
A BILL FOR AN ACT

RELATING TO REMEDIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 657-8, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§657-8 Limitation of action for damages based on**
4 **construction to improve real property.** (a) No action, whether
5 in contract, tort, statute, or otherwise, to recover damages for
6 any injury to property, real or personal, or for bodily injury
7 or wrongful death, arising out of any deficiency or neglect in
8 the planning, design, construction, supervision and
9 administering of construction, and observation of construction
10 relating to an improvement to real property shall be commenced
11 ~~[more than two years after the cause of action has accrued, but~~
12 ~~in any event not]~~ more than ten years after the date of
13 completion of the improvement.

14 (b) This section shall not be construed to extend any
15 shorter period of limitation under this chapter, including the
16 six-year statute of limitations under section 657-1 or the
17 two-year statute of limitations for damages to persons or



1 property under section 657-7, as applicable, subject to the
2 ten-year statute of repose under subsection (a).

3 ~~[(b)]~~ (c) This section shall not apply to actions for
4 damages against owners or other persons having an interest in
5 the real property or improvement based on their negligent
6 conduct in the repair or maintenance of the improvement or to
7 actions for damages against surveyors for their own errors in
8 boundary surveys. ~~[The term "improvement" as used in this~~
9 ~~section shall have the same meaning as in section 507-41 and the~~
10 ~~phrase "date of completion" as used in this section shall mean~~
11 ~~the time when there has been substantial completion of the~~
12 ~~improvement or the improvement has been abandoned. The filing~~
13 ~~of an affidavit of publication and notice of completion with the~~
14 ~~circuit court where the property is situated in compliance with~~
15 ~~section 507-43(f) shall be prima facie evidence of the date of~~
16 ~~completion.]~~ An improvement shall be deemed substantially
17 complete upon the earliest of the following:

- 18 (1) The issuance of a certificate of occupancy; or
19 (2) The filing of an affidavit of publication and notice
20 of completion within the circuit court of the judicial



1 circuit where the property is situated in compliance
2 with section 507-43(f).

3 If the improvement consists of multiple buildings or
4 improvements, each building or improvement shall be considered
5 as a separate improvement for the purpose of determining the
6 limitations period set forth in this section.

7 (d) This section shall not be construed to prevent, limit,
8 or extend any shorter period of limitation applicable to
9 sureties provided for in any contract or bond or any other
10 statute, nor to extend or add to the liability of any surety
11 beyond that for which the surety agreed to be liable by contract
12 or bond.

13 ~~[(e)]~~ (e) Nothing in this section shall exclude or limit
14 the liability provisions as set forth in the products liability
15 laws.

16 (f) For the purposes of this section:

17 "Date of completion" means the time when there has been
18 substantial completion of the improvement or the improvement has
19 been abandoned.

20 "Improvement" has the same meaning as in section 507-41."



1 SECTION 2. Section 672E-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§]~~**§672E-3**~~[§]~~ **Notice of claim of construction defect.**

4 (a) A claimant, no later than ninety days before filing an
5 action against a contractor, shall serve the contractor with a
6 written notice of claim. The notice of claim shall ~~[describe~~
7 ~~the claim in detail and include the results of any testing~~
8 ~~done.]~~:

- 9 (1) State that the claimant asserts a claim against the
10 contractor for a construction defect in the design,
11 construction, or remodeling, or any combination
12 thereof, of a dwelling or premises; and
13 (2) Describe the claim in detail sufficient to determine
14 the circumstances constituting the alleged
15 construction defect and damages resulting from the
16 construction defect. The description shall
17 specifically identify the alleged defect or problem;
18 provided that a general statement that a construction
19 defect may exist shall be insufficient.

20 The notice of claim shall not constitute a claim under any
21 applicable insurance policy and shall not give rise to a duty of



1 any insurer to provide a defense under any applicable insurance
2 policy unless and until the process [~~set forth~~] described in
3 section 672E-5 is completed. Nothing in this chapter shall in
4 any way interfere with or alter the rights and obligations of
5 the parties under any liability policy.

