

CS FOR HOUSE BILL NO. 340(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/12/04

Referred: Rules

Sponsor(s): REPRESENTATIVES MEYER, Anderson, Lynn, McGuire

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to damages in an action for a defect in the design, construction, and**
2 **remodeling of certain dwellings; and providing for an effective date."**

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

4 *** Section 1.** AS 09.45.893(c) is amended to read:

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

7 ALASKA LAW AT AS 09.45.881 - 09.45.899 CONTAINS
8 IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW
9 BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE
10 DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE
11 DESIGNER, BUILDER, OR REMODELER OF YOUR HOME.
12 WITHIN ONE YEAR OF THE DISCOVERY OF A DESIGN,
13 CONSTRUCTION, OR REMODELING DEFECT, BEFORE YOU
14 FILE A COURT ACTION, YOU MUST DELIVER TO THE

DESIGNER, BUILDER, OR REMODELER A WRITTEN NOTICE OF ANY DESIGN, CONSTRUCTION, OR REMODELING CONDITIONS YOU ALLEGE ARE DEFECTIVE IN ORDER TO PROVIDE YOUR DESIGNER, BUILDER, OR REMODELER WITH THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE DESIGNER, BUILDER, OR REMODELER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR RIGHT TO FILE A COURT ACTION. **ALASKA LAW AT AS 09.45.895 CONTAINS LIMITATIONS TO THE AMOUNT OF DAMAGES THAT MAY BE RECOVERED IN A COURT ACTION FOR DEFECTIVE DESIGN, CONSTRUCTION, OR REMODELING.**

* **Sec. 2.** AS 09.45.895 is repealed and reenacted to read:

Sec. 09.45.895. Limitation on damages; collateral sources. (a) Except as provided in (c) of this section, in an action covered under AS 09.45.881 - 09.45.899, a claimant may recover only the following damages caused by a defect:

(1) the reasonable cost of repairs necessary to cure a defect, or actual damages that result from the construction defect, including reasonable and necessary engineering or consulting fees required to evaluate and cure the defect, that the construction professional is responsible for repairing;

(2) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(3) the reduction in market value, if any, to the extent that the reduction is due to the defect; and

(4) reasonable and necessary attorney fees.

(b) In an action under AS 09.45.881 - 09.45.899, a court shall deduct from the compensation awarded to a claimant any compensation paid to the claimant under a homeowner's warranty contract or a homeowner's insurance policy as compensation for the defects that are the subject of the action. The amount of this deduction does

1 not include any compensation paid by the construction professional to the claimant to
2 satisfy the claim or any compensation paid under an insurance policy issued to the
3 construction professional to satisfy the claim.

4 (c) Subsections (a) and (b) of this section do not apply if the defect was caused
5 by gross negligence or reckless or intentional misconduct by the construction
6 professional.

7 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 **APPLICABILITY.** This Act applies to an action covered under AS 09.45.881 -
10 09.45.899 that accrues on or after the effective date of this Act.

11 * **Sec. 4.** This Act takes effect July 1, 2004.