

CS FOR HOUSE BILL NO. 151(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/16/03

Referred: Rules

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. Limits on when certain design, construction, and**
11 **remodeling actions may be brought.** (a) For actions covered under AS 09.45.881 -
12 09.45.899, a claimant may not begin an action against a construction professional
13 unless the notice of claim under AS 09.45.881 is given within one year after the
14 claimant discovers the defect that is the subject of the action, except that the action

1 may not be begun more than 10 years after substantial completion of the dwelling
2 construction or remodeling that contains or implements the alleged defect.

3 (b) A limitation imposed under this chapter for an action under AS 09.45.881 -
4 09.45.899 is tolled between the time the claimant serves notice under AS 09.45.881
5 and the time the claimant should reasonably understand that settlement under the
6 procedures in AS 09.45.881 - 09.45.899 will not succeed.

7 (c) In this section,

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

10 (2) "substantial completion" means the date when the construction or
11 remodeling is sufficiently completed to allow the owner of the dwelling or a person
12 authorized by the owner to use or occupy the dwelling or the improvement to the
13 dwelling in the manner for which the dwelling or improvement was intended.

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

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

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

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

24 (c) At the request of the construction professional, the claimant shall provide
25 to the construction professional any evidence that the claimant possesses that depicts
26 the nature and cause of the defect and the nature and extent of the repairs necessary to
27 repair the defect, including expert reports, photographs, and videotapes.

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

31 (b) The written response under (a) of this section must state that the

1 construction professional

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

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

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

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

16 **Sec. 09.45.884. Consequence of rejecting inspection or settlement offer.**
17 (a) If the claimant rejects the inspection offer under AS 09.45.882(b)(1) or the
18 settlement offer under AS 09.45.882(b)(2), the claimant shall serve written notice of
19 the claimant's rejection on the construction professional.

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

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

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

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

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

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

10 (3) statement that the construction professional will not repair the
 11 defect.

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

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

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

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

31 (1) the reasonable cost of the repairs offered under AS 09.45.886(1)

1 that are necessary to cure the defect and that are the responsibility of the construction
2 professional; or

3 (2) the amount of a reasonable settlement offer of money that was
4 made under AS 09.45.886(2).

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

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

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

18 **Sec. 09.45.891. Presumption of mitigation.** If a claimant fails to allow a
19 construction professional to make a reasonable inspection requested by the
20 construction professional under AS 09.45.882(b)(1), or fails to provide a good faith
21 written response to a construction professional's offer under AS 09.45.882(b)(2) or
22 09.45.886(1) or (2), the failure establishes a rebuttable presumption that the claimant's
23 damages could have been mitigated.

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

28 **Sec. 09.45.893. Notice required in contract.** (a) In order to take advantage
29 of any rights of a construction professional under AS 09.45.881 - 09.45.899, when a
30 construction professional enters into a contract with another person to design,
31 construct, or remodel a dwelling, the construction professional shall give the person a

1 notice of the construction professional's right to offer to cure a defect before the
2 person may file an action in court against the construction professional.

3 (b) The notice required by (a) of this section must be included on a separate
4 page attached to the contract and must contain a title at the top of the page that reads
5 "Notice and Opportunity to Repair."

6 (c) The notice required by (a) of this section must be conspicuous and must be
7 in substantially the following form:

8 ALASKA LAW AT AS 09.45.881 - 09.45.899 CONTAINS
9 IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW
10 BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE
11 DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE
12 DESIGNER, BUILDER, OR REMODELER OF YOUR HOME.
13 WITHIN ONE YEAR OF THE DISCOVERY OF A DESIGN,
14 CONSTRUCTION, OR REMODELING DEFECT, BEFORE YOU
15 FILE A COURT ACTION, YOU MUST DELIVER TO THE
16 DESIGNER, BUILDER, OR REMODELER A WRITTEN NOTICE
17 OF ANY DESIGN, CONSTRUCTION, OR REMODELING
18 CONDITIONS YOU ALLEGE ARE DEFECTIVE IN ORDER TO
19 PROVIDE YOUR DESIGNER, BUILDER, OR REMODELER WITH
20 THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY
21 FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
22 ANY OFFER MADE BY THE DESIGNER, BUILDER, OR
23 REMODELER. THERE ARE STRICT DEADLINES AND
24 PROCEDURES UNDER STATE LAW, AND FAILURE TO
25 FOLLOW THEM MAY AFFECT YOUR RIGHT TO FILE A COURT
26 ACTION.

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

1 **Sec. 09.45.895. Collateral sources.** In an action under AS 09.45.881 -
 2 09.45.899, a court shall deduct from the compensation awarded to a claimant any
 3 compensation paid to the claimant under a homeowner's warranty contract or a
 4 homeowner's insurance policy as compensation for the defects that are the subject of
 5 the action. The amount of this deduction does not include any compensation paid by
 6 the construction professional to the claimant to satisfy the claim or any compensation
 7 paid under an insurance policy issued to the construction professional to satisfy the
 8 claim.

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

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

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

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

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

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

21 (5) "dwelling" means a single-family house, a duplex, or a multi-
 22 family housing unit, and the mechanical and other systems, the other components, and
 23 all improvements that are part of the house, duplex, or housing unit when the dwelling
 24 is constructed or remodeled; for purposes of this paragraph, "multi-family housing
 25 unit" means

26 (A) an individual housing unit in a multi-family housing
 27 facility; and

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

30 (6) "multi-family housing facility" means a residential horizontal
 31 property regime organized under AS 34.07, a residential condominium organized

1 under AS 34.08, and a residential cooperative organized under AS 10.15;

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

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

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

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

10 (1) Rule 82, Alaska Rules of Civil Procedure, by allowing the court to deny
11 attorney fees to a claimant in the situation described by AS 09.45.889(b), even if the claimant
12 is the prevailing party;

13 (2) Rule 79, Alaska Rules of Civil Procedure, by allowing the court to deny
14 costs to a claimant in the situation described in AS 09.45.889(b), even if the claimant is the
15 prevailing party.

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

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

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

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