect, compromise by payment, or dispute the claim;

1 (b) Offer to compromise and settle the claim by monetary payment  
2 without inspection. A construction professional's offer under this  
3 subsection (2)(b) to compromise and settle a homeowner's claim may  
4 include, but is not limited to, an express offer to purchase the  
5 claimant's residence that is the subject of the claim, and to pay the  
6 claimant's reasonable relocation costs; or

7 (c) State that the construction professional disputes the claim  
8 and will neither remedy the construction defect nor compromise and  
9 settle the claim.

10 (3)(a) If the construction professional disputes the claim or  
11 does not respond to the claimant's notice of claim within the time  
12 stated in subsection (2) of this section, the claimant may bring an  
13 action against the construction professional for the claim described  
14 in the notice of claim without further notice.

15 (b) (~~If the claimant rejects the inspection proposal or the~~  
16 ~~settlement offer made by the construction professional pursuant to~~  
17 ~~subsection (2) of this section, the claimant shall serve written~~  
18 ~~notice of the claimant's rejection on the construction~~  
19 ~~professional.)) After ((~~service of the rejection~~)) inspection, the  
20 claimant may reject the construction professional's proposal and  
21 bring an action against the construction professional for the  
22 construction defect claim described in the notice of claim. If the  
23 construction professional has not received from the claimant, within  
24 thirty days after the claimant's receipt of the construction  
25 professional's response, either an acceptance or rejection of the  
26 inspection proposal or settlement offer, then at anytime thereafter  
27 the construction professional may terminate the proposal or offer by  
28 serving written notice to the claimant, and the claimant may  
29 thereafter bring an action against the construction professional for  
30 the construction defect claim described in the notice of claim.~~

31 (4)(a) (~~If the claimant elects to allow the construction~~  
32 ~~professional to inspect in accordance with the construction~~  
33 ~~professional's proposal pursuant to subsection (2)(a) of this~~  
34 ~~section,)) The claimant shall provide the construction professional  
35 and its contractors or other agents reasonable access to the  
36 claimant's residence during normal working hours to inspect the  
37 premises and the claimed defect.~~

38 (b) Within fourteen days following completion of the inspection,  
39 the construction professional shall serve on the claimant:

1 (i) A written offer to remedy the construction defect at no cost  
2 to the claimant, including a report of the scope of the inspection,  
3 the findings and results of the inspection, a description of the  
4 additional construction necessary to remedy the defect described in  
5 the claim, and a timetable for the completion of such construction;

6 (ii) A written offer to compromise and settle the claim by  
7 monetary payment pursuant to subsection (2)(b) of this section; or

8 (iii) A written statement that the construction professional will  
9 not proceed further to remedy the defect.

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

16 (d) If the claimant rejects the offer made by the construction  
17 professional pursuant to (b)(i) or (ii) of this subsection to either  
18 remedy the construction defect or to compromise and settle the claim  
19 by monetary payment, the claimant shall serve written notice of the  
20 claimant's rejection on the construction professional. After service  
21 of the rejection notice, the claimant may bring an action against the  
22 construction professional for the construction defect claim described  
23 in the notice of claim. If the construction professional has not  
24 received from the claimant, within thirty days after the claimant's  
25 receipt of the construction professional's response, either an  
26 acceptance or rejection of the offer made pursuant to (b)(i) or (ii)  
27 of this subsection, then at anytime thereafter the construction  
28 professional may terminate the offer by serving written notice to the  
29 claimant.

30 (5)(a) Any claimant accepting the offer of a construction  
31 professional to remedy the construction defect pursuant to subsection  
32 (4)(b)(i) of this section shall do so by serving the construction  
33 professional with a written notice of acceptance within a reasonable  
34 time period after receipt of the offer, and no later than thirty days  
35 after receipt of the offer. The claimant shall provide the  
36 construction professional and its contractors or other agents  
37 reasonable access to the claimant's residence during normal working  
38 hours to perform and complete the construction by the timetable  
39 stated in the offer.

1 (b) The claimant and construction professional may, by written  
2 mutual agreement, alter the extent of construction or the timetable  
3 for completion of construction stated in the offer, including, but  
4 not limited to, repair of additional defects.

5 (6) Any action commenced by a claimant prior to compliance with  
6 the requirements of this section shall be (~~subject to dismissal~~)  
7 dismissed without prejudice, and (~~may~~) will not be recommenced  
8 until the claimant has complied with the requirements of this  
9 section.

10 (7) Nothing in this section may be construed to prevent a  
11 claimant from commencing an action on the construction defect claim  
12 described in the notice of claim if the construction professional  
13 fails to perform the construction agreed upon, fails to remedy the  
14 defect, or fails to perform by the timetable agreed upon pursuant to  
15 subsection (2)(a) or (5) of this section.

16 (8) Prior to commencing any action alleging a construction  
17 defect, (~~or after the dismissal of any action without prejudice~~  
18 ~~pursuant to subsection (6) of this section,~~) the claimant may amend  
19 the notice of claim to include construction defects discovered after  
20 the service of the original notice of claim, and must otherwise  
21 comply with the requirements of this section for the additional  
22 claims. The service of an amended notice of claim shall relate back  
23 to the original notice of claim for purposes of tolling statutes of  
24 limitations and repose. Claims for defects discovered after the  
25 commencement or recommencement of an action may be added to such  
26 action only after providing notice to the construction professional  
27 of the defect and allowing for response under subsection (2) of this  
28 section.

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