

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1467 Session of 2005

INTRODUCED BY T. STEVENSON, DALLY, ARGALL, BALDWIN, BARRAR, BOYD, BUNT, CALTAGIRONE, CAPPELLI, CLYMER, CREIGHTON, DENLINGER, FAIRCHILD, GERGELY, GILLESPIE, GINGRICH, GRELL, HANNA, HERMAN, HUTCHINSON, KILLION, KOTIK, LaGROTTA, LEH, LESCOVITZ, LEVDANSKY, MACKERETH, MANN, MICOZZIE, R. MILLER, MUSTIO, NAILOR, PAYNE, PETRONE, PHILLIPS, REED, ROBERTS, ROSS, RUBLEY, SAYLOR, SCHRODER, SEMMEL, B. SMITH, SOLOBAY, SONNEY, R. STEVENSON, E. Z. TAYLOR, TIGUE, TRUE, TURZAI, WALKO, WILT, GEIST, MCGILL, FRANKEL, BUXTON, REICHLEY, PYLE AND ALLEN, MAY 2, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, DECEMBER 6, 2005

AN ACT

1 Providing for dispute resolution procedures relating to  
2 residential construction defects between contractors and  
3 homeowners or members of associations. ~~and prescribing~~ ←  
4 ~~penalties.~~

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Residential  
9 Construction Dispute Resolution Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Action." A civil lawsuit, judicial action or arbitration

1 proceeding asserting a claim, in whole or in part, for damages  
2 or other relief in connection with a dwelling caused by a  
3 construction defect.

4 "Association." An association as defined under 68 Pa.C.S. §§  
5 3103 (relating to definitions), 4103 (relating to definitions)  
6 and 5103 (relating to definitions).

7 "Claimant." Any person who asserts a claim concerning a  
8 construction defect. The term includes an association.

9 "Construction defect." The term shall have the same meaning  
10 assigned by a written express warranty either provided by the  
11 contractor or required to negate an express or statutory ←  
12 warranty. The BY APPLICABLE STATUTORY LAW. IF NO WRITTEN EXPRESS ←  
13 WARRANTY OR APPLICABLE STATUTORY WARRANTY PROVIDES A DEFINITION,  
14 THE term shall mean a matter concerning the design or  
15 construction of a dwelling or addition to a dwelling or an  
16 appurtenance to a dwelling on which a person has a complaint  
17 against a contractor. The term may include any physical damage  
18 to the dwelling or any appurtenance, or the real property on  
19 which the dwelling or appurtenance is affixed, proximately  
20 caused by a construction defect.

21 "Consultant." An engineer, architect, contractor, inspector  
22 or other person purporting to have expertise relating to  
23 residential construction or having that expertise as a result of  
24 training or profession.

25 "Contractor." A person, firm, partnership, corporation,  
26 association or other organization that is engaged in the  
27 business of developing, constructing or selling newly  
28 constructed dwellings or constructing additions OR APPURTENANCES ←  
29 to an existing dwelling. The term includes an owner, officer,  
30 director, shareholder, partner or employee of a contractor. For

1 purposes of this act, the term also includes an industrialized  
2 housing manufacturer. The term does not include a real estate  
3 agent, broker ~~or reproducer~~ or a contractor that installs a new ←  
4 device or appurtenance which costs less than \$2,000.

5 "Dwelling." A single-family house or duplex. The term  
6 includes a multifamily unit designed for residential use in  
7 which title to each individual unit is transferred to the owner.  
8 Under a condominium or cooperative system, the term includes  
9 common areas and improvements that are owned or maintained by an  
10 association or by members of an association. The term also  
11 includes the systems, other components, improvements, other  
12 structures and recreational facilities that are appurtenant to  
13 the house, duplex or multifamily unit but not necessarily a part  
14 of the house, duplex or multifamily unit. For purposes of this  
15 act, the term also includes industrialized housing.

16 "Industrialized housing." A structure designed primarily for  
17 residential occupancy, and which is wholly or in substantial  
18 part made, constructed, fabricated, formed or assembled in  
19 manufacturing facilities for installation or assembly and  
20 installation on the building site so that concealed parts or  
21 processes of manufacture cannot be inspected at the site without  
22 disassembly, damage or destruction. The term does not include a  
23 structure or building classified as an institutional building or  
24 manufactured home, as defined by the National Manufactured  
25 Housing Construction and Safety Standards Act of 1974 (42 U.S.C.  
26 §§ 5401-5426).

