

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 50

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

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 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 single family housing unit designed for residential use. "Dwelling" includes the systems

1 and other components and improvements that are part of a single
2 family housing unit at the time of construction;

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

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

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

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

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

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

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

21 A. A purchaser shall first comply with the
22 provisions of this section before filing a dwelling action. A
23 purchaser shall give written notice by certified mail, return
24 receipt requested, to the seller specifying the reasonable
25 detail of each alleged defect. A seller who receives notice

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1 pursuant to this subsection shall promptly forward a copy of
2 the notice to the last known address of each construction
3 professional that the seller reasonably believes is responsible
4 for an alleged defect specified in the notice. The seller's
5 notice to each construction professional may be delivered by
6 electronic means.

7 B. Once a seller receives notice pursuant to this
8 section, the notice does not constitute notice of a claim or
9 occurrence as defined by the New Mexico Insurance Code or an
10 insurance policy to trigger notice requirements to the seller's
11 liability carrier, as the notice is intended to allow the
12 purchaser and seller an opportunity to amicably resolve any
13 claimed defect issues without the need for formal arbitration
14 or legal proceedings.

15 C. After receipt of the notice described in
16 Subsection A of this section, the seller and the seller's
17 construction professional may inspect the dwelling to determine
18 the nature and cause of each alleged construction defect and
19 the nature and extent of any repairs or replacements necessary
20 to remedy each alleged construction defect. The purchaser
21 shall ensure the dwelling is made available for inspection
22 during normal working hours not later than ten days after the
23 purchaser receives the seller's and the seller's construction
24 professional's request for an inspection. The seller and the
25 seller's construction professional shall provide reasonable

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1 notice to the purchaser before conducting the inspection. The
2 inspection shall be conducted at a reasonable time. The seller
3 and the seller's construction professional may use reasonable
4 measures, including testing, to determine the nature and cause
5 of each alleged construction defect and the nature and extent
6 of any repairs or replacements necessary to remedy each alleged
7 construction defect. The seller's construction professional
8 shall restore the dwelling within sixty days of the testing.

9 D. Within sixty days after receipt of the notice
10 provided for in Subsection A of this section, the seller shall
11 send to the purchaser, by certified mail, return receipt
12 requested, a written response to the purchaser's notice. The
13 response may:

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

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

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

23 E. A written offer to repair or replace pursuant to
24 Paragraph (1) of Subsection D of this section shall describe in
25 reasonable detail all repairs or replacements that the seller

1 and the seller's construction professional intend to make or
2 provide to the dwelling and a reasonable estimate of the date
3 by which the repairs or replacements will be made. This
4 subsection does not prohibit the seller from offering monetary
5 compensation or other consideration instead of or in addition
6 to a repair or replacement.

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

10 G. The purchaser and seller may negotiate for a
11 release of claims regarding the noticed construction defect if
12 an offer involving monetary compensation or other consideration
13 is accepted or the purchaser is satisfied with the repairs or
14 replacements.

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

22 (1) the purchaser and the seller or the
23 seller's construction professional shall coordinate repairs or
24 replacements within thirty days after the seller's notice of
25 intent to repair or replace was sent pursuant to Subsection D

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1 of this section. A construction professional that was not
2 involved in the construction of the dwelling resulting in each
3 alleged construction defect and that performs any repair or
4 replacement of the alleged construction defect pursuant to this
5 section is liable to the seller or purchaser who contracted for
6 the contractor's or subcontractor's services only for that
7 construction professional's scope of work;

8 (2) repairs or replacements shall begin as
9 agreed by the purchaser and the seller or the seller's
10 construction professional, with reasonable efforts to begin
11 repairs or replacements within thirty days after the seller's
12 notice of intent to repair or replace was sent pursuant to
13 Subsection D of this section. If a permit is required to
14 perform the repair or replacement, reasonable efforts shall be
15 made to begin repairs or replacements within ten days after
16 receipt of the permit or thirty days after the seller's notice
17 of intent to repair or replace was sent pursuant to Subsection
18 D of this section, whichever is later;

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

25 (4) the purchaser shall provide reasonable

1 access during normal working hours for the repairs or
2 replacements;

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

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

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

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

24 K. If the seller does not comply with the
25 requirements of this section and the failure is not due to any

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1 fault of the purchaser or a result of delays that are beyond
2 the control of seller, including weather conditions or
3 government delay, the purchaser shall follow any remedy
4 provided for in the construction contract or file a complaint
5 in court if no dispute resolution mechanism is provided for in
6 the contract with the seller.

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

10 M. The statute of repose pursuant to Section
11 37-1-27 NMSA 1978 or other applicable statute of limitation
12 shall be tolled during the repair and replacement process for
13 items specified in the notice.

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