

HOUSE BILL NO. 151

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MEYER

Introduced: 3/5/03

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to claims and court actions for defects in the design, construction, and**
2 **remodeling of certain dwellings; limiting when certain court actions may be brought;**
3 **and amending Rules 79 and 82, Alaska Rules of Civil Procedure."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 08.18.081 is amended by adding a new subsection to read:

6 (c) If the claim for which a person may bring suit under (a) of this section is
7 subject to AS 09.45.881 - 09.45.899, the person may not bring suit unless the person
8 complies with AS 09.45.881 - 09.45.899.

9 * **Sec. 2.** AS 09.10 is amended by adding a new section to read:

10 **Sec. 09.10.054. Certain design, construction, and remodeling actions to be**
11 **brought in one year.** (a) For actions covered under AS 09.45.881 - 09.45.899, a
12 claimant may not begin an action against a construction professional unless the action
13 is begun within one year after the claimant discovers the defect that is the subject of
14 the action, except that the action may not be begun more than 10 years after

1 substantial completion of the dwelling.

2 (b) In this section,

3 (1) "action," "claim," "construction professional," and "dwelling" have
4 the meanings given in AS 09.45.899;

5 (2) "substantial completion" means the date when construction is
6 sufficiently completed to allow the owner of the dwelling or a person authorized by
7 the owner to use or occupy the improvement to the dwelling or to use the dwelling in
8 the manner for which it was intended.

9 * **Sec. 3.** AS 09.45 is amended by adding new sections to read:

10 **Article 10A. Action for Dwelling Design, Construction, or Remodeling Claims.**

11 **Sec. 09.45.881. Notice of claim.** (a) In an action brought on a claim against a
12 construction professional, the claimant shall, at least 90 days before filing the action,
13 serve written notice of the claim on the construction professional.

14 (b) The notice of the claim in (a) of this section must state that the claimant
15 asserts a claim against the construction professional for a defect in the design,
16 construction, or remodeling of a dwelling and must describe the claim in reasonable
17 detail sufficient to determine the general nature of the alleged defect and the results of
18 the defect if known.

19 (c) At the request of the construction professional, the claimant shall, if the
20 evidence is discoverable under the state's court rules of evidence, provide to the
21 construction professional any evidence that the claimant possesses that depicts the
22 nature and cause of the defect and the nature and extent of the repairs necessary to
23 repair the defect, including expert reports, photographs, and videotapes.

24 **Sec. 09.45.882. Written response to notice of claim.** (a) Within 21 days
25 after service of the notice under AS 09.45.881, the construction professional shall
26 serve a written response on the claimant.

27 (b) The written response under (a) of this section must state that the
28 construction professional

29 (1) offers to inspect the dwelling that is the subject of the claim within
30 a specified time to determine if the construction professional will offer to repair the
31 defect, will compromise and settle the claim by payment of money, or will dispute the

1 claim;

2 (2) offers to compromise and settle the claim by a payment of money
3 without inspection; or

4 (3) disputes the claim and will not repair the alleged defect or
5 compromise and settle the claim by a payment of money.

6 **Sec. 09.45.883. Court action allowed if claim disputed or not responded**
7 **to.** If the construction professional disputes the claim in the notice under
8 AS 09.45.882(b)(3) or does not respond to the claimant's notice of claim within the
9 time required by AS 09.45.882(a), the claimant may bring an action against the
10 construction professional for the claim described in the notice of the claim made under
11 AS 09.45.881 without further notice.

12 **Sec. 09.45.884. Consequence of rejecting inspection or settlement offer.**

13 (a) If the claimant rejects the inspection offer under AS 09.45.882(b)(1) or the
14 settlement offer under AS 09.45.882(b)(2), the claimant shall serve written notice of
15 the claimant's rejection on the construction professional.

16 (b) The notice under (a) of this section must include the basis for the
17 claimant's rejection of the construction professional's offer.

18 (c) After service of the rejection notice required by (a) of this section, the
19 claimant may bring an action against the construction professional for the claim
20 described in the notice of claim made under AS 09.45.881 without further notice.

21 **Sec. 09.45.885. Consequence of accepting inspection offer.** If a claimant
22 elects to allow the construction professional to make an inspection under
23 AS 09.45.882(b)(1), the claimant shall provide the construction professional and its
24 contractors or other agents reasonable access to the claimant's dwelling during normal
25 working hours to inspect the dwelling and the alleged defect to determine the nature
26 and cause of the alleged defect and the nature and extent of any repairs necessary to
27 repair the alleged defect.

