

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 50

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CONSTRUCTION; ENACTING THE RIGHT TO REPAIR ACT.

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 "Right to Repair Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Right to Repair Act:

A. "construction defect" means a deficiency in the

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construction of a dwelling that is the result of a failure to exercise that degree of skill a reasonably prudent person skilled in such work would exercise in such circumstances;

B. "construction professional" means a contractor or subcontractor performing the construction of a dwelling;

C. "dwelling" means a HJC→**newly constructed**←HJC single family housing unit designed for residential use.

"Dwelling" includes the systems and other components and improvements that are part of a single family housing unit at the time of construction;

D. "dwelling action" means a complaint in court or the mechanism for dispute resolution in the construction contract between the purchaser and seller involving an alleged construction defect brought by a purchaser against the seller of a dwelling arising out of or related to the construction of the dwelling;

E. "purchaser" means a person or entity who was the original purchaser or subsequent owner of a dwelling;

F. "reasonable detail" includes all of the following:

(1) an itemized list that describes each alleged construction defect; and

(2) the street address of the dwelling where the alleged construction defect is observed and the location in the dwelling that is the subject of the notice; and

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G. "seller" means the party responsible for construction of the dwelling.

SECTION 3. [~~NEW MATERIAL~~] NOTICE AND RIGHT TO REPAIR.--

A. HJC→~~A~~←HJC HJC→**Except with respect to claims for alleged construction defects involving an immediate threat to the life or safety of persons occupying a dwelling, rendering a dwelling uninhabitable or in which the seller, after notice from the purchaser pursuant to this subsection, refused to make a repair under any applicable express warranty, a**←HJC purchaser shall first comply with the provisions of this section before filing a dwelling action. A purchaser shall give written notice by HJC→~~certified mail, return receipt requested,~~←HJC HJC→**the United States postal service with delivery confirmation or electronic means**←HJC to the seller specifying the reasonable detail of each alleged defect. A seller who receives notice pursuant to this subsection shall promptly forward a copy of the notice to the last known address of each construction professional that the seller reasonably believes is responsible for an alleged defect specified in the notice. The seller's notice to each construction professional may be delivered by electronic means.

B. Once a seller receives notice pursuant to this section, the notice does not constitute notice of a claim or occurrence as defined by the New Mexico Insurance Code or an insurance policy to trigger notice requirements to the seller's

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liability carrier, as the notice is intended to allow the purchaser and seller an opportunity to amicably resolve any claimed defect issues without the need for formal arbitration or legal proceedings.

C. After receipt of the notice described in Subsection A of this section, the seller and the seller's construction professional may inspect the dwelling to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each alleged construction defect. The purchaser shall ensure the dwelling is made available for inspection during normal working hours not later than ten days after the purchaser receives the seller's and the seller's construction professional's request for an inspection. The seller and the seller's construction professional shall provide reasonable notice to the purchaser before conducting the inspection. The inspection shall be conducted at a reasonable time. The seller and the seller's construction professional may use reasonable measures, including testing, to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each alleged construction defect. The seller's construction professional shall restore the dwelling within sixty days of the testing.

D. Within sixty days after receipt of the notice provided for in Subsection A of this section, the seller shall

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send to the purchaser, by certified mail, return receipt requested, a written response to the purchaser's notice. The response may:

(1) offer to repair or replace each alleged construction defect or to have each alleged construction defect repaired or replaced by another construction professional chosen by the seller at the seller's or seller's construction professional's expense;

(2) offer to provide monetary compensation to the purchaser; or

(3) invoke any remedies provided in the construction contract between the seller and the purchaser.

E. A written offer to repair or replace pursuant to Paragraph (1) of Subsection D of this section shall describe in reasonable detail all repairs or replacements that the seller and the seller's construction professional intend to make or provide to the dwelling and a reasonable estimate of the date by which the repairs or replacements will be made. This subsection does not prohibit the seller from offering monetary compensation or other consideration instead of or in addition to a repair or replacement.

F. The purchaser shall allow the seller or the seller's construction professional the opportunity to make repairs or replacements of each alleged construction defect.

G. The purchaser and seller may negotiate for a

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release of claims regarding the noticed construction defect if an offer involving monetary compensation or other consideration is accepted or the purchaser is satisfied with the repairs or replacements.

H. If the response provided pursuant to Subsection D of this section includes a notice of intent to repair or replace each alleged construction defect, the purchaser shall allow the seller and the seller's construction professional a reasonable opportunity to repair or replace each alleged construction defect or cause each alleged construction defect to be repaired or replaced as follows:

(1) the purchaser and the seller or the seller's construction professional shall coordinate repairs or replacements within thirty days after the seller's notice of intent to repair or replace was sent pursuant to Subsection D of this section. A construction professional that was not involved in the construction of the dwelling resulting in each alleged construction defect and that performs any repair or replacement of the alleged construction defect pursuant to this section is liable to the seller or purchaser who contracted for the contractor's or subcontractor's services only for that construction professional's scope of work;

(2) repairs or replacements shall begin as agreed by the purchaser and the seller or the seller's construction professional, with reasonable efforts to begin

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repairs or replacements within thirty days after the seller's notice of intent to repair or replace was sent pursuant to Subsection D of this section. If a permit is required to perform the repair or replacement, reasonable efforts shall be made to begin repairs or replacements within ten days after receipt of the permit or thirty days after the seller's notice of intent to repair or replace was sent pursuant to Subsection D of this section, whichever is later;

(3) all repairs or replacements shall be completed using reasonable care under the circumstances and within a commercially reasonable time frame considering the nature of the repair or replacement, any access issues or unforeseen events that are not caused by the seller or the seller's construction professional;

(4) the purchaser shall provide reasonable access during normal working hours for the repairs or replacements;

(5) the purchaser and seller may negotiate a release or waiver upon the satisfaction of the purchaser or in exchange for monetary compensation or other consideration in lieu of repair; and

(6) at the conclusion of any repairs or replacements, the purchaser may reinitiate the process set forth in this section regarding any claim for inadequate repair or replacement.

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I. A purchaser may send a new notice pursuant to Subsection A of this section to include each alleged construction defect identified after submission of the original notice. The seller and the seller's construction professional shall have a reasonable period of time to conduct an inspection, if requested, and thereafter the parties shall comply with the requirements of Subsections B through H of this section for each additional alleged construction defect identified in reasonable detail in the notice.

J. The time periods provided for in this section shall be reasonably extended for delays that are beyond the control of seller and otherwise by written agreement of the seller and purchaser.

K. If the seller does not comply with the requirements of this section and the failure is not due to any fault of the purchaser or a result of delays that are beyond the control of seller, including weather conditions or government delay, the purchaser shall follow any remedy provided for in the construction contract or file a complaint in court if no dispute resolution mechanism is provided for in the contract with the seller.

L. Nothing in the Right to Repair Act negates or supersedes the existence of any remedy provided for in the construction contract.

M. The statute of repose pursuant to Section

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37-1-27 NMSA 1978 or other applicable statute of limitation shall be tolled during the repair and replacement process for items specified in the notice.

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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