

RCW 64.50.020 Construction defect action—Notice of claim—Report—Response—Procedure for negotiations—Commencing an action. (1) In every construction defect action brought against a construction professional, the claimant shall, no later than 45 days before filing an action, serve written notice of claim on the construction professional.

(a) The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(b) If the claimant is a condominium association created after July 23, 2023, the written notice of claim shall include a written report from a construction defect professional. In addition to describing the claim in reasonable detail sufficient to determine the general nature of the defect the written report shall state the construction defect professional's qualifications, the manner and type of inspection upon which the report was based, and the general location of the defect.

(2) Within 14 days after service of the notice of claim, the construction professional may serve a written response demanding a meeting with the claimant and its expert, including the construction defect professional who authored the report required in subsection (1)(b) of this section to confer regarding the report and its contents. The meeting shall take place within 14 days of service of the construction professional's demand or at such later date as mutually agreed to by the parties.

(3) Within 14 days after the meeting referenced in subsection (2) of this section or, in the absence of a demand for such meeting, within 21 days after service of the notice of claim, whichever is later, the construction professional shall serve a written response on the claimant by registered mail or personal service. The written response shall:

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

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

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

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

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (3) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action

against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(5) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (3) (a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within 14 days following completion of the inspection, the construction professional shall serve on the claimant:

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

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (3) (b) of this section; or

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

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

(d) If the claimant rejects the offer made by the construction professional pursuant to (b) (i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within 30 days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to (b) (i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(6) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (5) (b) (i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than 30 days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working

hours to perform and complete the construction by the timetable stated in the offer.

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

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

(8) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (3)(a) or (6) of this section.

(9) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection (7) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (3) of this section.

(10) If the claimant is an association, and notwithstanding any contrary provisions in the association's governing documents, the association's board of director's ability to incur expenses to prepare and serve a notice of claim and any related reports and otherwise comply with the requirements of this chapter shall not be restricted. [2023 c 337 § 4; 2002 c 323 § 3.]

Application—2023 c 337 §§ 3-5: See note following RCW 64.50.010.