28 **Sec. 09.45.886. Procedure after inspection.** Within 14 days after completion
29 of an inspection made under AS 09.45.885, the construction professional shall serve
30 on the claimant a written

31 (1) offer to repair the defect without charge to the claimant; the offer

1 must include a report of the scope of the inspection, the findings and results of the
 2 inspection, a description of any repairs necessary to repair the defect, and a schedule
 3 for the completion of the repairs;

4 (2) offer to compromise and settle the claim by a payment of money
 5 under AS 09.45.882(b)(2); or

6 (3) statement that the construction professional will not repair the
 7 defect.

8 **Sec. 09.45.887. Court action allowed after failure to repair or to settle.** If
 9 the construction professional does not respond within the time required by
 10 AS 09.45.886, does not repair the defect within the time agreed under
 11 AS 09.45.886(1), does not provide an offer under AS 09.45.886(2), or serves a
 12 statement under AS 09.45.886(3), the claimant may bring an action against the
 13 construction professional for the claim described in the notice of claim without further
 14 notice.

15 **Sec. 09.45.888. Court action allowed if claimant rejects offer.** (a) If the
 16 claimant rejects an offer made by the construction professional under AS 09.45.886(1)
 17 or (2), the claimant shall serve written notice of the claimant's rejection on the
 18 construction professional that includes the basis for the claimant's rejection of the
 19 construction professional's offer.

20 (b) After service of the notice under (a) of this section, the claimant may bring
 21 an action against the construction professional for the claim described in the notice of
 22 claim made under AS 09.45.881 without further notice.

23 **Sec. 09.45.889. Unreasonable rejection of offer.** (a) If a claimant
 24 unreasonably rejects an offer made under AS 09.45.881 - 09.45.899 or does not give
 25 the construction professional a reasonable opportunity to repair the defect under an
 26 accepted offer of settlement, the claimant may not recover an amount that exceeds

27 (1) the reasonable cost of the repairs offered under AS 09.45.886(1)
 28 that are necessary to cure the defect and that are the responsibility of the construction
 29 professional; or

30 (2) the amount of a reasonable settlement offer of money that is made
 31 under AS 09.45.886(2).

1 (b) If a claimant unreasonably rejects a construction professional's offer made
 2 under AS 09.45.881 - 09.45.899 or does not give the construction professional a
 3 reasonable opportunity to repair the defect under an accepted offer of settlement, the
 4 court may deny the claimant an award of attorney fees and costs and may award
 5 attorney fees and costs to the construction professional.

6 **Sec. 09.45.890. Acceptance of offer.** (a) To accept an offer of a construction
 7 professional to repair a defect under AS 09.45.886(1), a claimant shall serve the
 8 construction professional with a written notice of acceptance within a reasonable
 9 period of time, not to exceed 30 days, after receiving the offer.

10 (b) A claimant who accepts an offer under (a) of this section shall provide the
 11 construction professional and its contractors or other agents reasonable access to the
 12 claimant's dwelling during normal working hours to perform the repairs by the time
 13 stated in the offer.

14 **Sec. 09.45.891. Presumption of mitigation.** If a claimant fails to allow a
 15 construction professional to make a reasonable inspection requested by the
 16 construction professional under AS 09.45.882(b)(1), or fails to provide a good faith
 17 written response to a construction professional's offer under AS 09.45.882(b)(2) or
 18 09.45.886(2), the failure establishes a rebuttable presumption that the claimant's
 19 damages could have been mitigated.

20 **Sec. 09.45.892. Noncompliance assertion prohibited.** Unless there is good
 21 cause for the failure, a construction professional may not assert that the claimant did
 22 not comply with AS 09.45.881 - 09.45.899 if the construction professional fails to
 23 respond in good faith to the claimant's notice of claim made under AS 09.45.881.

24 **Sec. 09.45.893. Notice required in contract.** (a) In order to take advantage
 25 of any rights of a construction professional under AS 09.45.881 - 09.45.899, when a
 26 construction professional enters into a contract with another person to design,
 27 construct, or remodel a dwelling, the construction professional shall give the person a
 28 notice of the construction professional's right to offer to cure a defect before the
 29 person may file an action in court against the construction professional.

