

JAN 24 2024

A BILL FOR AN ACT

RELATING TO THE CONTRACTOR REPAIR ACT.

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

1 SECTION 1. The legislature finds that the rising costs of
2 insurance contribute substantially to the soaring costs of
3 housing in Hawaii. Developers or improvers of real property are
4 required to insure against deficiencies of improvements, while
5 costs of insurance are passed on to the purchasers of that real
6 property, which significantly drives up costs. Higher insurance
7 costs have resulted from the unrestricted filing of construction
8 defect claims filed by purchasers of real property. Developers
9 or improvers of real property have received legal complaints
10 seeking to recover damages without first being provided the
11 opportunity to inspect or remedy potential defects.

12 Therefore, the purpose of this Act is to:

- 13 (1) Expand the required contents of a notice of claim of
14 construction defect served on a contractor;
- 15 (2) Require the claimant to provide actual evidence of the
16 nature and cause of the construction defect and extent
17 of necessary repairs along with the notice of claim;



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- 1 (3) Amend the process and timeframe for a claimant to
- 2 accept a contractor's proposal to inspect and
- 3 authorize the contractor to proceed with repairs; and
- 4 (4) Limit the amount a claimant can recover if the
- 5 claimant unreasonably rejects a contractor's proposal
- 6 to inspect or an offer to remedy.

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

9 "[+]§672E-3[+] **Notice of claim of construction defect.**

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

13 (1) State that the claimant asserts a claim against the
 14 contractor for a construction defect in the design,
 15 construction, or remodeling of a dwelling or premises;

16 and

17 (2) Describe the claim, with particularity, specificity,
 18 and in detail [~~and include the results of any testing~~
 19 ~~done.~~] sufficient to determine the circumstances
 20 constituting the alleged construction defect and
 21 damages resulting from the construction defect. A



1 general statement that a construction defect may exist
2 shall be insufficient.

3 The notice of claim shall not constitute a claim under any
4 applicable insurance policy and shall not give rise to a duty of
5 any insurer to provide a defense under any applicable insurance
6 policy unless and until the process set forth in section 672E-5
7 is completed. Nothing in this chapter shall in any way
8 interfere with or alter the rights and obligations of the
9 parties under any liability policy.

10 (b) The claimant shall provide to the contractor, with the
11 notice of claim, actual evidence that depicts the nature and
12 cause of the construction defect and the nature and extent of
13 the repairs necessary to repair the defect, including but not
14 limited to expert reports, photographs, videotapes, and any
15 testing done.

16 (c) Each individual claimant or class member shall comply
17 with this chapter, which includes permitting inspection under
18 section 672E-4 of each dwelling or premises that is the subject
19 of the claim.

20 ~~(b)~~ (d) A contractor served with a written notice of
21 claim shall serve any other appropriate subcontractor with



1 notice of the claim. The contractor's notice shall include the
2 claimant's written notice of claim.

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

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

8 "**§672E-4 Rejection of claim; opportunity to repair**
9 **construction defect.** (a) The contractor rejects a claimant's
10 claim of construction defects by:

11 (1) Serving the claimant with a written rejection of the
12 claim; or

13 (2) Failing to respond pursuant to subsection (b)(1) or
14 (b)(2) [~~7~~] to the notice of claim within thirty days
15 after service.

16 (b) The contractor, within thirty days after service of
17 the notice of claim, shall serve the claimant and any other
18 contractor that has received the notice of claim with a written
19 response to the alleged construction defect that:

20 (1) Offers to settle without inspecting the construction
21 defect by:



- 1 (A) Monetary payment;
 - 2 (B) Making repairs; or
 - 3 (C) Both subparagraphs (A) and (B); or
- 4 (2) Proposes to inspect the premises of the alleged
5 construction defect that is the subject of the claim.
- 6 (c) [~~Within thirty days following any proposal for~~
7 ~~inspection under subsection (b) (2), the claimant shall provide~~
8 ~~access to:~~] The claimant shall accept a contractor's proposal
9 to inspect under subsection (b) (2) and notify the contractor of
10 that acceptance within fourteen days. After accepting the
11 contractor's proposal to inspect, the claimant and contractor
12 shall agree on a time and date for the inspection, which shall
13 occur within thirty days of the claimant's acceptance of the
14 contractor's proposal to inspect, unless the claimant and
15 contractor agree to a later date. The claimant shall provide
16 reasonable access to the dwelling or premises during normal
17 working hours to:
- 18 (1) Inspect the premises;
 - 19 (2) Document any alleged construction defects; and
 - 20 (3) Perform any testing required to evaluate the nature,
21 extent, and cause of the asserted construction defect,



