

Introduced: 3/4/69
Referred: State Affairs
and Judiciary

1 IN THE HOUSE

BY CROFT

2 HOUSE BILL NO. 253

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to construction contractors."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 08.18 is amended by adding new sections to read:

9 ARTICLE 5. HOUSING MERCHANT'S RESPONSIBILITY ACT.

10 Sec.08.18.181. LIABILITY OF HOUSING MERCHANTS FOR PERSONAL IN-
11 JURIES. (a) A housing merchant shall be liable, subject to the pro-
12 visions of (b) and (c) of this section, for damages in tort, notwith-
13 standing the absence of fault, for personal injuries or death to a
14 purchaser or user of the dwelling when the purchaser or user's injuries
15 or death have been caused by a defect in or upon the dwelling.

16 (b) The duration of liability imposed by (a) of this section
17 shall be as follows:

18 (1) for three years after the delivery of the deed to a
19 completed dwelling or the taking of possession of a completed dwelling,
20 whichever occurs first; or

21 (2) if a deed to an uncompleted dwelling is delivered before
22 completion, three years after completion of the dwelling or three
23 years after taking possession of the uncompleted dwelling, whichever
24 occurs first; or

25 (3) when the purchaser of the dwelling discovers or
26 should have discovered the defect and has had a reasonable time to
27 protect against injury.

28 (c) An action arising under this section shall be commenced
29 within one year after the occurrence of the injury or the injury

1 resulting in death provided a suit commenced for injury will toll the
2 running of this limitation if death results from the injury after the
3 one year period and provided further that the doctrine of equitable
4 estoppel shall apply to this section.

5 (d) The liability imposed by this section may not be considered
6 exclusive.

7 (e) A disclaimer or modification of the liability imposed by this
8 section shall be void and the obligations imposed upon housing merchants
9 by this section may not be extinguished by delivery of the deed.

10 Sec. 08.18.191. LIABILITY OF HOUSING MERCHANTS FOR BREACH OF
11 WARRANTY. (a) Express warranties by a housing merchant are created
12 as follows:

13 (1) A written affirmation of fact or promise which relates
14 to the dwelling and which is made a basis for the bargain between the
15 housing merchant and the purchaser creates an express warranty that the
16 dwelling shall conform to the affirmation or promise.

17 (2) A written description of the dwelling, including plans
18 and specifications which is made a basis of the bargain between the
19 housing merchant and the purchaser creates an express warranty that the
20 dwelling shall conform to the description.

21 (b) It is not necessary to the creation of an express warranty
22 that formal words such as "warrant" or "guarantee" be used or that there
23 be a specific intention to make a warranty, but an affirmation merely
24 of the value of the dwelling or a statement purporting to be an opinion
25 or commendation of the dwelling does not create a warranty.

26 (c) If an express warranty is made under (a) or (b) of this sec-
27 tion, neither words in the contract of sale, the deed, or other instru-
28 ment of conveyance, nor merger of the contract of sale into the deed
29 or any other instrument of conveyance is effective to exclude or modify

1 this warranty. However, at any time after the execution of the contract
2 of sale this warranty may be excluded or modified in whole or in part
3 by a written instrument, signed by the purchaser, which sets out in
4 detail the warranty to be excluded or modified, the consent of the
5 purchaser to this exclusion or modification, and the terms of the new
6 agreement.

7 (d) Unless excluded or modified under this section, in every sale
8 warranties are implied that the dwelling is (1) free from faulty
9 materials, (2) constructed according to sound engineering standards,
10 (3) constructed in a workmanlike manner, and (4) fit for habitation,
11 at the time of the delivery of the deed to a completed dwelling, or
12 at the time of the completion of a dwelling not completed when the
13 deed is delivered. However, warranties do not apply to any condition
14 that an inspection of the premises would have revealed to a reasonably
15 diligent purchaser at the time the contract was signed.

16 (e) Neither words in the contract of sale, the deed, or other
17 instrument of conveyance, nor merger of the contract of sale into the
18 deed or any other instrument of conveyance is effective to exclude or
19 modify the implied warranties under this section. However, if the
20 contract of sale pertains to a dwelling then completed, these warranties
21 may be excluded or modified in whole or in part by a written instrument,
22 signed by the purchaser, which sets out in detail the warranty to
23 be excluded or modified, the consent of the purchaser to this exclusion
24 or modification, and the terms of the new agreement.

25 (f) The implied warranties provided for under this section shall
26 extend to subsequent purchasers to whom a reasonably diligent inspection
27 of the premises would not have revealed the breach of this warranty
28 and who did not in fact discover it before delivery of the deed to them.