27 "Industrialized housing manufacturer." A person, firm,  
28 partnership, corporation, association or other organization  
29 involved in the process of making, constructing, fabricating,  
30 forming or assembling, in a manufacturing facility, for

1 installation or assembly and installation on the building site,  
2 industrialized housing from raw, unfinished or semifinished  
3 materials.

4 "Serve" or "service." For an individual, delivery by  
5 certified mail, return receipt requested, to the last known  
6 address of an addressee. For a corporation, limited partnership,  
7 limited liability company or other registered business  
8 organization, the term shall mean delivery to the registered  
9 agent or other agent for service of process authorized by the  
10 laws of this Commonwealth.

11 Section 3. Notice and opportunity to repair.

12 (a) Notice.--In every action subject to this act, the  
13 claimant shall, no later than 75 days before initiating an  
14 action against a contractor, provide service of written notice  
15 of claim on the contractor. The notice of claim shall state that  
16 the claimant asserts a construction defect claim or claims and  
17 is providing notice of the claim or claims pursuant to the  
18 requirements of this act. The notice of claim shall describe the  
19 claim or claims sufficiently to explain the nature of the  
20 alleged construction defects and the results of the defects.

21 (b) Service.--Service of the notice of the claim shall be  
22 the equivalent of service of a lawsuit or demand for arbitration  
23 with respect to imposing on the contractor a legal obligation to  
24 pay as damages the cost of any repairs and/or monetary payment  
25 made to settle the claim.

26 (c) Evidence.--In addition, the claimant shall provide to  
27 the contractor any evidence known to the claimant or in the  
28 claimant's possession that depicts the nature and cause of the  
29 construction defect, including expert reports, photographs and  
30 videotapes, if the evidence would be discoverable under the

1 State's evidentiary rules. If, after proper request, the  
2 claimant fails to provide such evidence, the claimant shall not  
3 be permitted to introduce any evidence not produced as evidence  
4 in any action.

5 Section 4. Personal injury or death claims.

6 This act shall not apply to any claim for personal injury or  
7 death.

8 Section 5. Procedure.

9 (a) Contents of notice.--

10 (1) In an action under this act, the claimant shall, at  
11 least 75 days before initiating the action against a  
12 contractor, provide service of written notice of claim on the  
13 contractor. The notice of claim shall:

14 (i) State that the claimant asserts a construction  
15 defect claim and is providing notice of the claim  
16 pursuant to the requirements of this act.

17 (ii) Describe the claim sufficiently to explain the  
18 nature of the construction defect and the result of the  
19 defect.

20 (iii) Include any ~~reports by consultants that~~ <—  
21 ~~describe~~ EVIDENCE THAT DESCRIBES the construction defect <—  
22 that the claimant possesses.

23 (2) Service under this subsection shall toll all  
24 applicable statutes of limitation until 75 days after receipt  
25 of notice of the claim.

26 (b) Response.--Except as otherwise provided for under  
27 subsection (g), within 15 days after service of the notice of  
28 claim, the contractor that has received the notice of claim  
29 shall serve on the claimant and on any other contractor that has  
30 received the notice of claim a written response to the claim

1 which:

2 (1) offers to settle the claim by monetary payment, the  
3 making of repairs or a combination of both, without  
4 inspection, including a timetable for the making of the  
5 payment or repairs;

6 (2) proposes to inspect at the contractor's expense the  
7 dwelling that is the subject of the claim within 15 days; or

8 (3) rejects the claim.

9 (c) Inspection of dwelling.--

10 (1) If the contractor requests the opportunity to  
11 inspect the dwelling under subsection (b)(2), the claimant  
12 shall provide the contractor and its consultants reasonable  
13 and timely access to inspect the dwelling in order to  
14 document the defect and perform any destructive or  
15 nondestructive tests necessary to evaluate the claim. If  
16 testing is performed, the contractor shall return the  
17 dwelling to its pretesting condition.

