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HOUSE BILL 632

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Patricio Ruiloba

AN ACT

RELATING TO CONSTRUCTION; ENACTING THE HOME WARRANTY ACT;
REQUIRING BUILDERS TO PROVIDE A HOME WARRANTY WITH A NEWLY
CONSTRUCTED HOME; ESTABLISHING REQUIREMENTS FOR A HOME
WARRANTY; ESTABLISHING RESPONSIBILITIES FOR BUILDERS, HOME
WARRANTY GUARANTORS AND HOMEOWNERS; REQUIRING RULEMAKING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Home Warranty Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Home Warranty Act:

A. "builder" means a person who contracts directly
with an owner for the purchase of a newly constructed home,
that was not previously occupied, unless it was occupied only
by the builder for the builder's residential or commercial use;

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1 B. "construction code" means the applicable laws
2 and standards, and materials and workmanship standards, in
3 effect in the jurisdiction where a home is located at the time
4 the building permit for the home was issued;

5 C. "damage" means a defect or a major structural
6 defect;

7 D. "defect" means that a component of a home fails
8 to meet the terms stated in a home warranty;

9 E. "emergency repair" means a repair to a home
10 necessary because of an imminent and substantial risk of damage
11 to the home or of serious bodily injury to the home's
12 occupants;

13 F. "home":

14 (1) means a detached one- or multi-family
15 residence that has five or fewer stories above grade plane, has
16 a separate means of egress, is newly constructed by a builder
17 and will be occupied by the owner as the owner's residence; and

18 (2) does not include any common areas owned by
19 a homeowners' or condominium association;

20 G. "home warranty" means a written warranty that
21 conforms to the requirements provided in the Home Warranty Act
22 and that constitutes the entire warranties provided by a
23 builder to an owner;

24 H. "home warranty guarantor" means an entity that
25 guarantees and administers a home warranty on behalf of a

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1 builder;

2 I. "load-bearing elements" includes footings and
3 foundation systems, beams, headers, girders, lintels, columns,
4 load-bearing walls, roof framing systems and floor systems as
5 described in a home warranty;

6 J. "major structural defect" means any physical
7 damage to the load-bearing portions of a home caused by failure
8 of the home's load-bearing elements, which affects those
9 elements' functions to the extent that the home becomes unsafe
10 or unsanitary or is otherwise unlivable;

11 K. "owner" means the first person to whom a home is
12 sold upon completion of the home's construction and any
13 successors in title to the home, during the time the home's
14 home warranty is in effect;

15 L. "superintendent" means the superintendent of
16 insurance; and

17 M. "warranty commencement date" means the date that
18 legal title to a home is conveyed to the owner.

19 SECTION 3. [NEW MATERIAL] HOME WARRANTY--WARRANTY TERMS--
20 EXCLUSIONS.--

21 A. When a purchase contract between a builder and
22 owner is signed, the builder shall provide to the owner a
23 sample of the home warranty that will be provided upon sale of
24 the home.

25 B. Upon the sale of a home, every builder shall

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1 provide a home warranty to the owner that shall be backed by a
2 home warranty guarantor and that:

3 (1) is substantially the same as the sample
4 provided in accordance with Subsection A of this section,
5 unless the builder allows the owner an opportunity to review
6 proposed changes to the home warranty and the owner and builder
7 agree in writing to those changes;

8 (2) provides the following periods of
9 coverage:

10 (a) for three hundred sixty-five days
11 following the warranty commencement date, the home will be free
12 from any defect or major structural defect due to noncompliance
13 with construction codes described in the home warranty;

14 (b) for a one-year period beginning
15 three hundred sixty-six days from the warranty commencement
16 date, the home's plumbing, electrical and mechanical
17 distribution systems will be free from any defect and the home
18 will be free from major structural defects; and

19 (c) for an eight-year period beginning
20 with the end of the period described in Subparagraph (b) of
21 this paragraph, the home will be free from major structural
22 defects;

23 (3) clearly describes the parties'
24 responsibilities under the warranty; and

25 (4) clearly describes whether the builder or

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1 the home warranty guarantor is the party primarily responsible
2 for satisfying claims against the home warranty throughout the
3 term of the home warranty. This information shall also be
4 clearly explained to an owner before the warranty commencement
5 date and shall not be revised after the warranty commencement
6 date.