29 (g) In the event of the breach of any of the several warranties

1 provided for in this section, the court may award legal or equitable
2 relief, or both, as justice may require.

3 (h) An action arising under this section shall be commenced within

4 (1) three years after the delivery of the deed to a completed
5 dwelling or the taking of possession of a completed dwelling, whichever
6 occurs first; or

7 (2) if a deed to an uncompleted dwelling is delivered before
8 completion, three years after completion of the dwelling or three years
9 after taking possession of the uncompleted dwelling, whichever occurs
10 first.

11 Sec. 08.18.201. SHAM CONVEYANCES. If a housing merchant conveys
12 a dwelling to an intermediate vendee for the purpose of evading liabilities
13 to users and purchasers imposed by secs. 181 - 241 of this chapter
14 the housing merchant shall be liable upon the subsequent sale of the
15 dwelling by the intermediate vendee as if the subsequent sale had been
16 effectuated by the housing merchant without regard to the intervening
17 conveyance.

18 Sec. 08.18.211. APPLICABILITY. (a) Secs. 181 - 241 of this
19 chapter apply to all dwellings constructed by a housing merchant upon
20 lands conveyed by him to the purchaser as a part of an integrated
21 transaction for the construction or reconstruction of a dwelling.

22 (b) Secs. 181 - 241 of this chapter do not apply to dwellings
23 constructed upon lands owned by the purchaser and obtained by him from
24 a source independent of the housing merchant.

25 Sec. 08.18.221. BONDS. Notwithstanding any agreement to the
26 contrary, a housing merchant may not be entitled to enforce a contract
27 of sale of a dwelling covered by secs. 181 - 241 of this chapter unless
28 he tenders with the deed or other instrument of conveyance a bond, with
29 sufficient surety, in an amount equal to the sale price of the dwelling,

1 conditioned upon the failure of the housing merchant to satisfy in full
2 any breach of warranty judgment arising under secs. 181 - 241 of this
3 chapter and payable to the purchaser and his mortgagee as their
4 interests may appear. Upon the failure of the housing merchant to
5 make this tender, the purchaser may terminate the contract of sale and
6 bring an action for damages suffered by reason of the termination as
7 if the contract had been breached by the housing merchant.

8 Sec. 18.231. DEFINITIONS. In secs. 181 - 241 of this chapter,
9 unless the context clearly requires otherwise,

10 (1) "dwelling" means a one-or two-family building newly
11 constructed or substantially reconstructed, all or part of which is
12 intended to serve the primary function of a place of abode for the
13 purchaser, and includes fixtures and appurtenant land;

14 (2) "defect" means an imperfection in a dwelling built or
15 caused to be built by a housing merchant which may place life and limb
16 in peril and which a reasonably diligent purchaser or user of the
17 premises would not discover in time to avoid injury;

18 (3) "housing merchant" means a person building one or more
19 dwellings or causing one or more dwellings to be built for the purpose
20 of the sale of the building;

21 (4) "purchaser" means a person who contracts to buy a
22 dwelling from a housing merchant;

23 (5) "user" means a person lawfully in or upon the dwelling.

24 Sec. 18.241. CRIMINAL LIABILITY. (a) A person who receives
25 money for the purpose of paying for services, labor, material or
26 equipment which may become the subject of a lien against realty, and
27 fails or neglects to apply the money received to satisfy this purpose
28 is committing an unlawful act.

29 (b) Proof that the money was received for one of the purposes in

1 (a) of this section and was not used for that purpose is prima facie
2 evidence that this failure constitutes neglect and wilful intent to
3 defraud.

4 (c) If diversion of funds from purposes used to obtain the funds
5 results in the realty in question becoming eligible for involuntary
6 sale to satisfy a lien or if the owner of the realty pays the sum
7 owed to keep the realty from becoming eligible for involuntary sale,
8 the person obtaining and diverting the funds is guilty of a misdemeanor
9 and upon conviction is punishable by not more than one year in prison.

10 * Sec. 2. AS 08.18.101 is amended to read:

11 Sec. 08.18.101. INSURANCE REQUIRED. Each applicant, at the time
12 of applying for registration, shall file with the commissioner satis-
13 factory evidence that the applicant has in effect public liability and
14 property damage insurance covering his contracting operations in the
15 sum of not less than \$100,000 [\$20,000] for damage to property, \$100,000
16 [\$50,000] for injury, including death, to any one person and \$300,000
17 [\$100,000] for injury, including death, to more than one person.
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