

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 25
NOTICE AND OPPORTUNITY TO REPAIR ACT

6-2501. SHORT TITLE. This chapter shall be known and may be cited as the "Notice and Opportunity to Repair Act."

[6-2501, added 2003, ch. 133, sec. 1, p. 386.]

6-2502. DEFINITIONS. Unless the context clearly requires otherwise, as used in 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 remodel of a residence. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means a homeowner's association, condominium management body, unit owner's organization or a nonprofit corporation created to own and operate portions of a planned community which has the power to assess unit owners to pay the costs and expenses incurred in the performance of the association's obligations.

(3) "Claimant" means a homeowner or association that asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means any person with a right to lien pursuant to section [45-501](#), Idaho Code, an architect, subdivision owner or developer, builder, contractor, subcontractor, engineer or inspector, performing or furnishing the design, supervision, inspection, construction or observation of the construction of any improvement to residential real property, whether operating as a sole proprietor, partnership, corporation, limited liability company or other business entity.

(5) "Homeowner" means:

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

(b) An association as defined in this section.

"Homeowner" includes a subsequent purchaser of a residence from any homeowner.

(6) "Person" means an individual, an association as defined in this section, or a corporation, business trust, estate, trust, partnership, limited liability company, joint venture or other legal business entity.

(7) "Residence" means a single-family house, duplex, triplex, quadraplex, condominium or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a cooperative system.

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

(9) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half (1/2) of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made.

[6-2502, added 2003, ch. 133, sec. 1, p. 386.]

6-2503. NOTICE AND OPPORTUNITY TO REPAIR. (1) Prior to commencing an action against a construction professional for a construction defect, the claimant shall serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect. Any action commenced by a claimant prior to compliance with the requirements of this section shall be dismissed by the court without prejudice and may not be recommenced until the claimant has complied with the requirements of this section. If a written notice of claim is served under this section within the time prescribed for the filing of an action under this chapter, the statute of limitations for construction-related claims is tolled until sixty (60) days after the period of time during which the filing of an action is barred.

(2) Within twenty-one (21) days after service of the notice of claim, the construction professional shall serve a written response on the claimant. 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 construction professional 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 construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3) (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, 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 claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's 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. If the construction professional has not received from the claimant, within thirty (30) days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2) (a) of this section, the claimant shall provide the construction professional and its 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 following completion of the inspection, the construction professional shall serve on the claimant:

(i) 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;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2) (b) of this section; or

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

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of subsection (4) (b) of this section, 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 claimant rejects the offer made by the construction professional pursuant to subsection (4) (b) (i) or (ii) of this section to either remedy the construction defect or to compromise and settle the claim by monetary payment, 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. If the construction professional has not received from the claimant, within thirty (30) days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to subsection (4) (b) (i) or (ii) of this section, then at any time thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4) (b) (i) of this section shall do so by serving the construction professional 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 construction professional and its 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.

(b) 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, repair of additional defects.

(6) Written or oral statements made by a claimant or by a construction professional in the course of complying with the procedures required or authorized by this section shall not be considered an admission of liability and shall not be admissible in an action subject to this section.

(7) Nothing in this section shall 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 by the timetable agreed upon pursuant to subsection (4) (b) or (5) (b) of this section.

[6-2503, added 2003, ch. 133, sec. 1, p. 387.]

6-2504. LIMITATION ON DAMAGES. (1) In a suit subject to section [6-2503](#), Idaho Code, the claimant may recover only the following damages proximately caused by a construction defect:

- (a) The reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under this chapter;
- (b) The reasonable expenses of temporary housing reasonably necessary during the repair period;
- (c) The reduction in market value, if any, to the extent that the reduction is due to structural failure; and
- (d) Reasonable and necessary attorney's fees.

(2) If a construction professional fails to make a reasonable offer as required under section [6-2503](#), Idaho Code, or fails to make a reasonable attempt to complete the repairs specified in an accepted offer, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer, the limitations on damages and defenses to liability provided for in this section shall not apply.

(3) If a claimant denies a request to inspect as provided for in section [6-2503](#), Idaho Code, unreasonably rejects an offer to remedy the construction defect or does not permit the construction professional a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of:

- (a) The reasonable cost of the offered repairs which are necessary to cure the construction defect and which are the responsibility of the construction professional; or
- (b) The amount of a reasonable monetary settlement offer made under section [6-2503](#), Idaho Code; and
- (c) The amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected.

(4) The total damages awarded in a suit subject to this chapter may not exceed the greater of the claimant's purchase price for the residence or the current fair market value of the residence without the construction defect.

(5) A builder, under the principles of comparative fault pertaining to affirmative defenses, may be excused, in whole or in part, from any obligation, damage, loss or liability if the builder can demonstrate any of the following affirmative defenses in response to the claimed construction defect action:

- (a) An unforeseen act of nature caused the structure not to meet the standard. For purposes of this section, an "unforeseen act of nature" means a weather condition, earthquake or man-made event such as war, terrorism or vandalism, in excess of the design criteria expressed by the applicable building codes, regulations and ordinances in effect at the time of original construction.
- (b) The homeowner unreasonably failed to minimize or prevent those damages in a timely manner. Such failure includes the failure of the homeowner to allow reasonable and timely access for inspections and repairs

under this chapter or to give timely notice to the builder after discovery of a construction defect, but does not include damages due to the untimely or inadequate response of a builder to the homeowner's claim of a construction defect.

(c) The homeowner or his or her agent, employee, subcontractor, independent contractor or consultant failed to follow the builder's or manufacturer's recommendations or commonly accepted homeowner maintenance obligations. In order to rely upon this defense as it relates to a builder's recommended maintenance schedule, the builder must show that the homeowner had written notice of these schedules and recommendations and that the schedules and recommendations were reasonable at the time they were issued.

(d) The damage or loss was caused by the homeowner's or his or her agent's or an independent third party's alterations, ordinary wear and tear, misuse, abuse or neglect, or by the structure's use for something other than its intended purpose.

(e) The time period for filing actions bars the claim.

(f) The action relates to a particular claim for which the builder has obtained a valid release.

(g) The builder's repair was successful in correcting the particular claimed construction defect to the applicable standard.

(6) All applicable affirmative defenses are preserved for causes of action to which this chapter does not apply.

[6-2504, added 2003, ch. 133, sec. 1, p. 389.]