7 C. Unless the builder and owner agree otherwise in
8 writing, a builder's home warranty shall not cover:

9 (1) any damage to the home that is caused or
10 made worse by:

11 (a) the owner's neglect, negligence,
12 improper maintenance, use or operation;

13 (b) the owner's failure to provide
14 timely notice to the builder or the home warranty guarantor as
15 required in the Home Warranty Act of any damage to the home;
16 provided, however, that such a failure shall not be construed
17 to change the period of coverage provided in a home warranty;

18 (c) nonresidential use of the home; or

19 (d) the repair of damage to the home by
20 anyone other than the builder or the builder's agent, except as
21 otherwise provided for in the Home Warranty Act;

22 (2) any loss or damage that the owner fails to
23 take timely action to mitigate;

24 (3) manufacturers' warranties related to
25 appliances, equipment or fixtures; or

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1 (4) if the home was constructed on land that
2 was owned by the owner, any loss or damage to a home caused by
3 soil conditions or soil movement; provided that the builder
4 obtains a written waiver from the owner for such loss or
5 damage.

6 D. The requirements in this section shall not be
7 waived by the owner or diminished by the builder.

8 SECTION 4. [NEW MATERIAL] RULES--REQUIREMENTS FOR HOME
9 WARRANTY GUARANTORS AND HOME WARRANTIES.--

10 A. The superintendent shall promulgate rules to
11 govern the Home Warranty Act, including rules to establish:

- 12 (1) qualifications for a home warranty
13 guarantor;
- 14 (2) requirements for the terms and conditions
15 of a home warranty;
- 16 (3) a process for approving a home warranty
17 guarantor to sell and back home warranties; and
- 18 (4) standards related to home warranty
19 products purchased by builders from home warranty guarantors.

20 B. To be approved to sell and back home warranties,
21 a home warranty guarantor shall:

- 22 (1) meet the qualifications established in
23 rule by the superintendent;
- 24 (2) possess a certificate of authority issued
25 by the superintendent to write the type of insurance specified

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1 in a home warranty, be designated by the superintendent as an
2 eligible surplus lines carrier or be a risk retention guarantor
3 company that meets the licensing, filing and approval
4 requirements provided in state and federal law; and

5 (3) be able to show financial security
6 sufficient to cover the total amount of claims that could be
7 made against builders whose home warranties the guarantor backs
8 and to cover the costs of operation of the home warranties it
9 backs.

10 C. A home warranty guarantor shall not require any
11 payment by an owner at any time subsequent to the home warranty
12 commencement date as a condition of maintaining the home
13 warranty.

14 D. The terms and conditions of a home warranty are
15 subject to approval by the superintendent. Once approved, the
16 terms and conditions shall not be altered without the consent
17 of the superintendent.

18 E. A home warranty guarantor's approval to sell and
19 back home warranties may be suspended or revoked by the
20 superintendent if the superintendent finds that the guarantor
21 has violated the Home Warranty Act or the rules promulgated by
22 the superintendent.

23 SECTION 5. [NEW MATERIAL] REQUIRED NOTICE.--

24 A. Before an owner personally undertakes a home
25 repair that is not an emergency repair, and before commencing

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1 legal action for a breach of warranty, the owner shall first
2 notify the builder or the home warranty guarantor as specified
3 in the home warranty. The notice shall be made in writing and
4 delivered by first class mail or as otherwise specified in the
5 home warranty and shall advise the builder or guarantor of all
6 damage to the home. The notice shall include a detailed and
7 itemized list that describes all damage, the location of the
8 damage within the home and whether any additional damage was
9 caused or is likely to be caused if the damage is not repaired
10 or replaced.

11 B. If damage to a home requires an emergency
12 repair, before the owner personally undertakes the emergency
13 repair, the owner shall first notify the builder or the home
14 warranty administrator, as specified in the home warranty. If
15 the owner is unable to make contact with the builder or the
16 home warranty guarantor, the owner shall:

17 (1) make as minimal repairs as are necessary
18 to mitigate or avoid an emergency until additional repairs can
19 be approved by the builder or home warranty guarantor; and

20 (2) take reasonable action to mitigate
21 additional damage.

