
A BILL FOR AN ACT

RELATING TO REMEDIES.

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

1 SECTION 1. The legislature finds that the existing
2 language of the Contractor Repair Act and the statute of repose,
3 section 657-8, Hawaii Revised Statutes, has led to inconsistent
4 application in the courts, which at times has permitted
5 incomplete or inadequate claims to go forward prematurely.
6 Therefore, it is the intent of the legislature to amend the
7 Contractor Repair Act to ensure that its implementation serves
8 both homeowners and homebuilders in promoting early and
9 efficient resolution of construction defect claims.

10 Accordingly, the purpose of this Act is to:

- 11 (1) Clarify that the statute of repose applies to
12 contract, tort, and statutory claims;
13 (2) Clarify the required contents of a notice of claim of
14 a construction defect served on a contractor;
15 (3) Require a claimant to satisfy the notice, offer, and
16 inspection requirements under the statute of repose
17 before proceeding with or joining a class action; and



(4) Clarify the process and time frame by which a claimant may accept or reject a contractor's offer to settle and authorize repairs.

SECTION 2. Section 657-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No action, whether in contract, tort, statute, or otherwise, to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any deficiency or neglect in the planning, design, construction, supervision and administering of construction, and observation of construction relating to an improvement to real property shall be commenced more than two years after the cause of action has accrued, but in any event not more than ten years after the date of completion of the improvement."

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

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

(a) A claimant, no later than ninety days before filing an action against a contractor, shall serve the contractor with a written notice of claim. The notice of claim shall [describe



1 ~~the claim in detail and include the results of any testing~~
2 ~~done.]:~~

3 (1) State that the claimant asserts a claim against the
4 contractor for a construction defect in the design,
5 construction, or remodeling of a dwelling or premises;
6 and

7 (2) Describe the claim in detail sufficient to determine
8 the circumstances constituting the alleged
9 construction defect and damages resulting from the
10 construction defect. The description shall
11 specifically identify the alleged defect or problem;
12 provided that a general statement that a construction
13 defect may exist shall be insufficient.

14 The notice of claim shall not constitute a claim under any
15 applicable insurance policy and shall not give rise to a duty of
16 any insurer to provide a defense under any applicable insurance
17 policy unless and until the process [~~set forth~~] described in
18 section 672E-5 is completed. Nothing in this chapter shall in
19 any way interfere with or alter the rights and obligations of
20 the parties under any liability policy.



1 (b) If available to the claimant, the claimant shall
2 provide to the contractor, with the notice of claim, evidence
3 that depicts the nature and cause of the construction defect and
4 the nature and extent of the repairs necessary to repair the
5 defect, including expert reports, photographs, videotapes, and
6 any testing performed, if obtained by the claimant.

7 (c) Each individual claimant or class member shall comply
8 with this chapter, which includes permitting inspection under
9 section 672E-4 of each dwelling or premises that is the subject
10 of the claim. No person shall be permitted to join a class
11 action brought under this chapter unless that person has first
12 complied with the requirements of this chapter.

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

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

20 SECTION 4. Section 672E-4, Hawaii Revised Statutes, is
21 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 dwellings 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) Within fourteen days following the inspection and
13 testing, the contractor shall serve on the claimant a written:

14 (1) Offer to fully or partially remedy the construction
15 defect at no cost to the claimant. [~~Such~~] The offer
16 shall include a description of construction necessary
17 to remedy the construction defect and a timetable for
18 the completion of the additional construction;

19 (2) Offer to settle the claim by monetary payment;

20 (3) Offer for a combination of repairs and monetary
21 payment; or



1 (4) Statement that the contractor will not proceed further
2 to remedy the construction defect.

3 (e) Upon receipt of the offer made under subsection
4 (b) (1), (d) (1), (d) (2), or (d) (3), the claimant, within thirty
5 or forty-five days, whichever applies pursuant to section
6 672E-5(a), may accept the offer and authorize the contractor to
7 proceed with any repairs offered under subsection (b) (1),
8 (d) (1), or (d) (3), or deny the offer.

9 (f) Any offer of settlement under this section shall
10 reference this section, and shall state that a claimant's
11 failure to respond with a written notice of acceptance or
12 rejection within thirty or forty-five days, whichever applies
13 pursuant to section 672E-5(a), shall mean that the offer is
14 rejected. Failure to serve a written offer or statement under
15 this section shall be deemed a statement that the contractor
16 will not proceed further."

17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

Statute of Repose; Contractor Repair Act; Notice of Claim;
Inspection; Repair; Rejection of Claims

Description:

Clarifies the applicability of the statute of repose to apply to contract, tort, and statutory claims. Clarifies the required contents of a notice of claim of a construction defect served on a contractor. Requires claimants to comply with provisions of the Contractor Repair Act before proceeding with or joining in a class action. Clarifies the process and time frame by which a claimant may accept or reject a contractor's offer to settle and authorize repairs. Effective 7/1/3000. (SD1)

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