

411.276 Written notice of claim required -- Offer to remedy or settle -- Acceptance or rejection of offer -- Tolling of statute of limitations.

- (1) In every deficient home inspection or home inspection report action brought against a home inspector, the claimant shall serve written notice of claim on the home inspector. The notice of claim shall state that the claimant asserts a deficient home inspection or home inspection report claim against the home inspector and shall describe the claim in reasonable detail sufficient to determine the general nature of the deficiency.
- (2) Within twenty-one (21) days after service of the notice of claim, the home inspector shall serve a written response on the claimant by registered mail or personal service. The written response shall:
 - (a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the home inspector shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;
 - (b) Offer to compromise and settle the claim by monetary payment without inspection; or
 - (c) State that the home inspector disputes the claim.
- (3)
 - (a) If the home inspector disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, then the claimant may bring an action against the home inspector for the claim described in the notice of claim without further notice.
 - (b) If the claimant rejects the inspection proposal or the settlement offer made by the home inspector pursuant to subsection (2) of this section, then the claimant shall serve written notice of the claimant's rejection on the home inspector. After service of the rejection, the claimant may bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim. If the home inspector has not received from the claimant, within thirty (30) days after the claimant's receipt of the home inspector's response, either an acceptance or a rejection of the inspection proposal or settlement offer, then at any time thereafter the home inspector may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim.
- (4)
 - (a) If the claimant elects to allow the home inspector to inspect in accordance with the home inspector's proposal pursuant to subsection (2)(a) of this section, then the claimant shall provide the home inspector reasonable access to the claimant's home during normal working hours to inspect the premises.
 - (b) Within fourteen (14) days following completion of the inspection, the home inspector shall serve on the claimant:
 1. A written offer to remedy the 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 remedy necessary to cure the defect described in the claim, and a timetable for the completion of this remedy;

2. A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or
3. A written statement that the home inspector will not proceed further to remedy the defect.

The claimant shall have the right to accept or reject the proposed remedy, or the monetary offer to settle the claim.

- (c) If the home inspector does not proceed further to remedy the defect within the agreed timetable, or if the home inspector fails to comply with the provisions of paragraph (b) of this subsection, then the claimant may bring an action against the home inspector for the claim described in the notice of claim without further notice.
 - (d) If the claimant rejects the offer made by the home inspector pursuant to paragraph (b)1. or 2. of this subsection to either remedy the defect or to compromise and settle the claim by monetary payment, then the claimant shall serve written notice of the claimant's rejection on the home inspector. After service of the rejection notice, the claimant may bring an action against the home inspector for the deficient home inspection or home inspection report claim described in the notice of claim. If the home inspector has not received from the claimant, within thirty (30) days after the claimant's receipt of the home inspector's response, either an acceptance or a rejection of the offer made pursuant to paragraph (b)1. or 2. of this subsection, then at any time thereafter the home inspector may terminate the offer by serving written notice to the claimant.
- (5) (a) Any claimant accepting the offer of a home inspector to remedy the defect pursuant to subsection (4)(b)1. of this section shall do so by serving the home inspector with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty (30) days after receipt of the offer. The claimant shall provide the home inspector reasonable access to the claimant's home during normal working hours to perform and complete the remedy by the timetable stated in the offer.
- (b) The claimant and home inspector may, by written mutual agreement, alter the extent of remedy or the timetable, including but not limited to repair of additional defects.
- (6) If a claimant files a complaint, counterclaim, or cross-claim prior to meeting the requirements of this section, then the court may issue an order holding the action in abeyance until the parties comply with this section.
- (7) Nothing in this section may be construed to prevent a claimant from commencing an action on the deficient home inspection or home inspection report claim described in the notice of claim if the home inspector fails to perform the remedy agreed upon or fails to perform by the timetable agreed upon pursuant to subsection

(2)(a) or (5) of this section.

- (8) The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose.

Effective: July 13, 2004

History: Created 2004 Ky. Acts ch. 109, sec. 24, effective July 13, 2004.