6 (b) If available to the claimant, the claimant shall
7 provide to the contractor, with the notice of claim, evidence
8 that depicts the nature and cause of the construction defect and
9 the nature and extent of the repairs necessary to repair the
10 defect, including the following information if obtained by the
11 claimant: photographs, videotapes, and any testing performed.

12 [~~(b)~~] (c) A contractor served with a written notice of
13 claim shall serve any other appropriate subcontractor with
14 notice of the claim. The contractor's notice shall include the
15 claimant's written notice of claim.

16 [~~(c)~~] (d) After serving the notice of claim, a claimant
17 shall give to the contractor reasonable prior notice and an
18 opportunity to observe if any testing is done."

19 SECTION 3. Section 672E-4, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§672E-4 Rejection of claim; opportunity to repair**
2 **construction defect.** (a) The contractor rejects a claimant's
3 claim of construction defects by:
4 (1) Serving the claimant with a written rejection of the
5 claim; or
6 (2) Failing to respond pursuant to subsection (b) (1) or
7 ~~[(b) (2),]~~ (2) to the notice of claim within thirty
8 days after service.
9 (b) The contractor, within thirty days after service of
10 the notice of claim, shall serve the claimant and any other
11 contractor that has received the notice of claim with a written
12 response to the alleged construction defect that:
13 (1) Offers to settle without inspecting the construction
14 defect by:
15 (A) Monetary payment;
16 (B) Making repairs; or
17 (C) Both subparagraphs (A) and (B); or
18 (2) Proposes to inspect the premises of the alleged
19 construction defect that is the subject of the claim.
20 (c) Within thirty days following any proposal for
21 inspection under subsection (b) (2), the claimant shall [provide



1 ~~access to:]~~ accept a contractor's proposal to inspect. After
2 accepting the contractor's proposal to inspect, the claimant and
3 contractor shall agree on a time and date for the inspection,
4 which shall occur within thirty days of the claimant's
5 acceptance of the contractor's proposal to inspect, unless the
6 claimant and contractor agree to a later date. The claimant
7 shall provide reasonable access to the dwelling or premises
8 during normal working hours to:

- 9 (1) Inspect the premises;
10 (2) Document any alleged construction defects; and
11 (3) Perform any testing required to evaluate the nature,
12 extent, and cause of the asserted construction defect,
13 and the nature and extent of any repair or replacement
14 that may be necessary to remedy the asserted
15 construction defect;

16 provided that if the claimant is an association under chapter
17 514B, the claimant shall have forty-five days to provide ~~such~~
18 access. If access to an individual condominium unit is
19 necessary, and the association is unable to obtain ~~such~~
20 access, then the association shall have a reasonable time to
21 provide access. If destructive testing is required, the



1 contractor shall give advance notice of tests and return the
2 premises to its pre-testing condition. If inspection or testing
3 reveals a condition that requires additional testing to fully
4 and completely evaluate the nature, cause, and extent of the
5 construction defect, the contractor shall provide notice to the
6 claimant of the need for additional testing. The claimant shall
7 provide additional access to the dwelling or premises. If a
8 claim is asserted on behalf of owners of multiple dwellings, or
9 multiple owners of units within a multi-family complex, the
10 contractor shall be entitled to inspect each of the dwellings or
11 units.

12 (d) Inspections and testing performed pursuant to this
13 section shall be completed within nine months of the
14 contractor's request to inspect, unless the parties agree or the
15 court orders otherwise.

