

JAN 15 2025

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. In
5 turn, the costs of insurance are passed on to the purchasers of
6 that real property, which significantly increases costs. Higher
7 insurance costs have resulted from the unrestricted filing of
8 construction defect claims filed by purchasers of real property.
9 Developers or improvers of real property have received legal
10 complaints seeking to recover damages without first being
11 provided the 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;



(3) Amend the process and time frame for a claimant to accept a contractor's offer to settle or inspect and authorize the contractor to proceed with repairs; and

(4) Limit the amount a claimant can recover if the claimant unreasonably rejects a contractor's proposal to inspect or an offer to remedy.

SECTION 2. 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) State that the claimant asserts a claim against the contractor for a construction defect in the design, construction, or remodeling of a dwelling or premises; and

(2) Describe the claim, with particularity, specificity, and in detail [and include the results of any testing done.] sufficient to determine the circumstances constituting the alleged construction defect and 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; provided that the claimant shall be required to
16 provide the evidence only to the extent that the claimant has
17 the evidence.

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



1 [~~(b)~~] (d) A contractor served with a written notice of
2 claim shall serve any other appropriate subcontractor with
3 notice of the claim. The contractor's notice shall include the
4 claimant's written notice of claim.

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

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

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

13 (1) Serving the claimant with a written rejection of the
14 claim; or

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

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



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

3 (A) Monetary payment;

4 (B) Making repairs; or

5 (C) Both subparagraphs (A) and (B); or

6 (2) Proposes to inspect the premises of the alleged
7 construction defect that is the subject of the claim.

8 (c) ~~[Within thirty days following any proposal for~~
9 ~~inspection under subsection (b) (2), the claimant shall provide~~
10 ~~access to:]~~ The claimant may accept a contractor's proposal to
11 inspect under subsection (b) (2) and notify the contractor of
12 that acceptance within fourteen days. After accepting the
13 contractor's proposal to inspect, the claimant and contractor
14 shall agree on a time and date for the inspection, which shall
15 occur within thirty days of the claimant's acceptance of the
16 contractor's proposal to inspect, unless the claimant and
17 contractor agree to a later date. The claimant shall provide
18 reasonable access to the dwelling or premises during normal
19 working hours to:

20 (1) Inspect the premises;

21 (2) Document any alleged construction defects; and



(3) Perform any testing required to evaluate the nature, extent, and cause of the asserted construction defect, and the nature and extent of any repair or replacement that may be necessary to remedy the asserted construction defect;

provided that if the claimant is an association under chapter 514B, the claimant shall have forty-five days to provide ~~such~~ access. If access to an individual condominium unit is necessary, and the association is unable to obtain ~~such~~ access, then the association shall have a reasonable time to provide access. If destructive testing is required, the contractor shall give advance notice of tests and return the premises to its pre-testing condition. If inspection or testing reveals a condition that requires additional testing to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for additional testing. The claimant shall provide additional access to the dwellings or premises. If a claim is asserted on behalf of owners of multiple dwellings, or multiple owners of units within a multi-family complex, the



1 contractor shall be entitled to inspect each of the dwellings or
2 units.

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

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

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

11 (3) Offer for a combination of repairs and monetary
12 payment; or

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

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



1 (f) If a claimant unreasonably rejects a proposal to
2 inspect made under subsection (b) (2), or unreasonably rejects an
3 offer under subsection (b) (1), (d) (1), (d) (2), or (d) (3), the
4 claimant's recovery shall be limited to the total value of the
5 offer, calculated based on the reasonable value of the repair
6 determined as of the date of the offer and the amount of the
7 offered monetary payment.

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

16 (h) Any offer of settlement under this section shall
17 reference this section[7] and shall state that a claimant's
18 failure to respond with a written notice of acceptance or
19 rejection within thirty or forty-five days, whichever applies
20 pursuant to section 672E-5(a), shall mean that the offer is
21 rejected[7] and shall subject the claimant to the limitations in



1 subsections (f) and (g). Failure to serve a written offer or
2 statement under this section shall be deemed a statement that
3 the contractor will not proceed further."

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

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

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INTRODUCED BY: 



S.B. NO. 331

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 to the extent the claimant has evidence. Amends the process and time frame 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.

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