22 C. An owner may amend a notice provided in
23 accordance with Subsection A or B of this section to include
24 additional alleged damage that the owner identifies in good
25 faith after submission of the original notice.

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1 D. A builder or a home warranty guarantor who
2 receives a written notice of damage from an owner:

3 (1) may:

4 (a) inspect the home to determine the
5 nature and cause of the damage and the nature and extent of any
6 repairs or replacements necessary to remedy the damage;

7 (b) use industry measures as necessary,
8 including deconstruction testing, to determine the nature and
9 cause of the damage and the nature and extent of any repairs or
10 replacements necessary to remedy the damage; provided, however,
11 that if deconstruction testing is used, the builder shall
12 restore the home to the condition it was in before the testing;
13 or

14 (c) repair or replace the damage; and

15 (2) shall, within sixty days of receipt of the
16 notice, send to the owner by first class mail a good faith
17 written response, stating whether the builder or home warranty
18 guarantor intends to inspect the home; use testing methods,
19 including deconstruction; have the damage repaired or replaced;
20 or negotiate a monetary settlement with the owner.

21 E. If a builder or home warranty guarantor notifies
22 an owner of the intent to repair or replace damage, the notice
23 shall describe all repairs or replacements that the builder
24 intends to undertake and an estimate of the date by which the
25 work will be complete. The owner shall allow an opportunity

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1 for the damage to be repaired or replaced, and the builder or
2 home warranty guarantor and the owner shall coordinate the
3 repair or replacement work. Any extensions to the completion
4 date shall be agreed to in writing by the owner and the builder
5 or home warranty guarantor.

6 F. An owner shall ensure that the owner's home is
7 available during business hours or as otherwise agreed with the
8 builder or home warranty guarantor for inspection, testing,
9 repairs or replacement as provided in the builder's or
10 guarantor's response to the owner.

11 G. If a builder or a home warranty guarantor offers
12 to negotiate a monetary settlement with an owner, the owner may
13 accept or reject a settlement offered, but if the owner also
14 rejects an offer to repair or replace damage, the owner shall
15 file a claim with the home warranty guarantor. If the owner
16 accepts a monetary settlement, the owner and the builder or
17 home warranty guarantor shall negotiate for a release of
18 liability.

19 H. If a builder does not comply with the
20 requirements of this section and that failure is not due to any
21 action or inaction of the owner or to an unforeseen event
22 outside the builder's control, the owner shall file a claim
23 with the home warranty guarantor.

24 SECTION 6. [NEW MATERIAL] VIOLATIONS--CAUSE OF ACTION--
25 LIMITATIONS.--

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1 A. If a builder violates the Home Warranty Act by
2 failing to provide a warranty or to perform as required by a
3 home warranty, an affected owner has a cause of action against
4 the builder for actual damages, including attorney fees and
5 related legal fees and costs arising out of the violation.

6 B. A monetary settlement with respect to a single
7 instance of damage shall not exceed the cost of repair or
8 replacement that would be necessary to cure the damage.

9 C. A monetary settlement with respect to all damage
10 in a home or to settle any legal action provided for in
11 Subsection A of this section, exclusive of costs and legal
12 fees, shall not exceed the original purchase price of the home.

13 **SECTION 7. [NEW MATERIAL] TRANSFER OF WARRANTY.--**A home
14 warranty made pursuant to the provisions of the Home Warranty
15 Act shall automatically transfer, without charge, to a
16 subsequent owner who acquires title to the home at a time when
17 the warranty is still in effect. The transfer of a home
18 covered by a home warranty shall not extend the duration of
19 home warranty coverage.

20 **SECTION 8. [NEW MATERIAL] NO EFFECT ON OTHER WARRANTIES**
21 **OR REMEDIES.--**Nothing in the Home Warranty Act shall be
22 construed:

23 A. as affecting or limiting any warranty of title
24 to land or improvements; or

25 B. to prevent the parties to a home warranty from

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1 agreeing to alternative dispute resolution as the sole or
2 optional remedy to a dispute or violation of the provisions of
3 that act or the home warranty.

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