

CS FOR HOUSE BILL NO. 151(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/31/03

Referred: Judiciary

Sponsor(s): REPRESENTATIVE MEYER

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 construction or remodeling that contains or
2 implements the alleged defect.

3 (b) In this section,

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

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

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

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

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

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

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

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

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

30 (1) offers to inspect the dwelling that is the subject of the claim within
31 a specified time to determine if the construction professional will offer to repair the

1 defect, will compromise and settle the claim by payment of money, or will dispute the
2 claim;

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

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

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

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

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

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

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

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

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

1 (1) offer to repair the defect without charge to the claimant; the offer
 2 must include a report of the scope of the inspection, the findings and results of the
 3 inspection, a description of any repairs necessary to repair the defect, and a schedule
 4 for the completion of the repairs;

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

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

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

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

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

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

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

31 (2) the amount of a reasonable settlement offer of money that is made

1 under AS 09.45.886(2).

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

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

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

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

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

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

31 (b) The notice required by (a) of this section may be included as part of the

1 contract, must be conspicuous, and must be in substantially the following form:

2 ALASKA LAW AT AS 09.45.881 - 09.45.899 CONTAINS
 3 IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW
 4 BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE
 5 DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE
 6 DESIGNER, BUILDER, OR REMODELER OF YOUR HOME.
 7 NINETY DAYS BEFORE YOU FILE A COURT ACTION, YOU
 8 MUST DELIVER TO THE DESIGNER, BUILDER, OR
 9 REMODELER A WRITTEN NOTICE OF ANY DESIGN,
 10 CONSTRUCTION, OR REMODELING CONDITIONS YOU
 11 ALLEGE ARE DEFECTIVE AND PROVIDE YOUR DESIGNER,
 12 BUILDER, OR REMODELER WITH THE OPPORTUNITY TO
 13 MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS.
 14 YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE
 15 BY THE DESIGNER, BUILDER, OR REMODELER. THERE ARE
 16 STRICT DEADLINES AND PROCEDURES UNDER STATE LAW,
 17 AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR RIGHT
 18 TO FILE A COURT ACTION.

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

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

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

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

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

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

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

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

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

18 (A) an individual housing unit in a multi-family housing
19 facility; and

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

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

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

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

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

31 INDIRECT COURT RULE AMENDMENTS. AS 09.45.889(b), enacted by sec. 3 of

1 this Act, has the effect of changing

2 (1) Rule 79, Alaska Rules of Civil Procedure, by allowing the court to deny
3 attorney fees to a claimant in the situation described by AS 09.45.889(b), even if the claimant
4 is the prevailing party;

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

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

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

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

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