

## IC 32-27-3

### Chapter 3. Notice and Opportunity to Repair

#### IC 32-27-3-1

##### Definitions

Sec. 1. The following definitions apply throughout this chapter:

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodeling of a residence.

"Action" does not include:

(A) a claim in bankruptcy; or

(B) any civil action in tort alleging personal injury to or wrongful death of a person or persons resulting from a construction defect.

(2) "Association" means an association of co-owners (as defined in IC 32-25-2-2).

(3) "Claimant" means a home owner who or an association that asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodeling of a residence.

(4) "Construction professional" means an architect, a builder, a builder vendor, a contractor, a subcontractor, or an engineer, including but not limited to any person performing or furnishing the design, supervision, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, a partnership, a corporation, or another business entity that contracts with the home owner to build the residence. A construction professional is not a home owner under this chapter unless the construction professional occupies the residence that is the basis for the claimed defect.

(5) "Defect" or "construction defect" means damage or deficiency in the residential construction, design, specifications, surveying, planning, supervision, testing, inspection, or observation of construction.

(6) "Home owner" means:

(A) any person, company, firm, partnership, corporation, association, or other business entity that:

(i) is owner of the residence; and

(ii) contracts with a construction professional for the construction, sale, or construction and sale of a residence;

or

(B) a subsequent purchaser of a residence from a home owner.

(7) "Residence" means a:

(A) single family house;

(B) duplex;

(C) triplex;

(D) quadraplex; or

(E) unit in a multiple unit residential structure in which title to the individual unit is transferred to the owner under a condominium or cooperative system.

For purposes of clause (E), the term includes common areas and facilities (as defined in IC 32-25-2-4).

(8) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(9) "Substantial remodeling" means a remodeling of a residence, the total cost of which exceeds fifty percent (50%) of the assessed value under IC 6-1.1-1-3(a)(2) of the residence at the time that the contract for the remodeling work was made.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-2**

#### **Notice of claim; response**

Sec. 2. (a) At least sixty (60) days before filing a construction defect action against a construction professional, the claimant must serve written notice of claim on the construction professional. The notice of claim must state that the claimant asserts a construction defect claim against the construction professional and must describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(b) Within twenty-one (21) days after service of a notice of claim under subsection (a), the construction professional must serve a written response on the claimant. The written response must do one (1) of the following:

(1) Propose to inspect the residence that is the subject of the claim and complete the inspection within a specified time frame. A response made under this subdivision must include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim.

(2) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subdivision may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim and to pay the claimant's reasonable relocation costs.

(3) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(c) If the construction professional terminates a proposal or offer under section 3(c) of this chapter, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

(d) A home owner is not required to serve an additional written notice for any additional defects discovered after the home owner has served an initial written notice of a construction defect in accordance with this section.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-3**

#### **Action for construction defect; notice of rejection; notice to terminate offer or proposal**

Sec. 3. (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time set forth in section 2(b) of this chapter, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the construction professional makes:

- (1) a proposal to inspect the residence under section 2(b)(1) of this chapter; or
- (2) an offer to compromise and settle the claim by monetary payment without inspection under section 2(b)(2) of this chapter;

and the claimant rejects the proposal or offer, the claimant must serve written notice of the rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

(c) If the construction professional does not receive from the claimant either an acceptance or rejection of the construction professional's inspection proposal or settlement offer within sixty (60) days after the claimant's receipt of the construction professional's response, the construction professional may terminate the proposal or offer by serving written notice on the claimant.

(d) If the construction professional terminates a proposal or offer under subsection (c), the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-4**

#### **Reasonable access for inspection; action for construction defect; notice of rejection; notice to terminate offer or proposal**

Sec. 4. (a) If the construction professional makes a proposal to inspect the residence under section 2(b)(1) of this chapter and the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal, the claimant must provide the construction professional and the construction professional's contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen (14) days after the completion of an inspection pursuant to a proposal under section 2(b)(1) of this chapter, the construction professional must serve on the claimant:

- (1) a written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the

additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(2) a written offer to compromise and settle the claim by monetary payment under section 2(b)(2) of this chapter; or

(3) a written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional:

(1) makes a written offer to remedy the construction defect under subsection (b)(1) but does not proceed further to remedy the construction defect within the agreed timetable; or

(2) fails to serve a written offer or statement on the claimant under subsection (b);

the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the construction professional makes an offer under subsection (b)(1) or (b)(2) to remedy the construction defect or to compromise and settle the claim by monetary payment and the claimant rejects the offer, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.

(e) If the construction professional makes an offer under subsection (b)(1) or (b)(2) and does not receive an acceptance or rejection of the offer from the claimant within sixty (60) days after the claimant's receipt of the construction professional's response, the construction professional may terminate the offer by serving written notice on the claimant.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-5**

#### **Notice of acceptance; reasonable access to complete construction; agreement to alter offer**

Sec. 5. (a) To accept the offer of a construction professional to remedy the construction defect under section (4)(b)(1) of this chapter, the claimant must serve on the construction professional a written notice of acceptance within a reasonable time period after receipt of the offer, and not later than sixty (60) days after receipt of the offer.