18 (2) If an inspection reveals a condition that requires  
19 additional testing, the contractor shall provide prompt  
20 notice to the claimant of the need for the additional  
21 testing, and the claimant shall provide reasonable and timely  
22 access to the dwelling. Additional testing, if necessary,  
23 shall be completed within 15 days of the notice.

24 (3) If a claim is asserted on behalf of owners of  
25 multiple dwellings or multiple owners of units within a  
26 multifamily complex, the contractor shall be entitled to  
27 inspect each of the dwellings or units for which a defect has  
28 been claimed.

29 (d) Process following inspection.--Within 15 days following  
30 completion of an inspection or testing under subsection (c), the

1 contractor shall serve a written response on the claimant which:

2 (1) offers to settle the claim by monetary payment, the  
3 making of repairs or a combination of both, including a  
4 timetable for making the payment and/or repairs; or

5 (2) rejects the claim.

6 (e) Notice of claimant's response.--

7 (1) The claimant shall accept or reject an offer by a  
8 contractor under subsection (b)(1) or (d)(1) within 30 days  
9 of receipt of the offer.

10 (2) If the claimant rejects the settlement offer made by  
11 the contractor under subsection (b) or (d), the claimant  
12 shall provide written notice of the claimant's rejection TO ←  
13 THE CONTRACTOR AND INCLUDE THE SPECIFIC REASONS FOR THE  
14 CLAIMANT'S REJECTION.

15 (3) If the claimant fails to respond as required under  
16 paragraph (1), the contractor's offer of monetary payment or  
17 offer to repair shall be deemed to be rejected.

18 (4) AFTER SUBMITTING NOTICE UNDER SECTION 3, A CLAIMANT ←  
19 MAY NOT INITIATE AN ACTION WITHOUT CONDUCTING AN IN-PERSON  
20 MEETING WITH THE CONTRACTOR IN A GOOD FAITH ATTEMPT TO  
21 RESOLVE THE DISPUTE. IN THE CASE OF AN ASSOCIATION CLAIMANT,  
22 A MAJORITY OF THE ASSOCIATION'S BOARD OF DIRECTORS SHALL  
23 ATTEND THE MEETING. A MEETING IS NOT REQUIRED IF THE  
24 CONTRACTOR HAS FAILED TO TIMELY RESPOND TO A CLAIMANT'S  
25 NOTICE OR REFUSED OR IGNORED A REQUEST FOR A MEETING.

26 (f) Claimant's ability to bring an action.--If the  
27 contractor:

28 (1) rejects the claim;

29 (2) does not respond to a notice of claim within the  
30 time frames under this section; or

1 (3) does not make monetary payment or repair within the  
2 proposed timetable of an accepted offer, the claimant may  
3 bring an action against the contractor for the defect  
4 described in the notice of claim without further notice,  
5 notwithstanding the 75-day time period set forth under  
6 subsection (a).

7 (g) Construction defects involving physical safety of  
8 occupants.--

9 (1) If a construction defect poses an imminent threat to  
10 the physical safety of the occupants of the dwelling, the  
11 notice shall so advise the contractor, and the deadline for  
12 the contractor's initial response under subsection (b) shall  
13 be seven days after receipt of the notice.

14 (2) If the contractor's response under subsection (b)  
15 contains a request to inspect the dwelling, the contractor  
16 shall arrange for the inspection within five days.

17 (3) If the contractor determines there is an imminent  
18 threat to physical safety, the contractor shall provide the  
19 claimant with a proposal for a monetary offer or offer to  
20 repair within three days of the determination.

21 (4) Prior to the submission of an offer by the  
22 contractor under this subsection, either the claimant or  
23 contractor may take interim repair steps to maintain the  
24 structural integrity of the dwelling without prejudicing the  
25 claimant's or contractor's claims or defenses.

26 (H) RIGHT OF ACTION.--IF A CLAIMANT REJECTS A REASONABLE  
27 MONETARY OFFER OR REASONABLE SUPPLEMENTAL MONETARY OFFER OR DOES  
28 NOT PERMIT THE CONTRACTOR TO REPAIR THE DEFECT PURSUANT TO AN  
29 ACCEPTED OFFER TO REPAIR UNDER SUBSECTION (E), THE CLAIMANT MAY  
30 NOT RECOVER AN AMOUNT IN EXCESS OF: <—

1 (1) THE FAIR MARKET VALUE OF THE OFFER TO REPAIR THE  
2 CONSTRUCTION DEFECT OR THE ACTUAL COST OF THE REPAIRS,  
3 WHICHEVER IS LESS; OR

4 (2) THE AMOUNT OF THE MONETARY OFFER OF SETTLEMENT.

