
A BILL FOR AN ACT

RELATING TO REMEDIES.

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

1 SECTION 1. Section 657-8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§657-8 Limitation of action for damages based on**
4 **construction to improve real property.** (a) No action, whether
5 in contract, tort, statute, or otherwise, to recover damages for
6 any injury to property, real or personal, or for bodily injury
7 or wrongful death, arising out of any deficiency or neglect in
8 the planning, design, construction, supervision and
9 administering of construction, and observation of construction
10 relating to an improvement to real property shall be commenced
11 more than ten years after the date of completion of the
12 improvement.

13 (b) This section shall not be construed to extend any
14 shorter period of limitation under this chapter, including the
15 six-year statute of limitations under section 657-1 or the two-
16 year statute of limitations for damages to persons or property



1 under section 657-7, as applicable, subject to the ten-year
2 statute of repose under subsection (a).

3 (c) This section shall not apply to actions for damages
4 against owners or other persons having an interest in the real
5 property or improvement based on their negligent conduct in the
6 repair or maintenance of the improvement or to actions for
7 damages against surveyors for their own errors in boundary
8 surveys. An improvement shall be deemed substantially complete
9 upon the earliest of the following:

- 10 (1) The issuance of a certificate of occupancy; or
11 (2) The filing of an affidavit of publication and notice
12 of completion within the circuit court of the judicial
13 circuit where the property is situated in compliance
14 with section 507-43(f).

15 If the improvement consists of multiple buildings or
16 improvements, each building or improvement shall be considered
17 as a separate improvement for the purpose of determining the
18 limitations period set forth in this section.

19 (d) This section shall not be construed to prevent, limit,
20 or extend any shorter period of limitation applicable to
21 sureties provided for in any contract or bond or any other



1 statute, nor to extend or add to the liability of any surety
2 beyond that for which the surety agreed to be liable by contract
3 or bond.

4 (e) Nothing in this section shall exclude or limit the
5 liability provisions as set forth in the products liability
6 laws.

7 (f) No action, whether in contract, tort, statute, or
8 otherwise, based on a violation of the applicable building code
9 shall be commenced unless the violation is a material violation
10 of the applicable building code.

11 [~~f~~] (g) For the purposes of this section:

12 "Date of completion" means the time when there has been
13 substantial completion of the improvement or the improvement has
14 been abandoned.

15 "Improvement" has the same meaning as in section 507-41.

16 "Material violation" means a building code violation that
17 exists within a completed building, structure, or facility that
18 may reasonably result or has resulted in physical harm to a
19 person or significant damage to the performance of a building or
20 its systems."



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

3 **"§672E-3 Notice of claim of construction defect.** (a) A
4 claimant, no later than ninety days before filing an action
5 against a contractor, shall serve the contractor with a written
6 notice of claim. The notice of claim shall:

7 (1) State that the claimant asserts a claim against the
8 contractor for a construction defect in the design,
9 construction, or remodeling, or any combination
10 thereof, of a dwelling or premises; and

11 (2) Describe the claim in detail sufficient to determine
12 the circumstances constituting the alleged
13 construction defect and damages resulting from the
14 construction defect. The description shall
15 specifically identify the alleged defect or problem;
16 provided that a general statement that a construction
17 defect may exist shall be insufficient.

18 The notice of claim shall not constitute a claim under any
19 applicable insurance policy and shall not give rise to a duty of
20 any insurer to provide a defense under any applicable insurance
21 policy unless and until the process described in section 672E-5



1 is completed. Nothing in this chapter shall in any way
2 interfere with or alter the rights and obligations of the
3 parties under any liability policy.

4 (b) If available to the claimant, the claimant shall
5 provide to the contractor, with the notice of claim, evidence
6 that depicts the nature and cause of the construction defect and
7 the nature and extent of the repairs necessary to repair the
8 defect, including the following information if obtained by the
9 claimant: photographs, videotapes, and any testing performed.

10 (c) Each individual claimant or putative class member
11 shall comply with this chapter, which includes permitting
12 inspection under section 672E-4 of each dwelling or premises
13 that is the subject of the claim. No person shall be permitted
14 to join a class action under this chapter unless the person has
15 first complied with this chapter.

16 [~~e~~] (d) A contractor served with a written notice of
17 claim shall serve any other appropriate subcontractor with
18 notice of the claim. The contractor's notice shall include the
19 claimant's written notice of claim.



