
HOUSE BILL 2059

State of Washington 59th Legislature 2005 Regular Session

By Representatives Springer, P. Sullivan, B. Sullivan and Wallace

Read first time 02/16/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to preservation of claim rights in construction
2 disputes; amending RCW 4.24.370, 4.24.380, and 64.50.020; and adding a
3 new section to chapter 4.24 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 4.24 RCW
6 to read as follows:

7 Any clause in a construction contract, as defined in RCW 4.24.370,
8 that purports to waive, release, or extinguish the claim rights of a
9 contractor, subcontractor, or supplier to damages or an equitable
10 adjustment based on failure to submit claim notice or claim-related
11 documentation in a specified time frame or form is enforceable to the
12 extent that the party failing to receive such notice or documentation
13 was prejudiced thereby.

14 **Sec. 2.** RCW 4.24.370 and 1979 ex.s. c 264 s 2 are each amended to
15 read as follows:

16 "Construction contract" for purposes of RCW 4.24.360 and section 1
17 of this act means any contract or agreement for the construction,
18 alteration, repair, addition to, subtraction from, improvement to, or

1 maintenance of, any building, highway, road, railroad, excavation, or
2 other structure, project, development, or improvement attached to real
3 estate, including moving and demolition in connection therewith.

4 **Sec. 3.** RCW 4.24.380 and 1979 ex.s. c 264 s 3 are each amended to
5 read as follows:

6 (1) The provisions of RCW 4.24.360 shall apply to contracts or
7 agreements entered into after September 1, 1979.

8 (2) The provisions of section 1 of this act shall apply to
9 contracts or agreements entered into on or after the effective date of
10 this act.

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

13 (1) In every construction defect action brought against a
14 construction professional, the claimant shall, no later than forty-five
15 days before filing an action, serve written notice of claim on the
16 construction professional. The notice of claim shall state that the
17 claimant asserts a construction defect claim against the construction
18 professional and shall describe the claim in reasonable detail
19 sufficient to determine the general nature of the defect.

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

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

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

35 (c) State that the construction professional disputes the claim and

1 will neither remedy the construction defect nor compromise and settle
2 the claim.

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

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

23 (4)(a) If the claimant elects to allow the construction
24 professional to inspect in accordance with the construction
25 professional's proposal pursuant to subsection (2)(a) of this section,
26 the claimant shall provide the construction professional and its
27 contractors or other agents reasonable access to the claimant's
28 residence during normal working hours to inspect the premises and the
29 claimed defect.

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

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

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

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

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

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

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

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

37 (6) Any action commenced by a claimant prior to compliance with the
38 requirements of this section shall be subject to dismissal without

1 prejudice, and may not be recommenced until the claimant has complied
2 with the requirements of this section. If a dismissal under this
3 subsection would otherwise have the effect of barring the
4 recommencement of the action because of the operation of a statute of
5 limitations or repose, the claimant shall have sixty days following the
6 dismissal within which to comply with the requirements of this section
7 and to recommence the action.

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

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

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