16 [~~(d)~~] (e) Within fourteen days following the inspection
17 and testing, the contractor shall serve on the claimant a
18 written:

- 19 (1) Offer to fully or partially remedy the construction
20 defect at no cost to the claimant. [~~Such~~] The offer
21 shall include a description of construction necessary



1 to remedy the construction defect and a timetable for
2 the completion of the additional construction;
3 (2) Offer to settle the claim by monetary payment;
4 (3) Offer for a combination of repairs and monetary
5 payment; or
6 (4) Statement that the contractor will not proceed further
7 to remedy the construction defect.
8 (f) Upon receipt of the offer made under subsection (b) (1)
9 or (e) (1), (2), or (3), the claimant may, within thirty or
10 forty-five days, whichever applies pursuant to section
11 672E-5(a), accept the offer and authorize the contractor to
12 proceed with any repairs offered under subsection (b) (1) or
13 (e) (1) or (3), or deny the offer.
14 (g) Any offer of settlement under this section shall
15 reference this section, and shall state that a claimant's
16 failure to respond with a written notice of acceptance or
17 rejection within thirty or forty-five days, whichever applies
18 pursuant to section 672E-5(a), shall mean that the offer is
19 rejected. Failure to serve a written offer or statement under
20 this section shall be deemed a statement that the contractor
21 will not proceed further."



1 SECTION 4. Section 672E-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[§]672E-6[§]~~ **Offer of settlement.** (a) Any time after
4 the service of the notice of claim, any party may serve an offer
5 of settlement.

6 (b) If the offer is accepted, the parties shall be deemed
7 to have resolved the claim in whole or in part pursuant to the
8 offer.

9 (c) An offer not accepted within the time period required
10 under section 672E-5, or ten days after service for any
11 subsequent offers, shall be deemed withdrawn and evidence
12 thereof ~~[is]~~ shall not be admissible except to determine
13 entitlement to recovery of costs. If the judgment or award
14 obtained in a subsequent proceeding is not more favorable than
15 the offer, the offeree shall pay the costs incurred by the
16 offeror after the making of the offer. The fact that an offer
17 is made and not accepted does not preclude a subsequent offer."

18 SECTION 5. Section 672E-7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~[§]672E-7[§]~~ **Mediation.** (a) If the parties are unable
21 to resolve the claim pursuant to section 672E-5 or 672E-6, all



1 parties shall attempt to resolve the dispute through mediation,
2 even if mediation is not otherwise ordered or mandated by
3 contract or by law[-]; provided that the parties shall not be
4 required to attempt to resolve the dispute through mediation
5 more than once.

6 (b) Mediation shall be completed within twelve months of
7 the filing of the notice of the claim, unless the parties agree
8 or the court orders otherwise."

9 SECTION 6. Section 672E-8, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§672E-8[+] Statute of limitations on actions
12 **exception.** If an applicable statute of limitation or repose
13 would preclude an action after the notice of claim has been
14 served but before the dispute is resolved under this chapter,
15 the claimant may file an action against the contractor but the
16 action shall be immediately stayed pending the contractor's
17 opportunity to repair under section 672E-4, or submission of the
18 dispute to mediation under section 672E-7[-]; provided that no
19 action shall be filed pursuant to this section more than six
20 months before the end of the applicable limitation or repose
21 period. This section shall not be construed to revive a



1 statutory period of limitations on actions that have expired
2 prior to the date on which a claimant's written notice of claim
3 is served. After the sending of the initial notice of claim, a
4 claimant and a contractor, by written mutual agreement, may
5 alter the procedure for the notice of claim under this section."

6 SECTION 7. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 8. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Contractor Repair Act; Statute of Repose; Notice of Claim;
Inspection; Repair; Rejection of Claims; Construction Defect;
Mediation; Statute of Limitations

Description:

Clarifies that the statute of repose applies to contract, tort, and statutory claims. Clarifies the required contents of a notice of claim of a construction defect served on a contractor. Clarifies the process and time frame by which a claimant may accept or reject a contractor's offer to settle and authorize repairs. Clarifies the mediation process for construction defect claims. Clarifies the statute of limitation or repose for construction defect claims. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