5 ~~(h)~~ (I) Reasonableness of monetary offer or offer to ←  
6 repair.--

7 (1) For purposes of this section, the trier of fact  
8 shall determine the reasonableness of a monetary offer or  
9 offer to repair. If the claimant has rejected a reasonable  
10 monetary offer or offer to repair, the claimant may not  
11 recover costs or attorney fees incurred after the date of  
12 rejection.

13 (2) If the contractor, through no fault of the claimant,  
14 fails to make a reasonable offer, this act shall not limit  
15 the remedies available to a claimant.

16 ~~(i)~~ (J) Timely access for repairs.--If a claimant accepts a ←  
17 contractor's offer to repair a construction defect, the claimant  
18 shall provide the contractor and its subcontractors, agents,  
19 experts and consultants reasonable and timely access to the  
20 dwelling to complete the repairs within the timetable set forth  
21 under this section.

22 ~~(j)~~ (K) Agreement between claimant and contractor.-- ←  
23 Following service under subsection (a), a claimant and a  
24 contractor may alter the procedures under this act, including  
25 the tolling of the statute of limitations, by mutual written  
26 agreement.

27 ~~(k)~~ (L) Limitation of liability.--In an action involving a ←  
28 construction defect, a contractor shall not be liable for  
29 damages caused by:

30 (1) Normal shrinkage due to drying or settlement of

1 construction components with the tolerance of building  
2 standards.

3 (2) The contractor's reasonable reliance on written  
4 information relating to the dwelling that was obtained from  
5 official government records or provided by a government  
6 entity.

7 (3) Refusal of the claimant to allow the contractor or  
8 the contractor's agents to perform their warranty service  
9 work.

10 Section 6. Additional construction defects.

11 A construction defect that is discovered after a claimant has  
12 served notice under section 3(a) (relating to notice and  
13 opportunity to repair) may be alleged in an action provided the  
14 claimant complies with the requirements of section 5 (relating  
15 to procedure) with respect to the defect.

16 ~~Section 7. Right of action for association.~~ <—

17 ~~(a) General rule. An association may bring an action~~  
18 ~~against a contractor to recover damages resulting from~~  
19 ~~construction defects in any of the common elements or limited~~  
20 ~~common elements of a common interest community.~~

21 ~~(b) Restrictions. The action may be maintained only after:~~

22 ~~(1) A majority of the board of directors of the~~  
23 ~~association and the contractor have met in person and~~  
24 ~~conferred in a good faith attempt to resolve the~~  
25 ~~association's claim, or the contractor has definitively~~  
26 ~~declined or ignored the requests to meet with the board of~~  
27 ~~directors of the association. Notice of a meeting under this~~  
28 ~~paragraph shall be provided to all board members and to the~~  
29 ~~contractor.~~

30 ~~(2) The association has complied with section 5~~

1 ~~(relating to procedure).~~

2 ~~Section 8. Destructive tests.~~

3 ~~No association may employ a person to perform destructive~~  
4 ~~tests to determine any damage or injury to a unit, common~~  
5 ~~element or limited common element caused by a construction~~  
6 ~~defect unless reasonable prior notice and opportunity to observe~~  
7 ~~the tests are given to the contractor against whom an action may~~  
8 ~~be brought as a result of the test.~~

9 ~~Section 9. Contractor employed by association.~~

10 ~~The board of directors of an association may, without giving~~  
11 ~~notice to the unit owners, employ a contractor and such other~~  
12 ~~persons as are necessary to make such immediate repairs to a~~  
13 ~~unit or common element within the association as are required to~~  
14 ~~protect the health, safety and welfare of the units' owners.~~

15 SECTION 7. DESTRUCTIVE TEST. ←

16 NO CLAIMANT MAY EMPLOY A PERSON TO PERFORM DESTRUCTIVE TESTS  
17 TO DETERMINE ANY DAMAGE OR INJURY TO A DWELLING CAUSED BY A  
18 CONSTRUCTION DEFECT UNLESS REASONABLE PRIOR NOTICE AND  
19 OPPORTUNITY TO OBSERVE THE TESTS ARE GIVEN TO THE CONTRACTOR  
20 AGAINST WHOM AN ACTION MAY BE BROUGHT AS A RESULT OF THE TEST.