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

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

6 "**§672E-4 Rejection of claim; opportunity to repair**
7 **construction defect.** (a) The contractor rejects a claimant's
8 claim of construction defects by:

9 (1) Serving the claimant with a written rejection of the
10 claim; or

11 (2) Failing to respond pursuant to subsection (b) (1) or
12 (2) to the notice of claim within thirty days after
13 service.

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

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

20 (A) Monetary payment;

21 (B) Making repairs; or



1 (C) Both subparagraphs (A) and (B); or
2 (2) Proposes to inspect the premises of the alleged
3 construction defect that is the subject of the claim.

4 (c) Within thirty days following any proposal for
5 inspection under subsection (b) (2), the claimant shall accept a
6 contractor's proposal to inspect. After accepting the
7 contractor's proposal to inspect, the claimant and contractor
8 shall agree on a time and date for the inspection, which shall
9 occur within thirty days of the claimant's acceptance of the
10 contractor's proposal to inspect, unless the claimant and
11 contractor agree to a later date. The claimant shall provide
12 reasonable access to the dwelling or premises during normal
13 working hours to:

- 14 (1) Inspect the premises;
- 15 (2) Document any alleged construction defects; and
- 16 (3) Perform any testing required to evaluate the nature,
17 extent, and cause of the asserted construction defect,
18 and the nature and extent of any repair or replacement
19 that may be necessary to remedy the asserted
20 construction defect;



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

17 ~~[(d) Inspections and testing performed pursuant to this~~
18 ~~section shall be completed within nine months of the~~
19 ~~contractor's request to inspect, unless the parties agree or the~~
20 ~~court orders otherwise.~~



1 ~~(e)]~~ (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. The offer shall
5 include a description of construction necessary to
6 remedy the construction defect and a timetable for the
7 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 ~~[(f) Upon receipt of the offer made under subsection~~
14 ~~(b) (1) or (c) (1), (2), or (3), the claimant may, within thirty~~
15 ~~or forty-five days, whichever applies pursuant to section 672E-~~
16 ~~5(a), accept the offer and authorize the contractor to proceed~~
17 ~~with any repairs offered under subsection (b) (1) or (c) (1) or~~
18 ~~(3), or deny the offer.~~

19 ~~(g)]~~ (e) Any offer of settlement under this section shall
20 reference this section, and shall state that a claimant's
21 failure to respond with a written notice of acceptance or



1 rejection within thirty or forty-five days, whichever applies
2 pursuant to section 672E-5(a), shall mean that the offer is
3 rejected. Failure to serve a written offer or statement under
4 this section shall be deemed a statement that the contractor
5 will not proceed further."

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

8 "**§672E-6 Offer of settlement.** (a) Any time after the
9 service of the notice of claim, any party may serve an offer of
10 settlement.

11 (b) If the offer is accepted, the parties shall be deemed
12 to have resolved the claim in whole or in part pursuant to the
13 offer.

14 (c) An offer not accepted within the time period required
15 under section 672E-5, or ten days after service for any
16 subsequent offers, shall be deemed withdrawn and evidence
17 thereof shall not be admissible except to determine entitlement
18 to recovery of attorneys' fees and costs [~~. If the judgment or~~
19 ~~award obtained in a subsequent proceeding is not more favorable~~
20 ~~than the offer, the offeree shall pay the costs incurred by the~~
21 ~~offeror after the making of the offer. The fact that an offer~~



1 ~~is made and not accepted does not preclude a subsequent offer.]~~
2 and the reasonableness of the contractor's offer of settlement
3 for purposes of subsection (d).

4 (d) If a claimant rejects a contractor's reasonable offer
5 of settlement, the claimant's cost of repair recovery shall be
6 limited to the reasonable value of the repair determined as of
7 the date of the offer and the amount of the offered monetary
8 payment. Any additional damages caused by the alleged
9 construction defect shall not be limited by this section."

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

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



Report Title:

Statute of Repose; Building Code; Contractor Repair Act;
Inspection; Repair; Rejection of Claims; Limitations on Recovery

Description:

Prohibits actions based on a building code violation unless the violation was a material violation of the building code. Specifies that claimants must comply with the Contractor Repair Act and bars persons from joining a class action for failure to comply with the Contractor Repair Act. Repeals the requirement that inspections and testing be completed within nine months. Deletes duplicative language for when persons may accept a settlement offer. Limits the amount a claimant can recover if the claimant rejects a contractor's reasonable proposal for inspection or a reasonable offer to remedy. (HD1)

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

