

Notice and Opportunity to Repair in Home Construction Defects

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Construction defect litigation continues to proliferate, often clogging courts with suits that are complex and take an inordinate amount of time to resolve. Everyone involved, including plaintiffs and defendants, typically find the litigation expensive and often so complex that the proper remedy is never achieved.

In response many states, including Indiana, have enacted “notice and opportunity to repair” bills that attempt to avoid litigation by encouraging home owners and home builders to settle disputes without litigation. Most of these laws are relatively new, having been enacted within the last three years, and their effect on reducing litigation is still inconclusive.

Since 2003 Indiana’s “Notice and Opportunity to Repair Act,” similar to those found in other states, requires “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.” Ind. Code § 32-27-3-2.

Contractors would then have 21 days to propose to inspect the alleged defects, offer to settle the claim by payment or dispute the claim. The Act preserves the home owner’s right to sue if they are not satisfied with the builder’s settlement offer.

One aspect of the law unique to Indiana is that the Act contains extensive language on attorney’s fees, including awarding fees to builders if the claimant does not allow adequate time for the builder to fix the defect.

“Notice and opportunity to repair laws provide a common-sense approach to dealing with construction defect problems,” said National Association of Home Builders President David Wilson. “It’s an approach that has received widespread support across the country.”

Builders and contractors in particular should find the Act helpful. It can help prevent expensive, time-consuming lawsuits by giving builders a chance to fix defects before being hauled into court by what some see as overly litigious home buyers.

If the Act results in fewer claims on home builder policies in the long run, as it aims to do, general liability insurance costs may stop rising. Already at least two large insurance carriers in California have indicated that they will reconsider their decision to leave the market because of the new construction defect law recently passed in that state.

This article was written by Jeff W. Henning, a partner, and Joshua A. Claybourn, a law clerk, with Rudolph, Fine, Porter & Johnson, LLP in Evansville, Indiana. This article is indeed solely as an information source and its contents should not be construed as legal advice. Readers should not act upon the information presented without professional counsel.