(b) A claimant who accepts a construction professional's offer under section 4(b)(1) of this chapter must provide the construction professional and the construction professional's contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(c) After the acceptance of an offer under section 4(b)(1) of this chapter, the claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to construction to repair additional defects.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-6**

#### **Dismissal**

Sec. 6. Any action commenced by a claimant before compliance with the requirements of this chapter is subject to dismissal without prejudice, and may not be recommenced until the claimant complies with the requirements of this section.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-7**

#### **Commence action for construction defect**

Sec. 7. Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform according to the timetable agreed upon under section 4(b)(1) or 5 of this chapter.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-8**

#### **Amend notice of claim; date of original notice of claim applies**

Sec. 8. (a) Before commencing any action alleging a construction defect, or after the dismissal of any action without prejudice under section 6 of this chapter, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim.

(b) The service of an amended notice of claim relates back to the original notice of claim for purposes of section 2 of this chapter and the applicable statutes of limitations and repose.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-9**

#### **Attorney's fees and costs to construction professional; deduction of sums paid under warranty; failure to comply**

Sec. 9. (a) If a claimant:

- (1) unreasonably rejects a reasonable written offer of settlement made under this chapter; or
- (2) does not permit the construction professional a reasonable opportunity to inspect or to repair the defect under a reasonable offer of settlement;

and thereafter commences an action governed by this chapter, the court may deny the claimant attorney's fees and costs and award attorney's fees and costs to the construction professional. However, a homeowner is not required to accept an offer to repair the defect when the defect is caused by the construction professional's noncompliance with applicable building codes.

(b) Any sums paid under a homeowners warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the construction professional, must be deducted from any

recovery.

(c) If a construction professional fails to comply with the requirements of this chapter, the claimant is not obligated to comply further with the provisions of this chapter.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-10**

#### **Attorney's fees and costs to claimant**

Sec. 10. If a construction professional unreasonably:

- (1) disputes a home owner's claim;
- (2) fails to remedy or compromise and settle the claim;
- (3) fails to repair the construction defect within a reasonable time, subject to the nature of the repair or some unforeseen event not caused by the construction professional; or
- (4) fails to respond to a notice;

and the claimant commences an action governed by this chapter and prevails in the action, the court may award attorney's fees and costs to the claimant.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-11**

#### **Filing; list of defects**

Sec. 11. (a) In every action brought against a construction professional, the claimant must file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(b) The list of known construction defects must contain a description of the construction that the claimant alleges to be defective. The list of known construction defects must be filed with the court and served on the defendant within sixty (60) days after the commencement of the action or within such longer period as the court in its discretion may allow.

(c) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(d) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(e) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against the subcontractor or supplier must serve on the subcontractor or supplier the list of construction defects in accordance with this section within sixty (60) days after service of the complaint against the subcontractor or supplier, or within such period as the court in its discretion may allow.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-12**

#### **Notice of right to offer to cure; action not barred**

Sec. 12. (a) Upon entering into a contract for sale, construction, or

substantial remodeling of a residence, a construction professional must provide notice to each home owner of the construction professional's right to offer to cure construction defects before a home owner may commence litigation against the construction professional. The notice must be conspicuous and may be included as part of the underlying contract signed by the home owner.

(b) The notice required by this section must be in substantially the following form:

"IC 32-27-3 CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR OR BUILDER OF YOUR HOME. SIXTY (60) DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR OR BUILDER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR CONTRACTOR. HOWEVER, IF YOU UNREASONABLY REJECT A REASONABLE WRITTEN OFFER AND COMMENCE AN ACTION AGAINST THE BUILDER OR CONTRACTOR, A COURT MAY AWARD ATTORNEY'S FEES AND COSTS TO THE BUILDER OR CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT."

(c) This chapter does not preclude or bar any action if notice is not given to the home owner as required by this section.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-13**

#### **Contractual relationship not affected**

Sec. 13. Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among home owners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed under current law. Nothing in this chapter shall negate or otherwise restrict a construction professional's right to access or inspection provided by law, covenant, easement, or contract.

*As added by P.L.134-2003, SEC.1.*

### **IC 32-27-3-14**

#### **Tolling of statute of limitations**

Sec. 14. If a written notice of claim is served under section 2 of this chapter within the time prescribed for the filing of an action against a construction professional based on an alleged construction defect, the applicable statute of limitations for construction related

claims is tolled with respect to the alleged construction defect described in the notice of claim from the day on which the notice of claim is served until sixty (60) days after the period of time during which the filing of an action is barred under this chapter.

*As added by P.L.134-2003, SEC.1.*