

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 721
Judicial Proceedings

(Senator Middleton, *et al.*)

**Real Property - Residential Dwellings - Notice and Opportunity to Repair
Construction Defects**

This bill establishes procedures that a homeowner or homeowners association, condominium council of unit owners, or cooperative housing corporation must follow before bringing a civil action in court asserting a claim concerning a defect in the design, construction, or condition of a dwelling.

Fiscal Summary

State Effect: Any change in the manner in which the Consumer Protection Division of the Office of the Attorney General handles complaints is not expected to increase the division's workload and could be handled with existing resources. The bill would not materially affect the caseload of the Judiciary.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Notice Requirements

At least 90 days before filing a civil action for damages to a dwelling or personal property based on a claim of a construction defect, the claimant must serve written notice

of the claim on the contractor with whom the claimant has a direct contractual relationship. The bill requires the notice to be sent by certified mail or personally delivered to the contractor's principal place of business in the State and specifies the content of the notice. No more than 15 days after receiving the notice, the contractor must forward a copy to each construction professional whom the contractor believes to be responsible for a defect specified in the notice.

Contractor's Right to Inspection and Evidence

On request from a contractor or construction professional, the claimant must: (1) allow the contractor or construction professional reasonable access during normal working hours to inspect the dwelling to determine the nature and cause of the defect and nature and extent of necessary remedial repairs or replacements; and (2) provide any evidence that depicts the nature and cause of the defect and the nature and extent of the necessary repairs.

Repair Proposal and/or Settlement Offer

Within 30 days after the inspection or the receipt of evidence, the contractor or construction professional must respond in writing. The response must propose to repair the defect, settle the claim, or deny the claim and refuse to settle the claim or repair the defect. Within 30 days after receiving a proposal or offer, the claimant must, in writing: (1) accept the repair proposal or settlement offer; or (2) reject it and provide a reason for the rejection. A claimant who accepts a repair proposal must allow access during normal business hours to perform the work.

A claimant who finds a subsequent defect must follow the same procedures prior to bringing a civil action, unless a contractor or construction professional fails to respond to a notice.

Unreasonable rejection of a repair proposal or failure to permit reasonable opportunity to repair the defect results in limiting the claimant's recovery in a civil action to the reasonable cost of the repair proposal or the settlement amount offered. Failure to allow inspection or respond to a proposal is admissible in a civil action and establishes a rebuttable presumption that the damages could have been mitigated.

Court Procedure

Compliance with a building code is conclusive evidence of construction in accordance with accepted trade standards for good workmanlike construction. Except for a good

cause reason, a contractor or construction professional who fails to respond in good faith to a notice may not assert that the claimant failed to comply with the bill.

Compliance with the bill's notice requirements tolls all statutes of limitations for claims stated in the notice for 90 days.

On the motion of a party to an action under the bill, the court: (1) must dismiss an action without prejudice that does not comply with the bill's requirements; and (2) may award incurred attorney's fees to the defendant. The bill does not apply to an action arising out of a claim for personal injury or death.

Home Builder Notice Requirements

The bill requires a home builder to provide to an owner, within 30 days after purchase of a new home: (1) information on the subcontractors and design professionals who worked on the home with a brief description of their work; and (2) a notice about the bill's provisions.

Current Law: Home builders are regulated by the Home Builder Registration Unit in the Attorney General's Consumer Protection Division under the Maryland Home Builder Registration Act. Generally, the unit must encourage resolution of a dispute under a contract to build and purchase a home.

Prior to entering into a contract for the sale or construction of a new home, the builder must disclose whether the builder participates in a new home warranty security plan. A warranty issued under a new home warranty security plan must warrant against: (1) material or workmanship defects for one year; (2) defects in the electrical, plumbing, heating, cooling, and ventilating systems for two years, up to the length and scope of the manufacturer's warranty; and (3) structural defects for five years.

Background: The Consumer Protection Division advises that it receives approximately 200 complaints annually involving home builders and resolves approximately 100 of them.

Small Business Effect: It is assumed that most building subcontractors are small businesses. Small business contractors, subcontractors, and other construction professionals would benefit from reduced litigation costs, and potentially smaller damage awards, under the bill.

Additional Information

Prior Introductions: HB 1324 of 2004, an identical bill, received a hearing by the Economic Matters Committee, but no further action was taken.

Cross File: None.

Information Source(s): Secretary of State, Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2005
ncs/jr

Analysis by: Michelle L. Harrison-Davis

Direct Inquiries to:
(410) 946-5510
(301) 970-5510