30 (b) The notice required by (a) of this section may be included as part of the
 31 contract, must be conspicuous, and must be in substantially the following form:

1 ALASKA LAW CONTAINS IMPORTANT
 2 REQUIREMENTS THAT YOU MUST FOLLOW BEFORE YOU
 3 MAY FILE A COURT ACTION FOR DEFECTIVE DESIGN,
 4 CONSTRUCTION, OR REMODELING AGAINST THE DESIGNER,
 5 BUILDER, OR REMODELER OF YOUR HOME. NINETY DAYS
 6 BEFORE YOU FILE A COURT ACTION, YOU MUST DELIVER
 7 TO THE DESIGNER, BUILDER, OR REMODELER A WRITTEN
 8 NOTICE OF ANY DESIGN, CONSTRUCTION, OR REMODELING
 9 CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE
 10 YOUR DESIGNER, BUILDER, OR REMODELER WITH THE
 11 OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR
 12 THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY
 13 OFFER MADE BY THE DESIGNER, BUILDER, OR REMODELER.
 14 THERE ARE STRICT DEADLINES AND PROCEDURES UNDER
 15 STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT
 16 YOUR RIGHT TO FILE A COURT ACTION.

17 **Sec. 09.45.894. Additional construction defects; additional notice of claim**
 18 **required.** A court action for a defect that is discovered after a claimant has provided a
 19 construction professional with a notice of claim required in AS 09.45.881 - 09.45.899
 20 may not be commenced until the claimant has complied with the provisions of
 21 AS 09.45.881 - 09.45.899.

22 **Sec. 09.45.895. Collateral sources.** In an action under AS 09.45.881 -
 23 09.45.899, a court shall deduct from the compensation awarded to a claimant any
 24 compensation paid to the claimant under a homeowner's warranty contract or a
 25 homeowner's insurance policy as compensation for the defects that are the subject of
 26 the action. The amount of this deduction does not include any compensation paid by
 27 the construction professional to the claimant to satisfy the claim or any compensation
 28 paid under an insurance policy issued to the construction professional to satisfy the
 29 claim.

30 **Sec. 09.45.896. Exemption.** AS 09.45.881 - 09.45.899 do not apply to claims
 31 for personal injury claims, including death.

1 **Sec. 09.45.899. Definitions.** In AS 09.45.881 - 09.45.899,

2 (1) "action" means a civil action or an arbitration proceeding for
3 damages or indemnification;

4 (2) "claim" means a claim against a construction professional
5 concerning a defect in the design, construction, or remodel of a dwelling;

6 (3) "claimant" means a person who owns or is purchasing a dwelling
7 and who asserts a claim;

8 (4) "construction professional" means a contractor, an architect, or an
9 engineer who is engaged in the business of designing, constructing, or remodeling a
10 dwelling; in this paragraph, "contractor" has the meaning given in AS 08.18.171;

11 (5) "dwelling" means a single-family house, a duplex, or a multi-
12 family housing unit, and the mechanical and other systems, the other components, and
13 all improvements that are part of the house, duplex, or housing unit when the dwelling
14 is constructed or remodeled; for purposes of this paragraph, "multi-family housing
15 unit" means

16 (A) an individual housing unit in a multi-family housing
17 facility; and

18 (B) the interest of the owner of an individual housing unit in
19 the common areas and improvements of a multi-family housing facility;

20 (6) "multi-family housing facility" means a residential horizontal
21 property regime organized under AS 34.07, a residential condominium organized
22 under AS 34.08, and a residential cooperative organized under AS 10.15;

23 (7) "remodel" means a change to a dwelling if the change has a value
24 that is more than 25 percent of the value of the structure being changed;

25 (8) "serve" means to deliver by personal service or by certified mail,
26 return receipt requested, to the last known address of the addressee.

27 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 INDIRECT COURT RULE AMENDMENTS. AS 09.45.889(b), enacted by sec. 3 of
30 this Act, has the effect of changing

31 (1) Rule 79, Alaska Rules of Civil Procedure, by allowing the court to deny

1 attorney fees to a claimant in the situation described by AS 09.45.889(b), even if the claimant
2 is the prevailing party;

3 (2) Rule 82, Alaska Rules of Civil Procedure, by allowing the court to deny
4 costs to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the
5 prevailing party.

6 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

8 APPLICABILITY. This Act applies to a claim if the contract for the work on which
9 the claim is based was entered into on or after the effective date of this Act. In this section,
10 "claim" has the meaning given in AS 09.45.899.

11 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 CONDITIONAL EFFECT. AS 09.45.889(b), enacted by sec. 3 of this Act, takes
14 effect only if sec. 4 of this Act receives the two-thirds majority vote of each house required by
15 art. IV, sec. 15, Constitution of the State of Alaska.