

Notice to Repair Laws
and How They Can Increase Residential Contractors' Bottom-Lines

It is difficult in this day and age for residential contractors to avoid involvement in litigation; especially for perceived construction defects. Our society has developed into one that is not shy to pull the litigation trigger. Therefore, it is imperative residential contractors make themselves aware of laws that are designed to protect them from lawsuits that could otherwise be avoided such as notice to repair ("NOR") legislation.

The purpose of NOR legislation is quite simply to avoid litigation in as many instances as possible when construction defects arise. NOR in its simplest form is a pre-lawsuit process whereby a contractor is notified of a construction defect and is given an opportunity to investigate to determine if a defect is in fact present, investigate its cause and have an opportunity to cure, either by repairing or paying the cost of repair.

In Indiana, at least sixty (60) days before filing a construction defect action against a contractor or construction professional, the claimant must serve written notice of claim on that person or entity. 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.

Within twenty-one (21) days after service of a notice of claim, the construction professional must serve a written response on the claimant. The written response must: (a) propose to inspect the residence that is the subject of the claim and based on that inspection, offer to remedy the defect, compromise by payment, or dispute the claim; (b) offer to compromise and settle the claim without inspection; or (c) state that the construction professional disputes the claim and will neither remedy the construction defect nor settle the claim.

If the construction professional disputes the claim or does not respond to the claimant's notice of claim, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice. If the construction professional makes a proposal to inspect the residence or an offer to settle the claim by monetary payment without inspection, and the claimant rejects the proposal or offer, the claimant must serve written notice of the rejection on the construction professional and 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.

Any action commenced by a claimant before compliance with the requirements of NOR is subject to dismissal without prejudice, and may not be recommenced until the claimant complies with the requirements. In addition, if a claimant unreasonably rejects a reasonable written offer of settlement made or 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 a lawsuit, the court may deny the claimant attorney's fees and costs and award attorney's fees and costs to the construction

professional. Finally, if a construction professional unreasonably disputes a home owner's claim, fails to remedy or compromise and settle the claim, fails to repair the construction defect within a reasonable time or fails to respond to a notice and the claimant commences an action and prevails in the action, the court may award attorney's fees and costs to the claimant.

Residential contractors must be mindful of laws like NOR to take advantage of the defenses and opportunities they provide and to avoid violating them and exposing themselves to any further liability. At the end of the day, these types of laws can, quite simply, increase your bottom-line.

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