21 SECTION 8. CONTRACTOR EMPLOYED BY CLAIMANT.

22 A CLAIMANT MAY, WITHOUT GIVING NOTICE TO THE CONTRACTOR,  
23 EMPLOY A CONTRACTOR AND SUCH OTHER PERSONS AS ARE NECESSARY TO  
24 MAKE SUCH IMMEDIATE REPAIRS TO A DWELLING AS ARE REQUIRED TO  
25 PROTECT THE HEALTH, SAFETY AND WELFARE OF THE OCCUPANTS.

26 ~~Section 10 9. Construction.~~ ←

27 Nothing in this act shall be construed as establishing a  
28 cause of action on behalf of any claimant or contractor.

29 ~~Section 11 10. Notice required at time of contracting.~~ ←

30 (a) Form of notice.--Upon entering into a contract to

1 construct a dwelling ~~or to complete a remodeling project on a~~ <—  
2 ~~dwelling~~, the contractor shall give the owner ~~and anyone the~~ <—  
3 ~~contractor enters into a contract with~~ OR BUYER a written notice <—  
4 worded substantially as follows:

5 NOTICE CONCERNING CONSTRUCTION DEFECTS

6 Pennsylvania law contains important requirements you must  
7 follow before you may file ~~a lawsuit~~ ANY ACTION for <—  
8 defective construction against the contractor who  
9 constructed your dwelling ~~or completed your remodeling~~ <—  
10 ~~project~~. Pennsylvania law requires you to deliver to the  
11 contractor a written notice by certified mail of any  
12 construction conditions that you believe are defective,  
13 with an opportunity to repair, before you file any  
14 ~~lawsuit~~ ACTION, and you must provide your contractor: <—

15 (1) The opportunity to make an offer to repair or  
16 pay for the alleged defects.

17 (2) With any ~~documentary~~ evidence in your possession <—  
18 THAT DESCRIBED THE DEFECT. If you do not disclose such <—  
19 ~~documentary~~ evidence you will not be allowed to use the <—  
20 ~~documentary~~ evidence in any ~~lawsuit~~ ACTION. <—

21 You are not obligated to accept any offer made by the  
22 contractor, but failure to accept a reasonable offer, as  
23 determined by a court OR OTHER TRIER OF FACT, may limit <—  
24 your recoverable damages. There are strict deadlines and  
25 procedures under State law, and failure to follow them  
26 may affect or impair your ability to file ~~a lawsuit~~ AN <—  
27 ACTION or to seek recovery for any defects. There may  
28 also be requirements which must be followed in a written  
29 warranty. It is recommended that you consult with an  
30 attorney of your choosing before entering into any

1 agreement.

2 (b) Additional requirements.--The notice required under  
3 subsection (a) shall be in 10-point bold type or greater and  
4 shall be included within the contract between the contractor and  
5 potential claimant.

6 (c) Failure to include notice.--Failure to include the  
7 notice shall deprive the contractor of the benefits of ~~the~~ THIS <—  
8 act.

9 Section ~~12~~ 11. Applicability. <—

10 This act shall apply as follows:

11 (1) This act shall not affect a contractor's right to  
12 seek contribution, indemnity or recovery against a  
13 subcontractor, supplier or design professional for any claim  
14 made against the contractor by a claimant.

15 (2) This act shall apply regardless of the date of sale  
16 or substantial completion of a dwelling, consistent with 42  
17 Pa.C.S. § 5536 (relating to construction projects).

18 (3) This act shall not restrict, modify or alter or  
19 otherwise interfere with the obligations, terms or conditions  
20 of an insurance policy.

21 (4) This act shall not apply to an insurer asserting a  
22 claim against a contractor for payments made by the insurer  
23 pursuant to an insurance policy covering the dwelling. A  
24 claim under this paragraph shall not be prejudiced, reduced  
25 or otherwise modified because of the failure of the claimant  
26 to comply with this act.

27 Section ~~13~~ 12. Effective date. <—

28 This act shall take effect in 60 days.