1 and the nature and extent of any repair or replacement
2 that may be necessary to remedy the asserted
3 construction defect;
4 provided that if the claimant is an association under chapter
5 514B, the claimant shall have forty-five days to provide [~~such~~]
6 access. If access to an individual condominium unit is
7 necessary, and the association is unable to obtain [~~such~~]
8 access, then the association shall have a reasonable time to
9 provide access. If destructive testing is required, the
10 contractor shall give advance notice of tests and return the
11 premises to its pre-testing condition. If inspection or testing
12 reveals a condition that requires additional testing to fully
13 and completely evaluate the nature, cause, and extent of the
14 construction defect, the contractor shall provide notice to the
15 claimant of the need for additional testing. The claimant shall
16 provide additional access to the dwellings or premises. If a
17 claim is asserted on behalf of owners of multiple dwellings, or
18 multiple owners of units within a multi-family complex, the
19 contractor shall be entitled to inspect each of the dwellings or
20 units.



1 (d) Within fourteen days following the inspection and
2 testing, the contractor shall serve on the claimant a written:

3 (1) Offer to fully or partially remedy the construction
4 defect at no cost to the claimant. [~~Such~~] The offer
5 shall include a description of construction necessary
6 to remedy the construction defect and a timetable for
7 the completion of the additional construction;

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

9 (3) Offer for a combination of repairs and monetary
10 payment; or

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

13 (e) Upon receipt of the offer made under subsection
14 (b) (1), (d) (1), (d) (2), or (d) (3), the claimant, within thirty
15 or forty-five days, whichever applies pursuant to section 672E-
16 5(a), shall accept the offer and authorize the contractor to
17 proceed with any repairs offered under subsection (b)1, (d)(1),
18 or (d) (3).

19 (f) If a claimant unreasonably rejects a proposal to
20 inspect made under subsection (b) (2), or unreasonably rejects an
21 offer under subsection (b) (1), (d) (1), (d) (2), or (d) (3), the



1 claimant's recover shall be limited to the total value of the
2 offer, calculated based on the reasonable value of the repair
3 determined as of the date of the offer and the amount of the
4 offered monetary payment.

5 (g) If a claimant unreasonably rejects a contractor's
6 proposal to inspect under subsection (b)(2), or unreasonably
7 rejects an offer under subsection (b)(1), (d)(1), (d)(2), or
8 (d)(3), the court shall deny the claimant an award of attorney
9 fees and costs even if the claimant is determined to be the
10 prevailing party, and the contractor shall be entitled to an
11 award of attorney fees and costs incurred following the date of
12 the offer.

13 (h) Any offer of settlement under this section shall
14 reference this section, and shall state that a claimant's
15 failure to respond with a written notice of acceptance or
16 rejection within thirty or forty-five days, whichever applies
17 pursuant to section 672E-5(a), shall mean that the offer is
18 rejected[+] and shall subject the claimant to the limitations in
19 subsections (f) and (g). Failure to serve a written offer or
20 statement under this section shall be deemed a statement that
21 the contractor will not proceed further."



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

4

INTRODUCED BY: 



S.B. NO. 3334

Report Title:

Contractor Repair Act; Notice of Claim; Inspection; Repair; Rejection of Claims; Limitations on Recovery

Description:

Expands the required contents of a notice of claim of construction defect served on a contractor. Requires the claimant to provide actual evidence of the nature and cause of the construction defect and extent of necessary repairs along with the notice of claim. Amends the process and timeframe for a claimant to accept a contractor's proposal to inspect and authorize the contractor to proceed with repairs. Limits the amount a claimant can recover if the claimant unreasonably rejects a contractor's proposal to inspect or an offer to remedy.

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

