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AN ACT

RELATING TO CONSTRUCTION; ENACTING THE RIGHT TO REPAIR ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Right to Repair Act".

SECTION 2. DEFINITIONS.--As used in the Right to Repair Act:

A. "construction defect" means a deficiency in the construction of a dwelling that is the result of a failure to exercise that degree of skill a reasonably prudent person skilled in such work would exercise in such circumstances;

B. "construction professional" means a contractor or subcontractor performing the construction of a dwelling;

C. "dwelling" means a newly constructed single family housing unit designed for residential use. "Dwelling" includes the systems and other components and improvements that are part of a single family housing unit at the time of construction;

D. "dwelling action" means a complaint in court or the mechanism for dispute resolution in the construction contract between the purchaser and seller involving an alleged construction defect brought by a purchaser against the seller of a dwelling arising out of or related to the construction of the dwelling;

1 E. "purchaser" means a person or entity who was
2 the original purchaser or subsequent owner of a dwelling;

3 F. "reasonable detail" includes all of the
4 following:

5 (1) an itemized list that describes each
6 alleged construction defect; and

7 (2) the street address of the dwelling where
8 the alleged construction defect is observed and the location
9 in the dwelling that is the subject of the notice; and

10 G. "seller" means the party responsible for
11 construction of the dwelling.

12 SECTION 3. NOTICE AND RIGHT TO REPAIR.--

13 A. Except with respect to claims for alleged
14 construction defects involving an immediate threat to the
15 life or safety of persons occupying a dwelling, rendering a
16 dwelling uninhabitable or in which the seller, after notice
17 from the purchaser pursuant to this subsection, refused to
18 make a repair under any applicable express warranty, a
19 purchaser shall first comply with the provisions of this
20 section before filing a dwelling action. A purchaser shall
21 give written notice by the United States postal service with
22 delivery confirmation or electronic means, to the seller
23 specifying the reasonable detail of each alleged defect. A
24 seller who receives notice pursuant to this subsection shall
25 promptly forward a copy of the notice to the last known

1 address of each construction professional that the seller
2 reasonably believes is responsible for an alleged defect
3 specified in the notice. The seller's notice to each
4 construction professional may be delivered by electronic
5 means.

6 B. Once a seller receives notice pursuant to this
7 section, the notice does not constitute notice of a claim or
8 occurrence as defined by the New Mexico Insurance Code or an
9 insurance policy to trigger notice requirements to the
10 seller's liability carrier, as the notice is intended to
11 allow the purchaser and seller an opportunity to amicably
12 resolve any claimed defect issues without the need for formal
13 arbitration or legal proceedings.

14 C. After receipt of the notice described in
15 Subsection A of this section, the seller and the seller's
16 construction professional may inspect the dwelling to
17 determine the nature and cause of each alleged construction
18 defect and the nature and extent of any repairs or
19 replacements necessary to remedy each alleged construction
20 defect. The purchaser shall ensure the dwelling is made
21 available for inspection during normal working hours not
22 later than ten days after the purchaser receives the seller's
23 and the seller's construction professional's request for an
24 inspection. The seller and the seller's construction
25 professional shall provide reasonable notice to the purchaser

1 before conducting the inspection. The inspection shall be
2 conducted at a reasonable time. The seller and the seller's
3 construction professional may use reasonable measures,
4 including testing, to determine the nature and cause of each
5 alleged construction defect and the nature and extent of any
6 repairs or replacements necessary to remedy each alleged
7 construction defect. The seller's construction professional
8 shall restore the dwelling within sixty days of the testing.

9 D. Within sixty days after receipt of the notice
10 provided for in Subsection A of this section, the seller
11 shall send to the purchaser, by certified mail, return
12 receipt requested, a written response to the purchaser's
13 notice. The response may:

14 (1) offer to repair or replace each alleged
15 construction defect or to have each alleged construction
16 defect repaired or replaced by another construction
17 professional chosen by the seller at the seller's or seller's
18 construction professional's expense;

19 (2) offer to provide monetary compensation
20 to the purchaser; or

21 (3) invoke any remedies provided in the
22 construction contract between the seller and the purchaser.

23 E. A written offer to repair or replace pursuant
24 to Paragraph (1) of Subsection D of this section shall
25 describe in reasonable detail all repairs or replacements

1 that the seller and the seller's construction professional
2 intend to make or provide to the dwelling and a reasonable
3 estimate of the date by which the repairs or replacements
4 will be made. This subsection does not prohibit the seller
5 from offering monetary compensation or other consideration
6 instead of or in addition to a repair or replacement.

7 F. The purchaser shall allow the seller or the
8 seller's construction professional the opportunity to make
9 repairs or replacements of each alleged construction defect
10 unless the purchaser has rejected in writing or by electronic
11 means the seller's offer to repair or replace. If the
12 purchaser reasonably rejects the seller's offer, the
13 purchaser has complied with the requirements of this section
14 and may initiate a dwelling action.

15 G. The purchaser and seller may negotiate for a
16 release of claims regarding the noticed construction defect
17 if an offer involving monetary compensation or other
18 consideration is accepted or the purchaser is satisfied with
19 the repairs or replacements.

20 H. If the response provided pursuant to Subsection
21 D of this section includes a notice of intent to repair or
22 replace each alleged construction defect, and such offer to
23 repair or replace has not been rejected by the purchaser, the
24 purchaser shall allow the seller and the seller's
25 construction professional a reasonable opportunity to repair

1 or replace each alleged construction defect or cause each
2 alleged construction defect to be repaired or replaced as
3 follows:

4 (1) the purchaser and the seller or the
5 seller's construction professional shall coordinate repairs
6 or replacements within thirty days after the seller's notice
7 of intent to repair or replace was sent pursuant to
8 Subsection D of this section. A construction professional
9 that was not involved in the construction of the dwelling
10 resulting in each alleged construction defect and that
11 performs any repair or replacement of the alleged
12 construction defect pursuant to this section is liable to the
13 seller or purchaser who contracted for the contractor's or
14 subcontractor's services only for that construction
15 professional's scope of work;

16 (2) repairs or replacements shall begin as
17 agreed by the purchaser and the seller or the seller's
18 construction professional, with reasonable efforts to begin
19 repairs or replacements within thirty days after the seller's
20 notice of intent to repair or replace was sent pursuant to
21 Subsection D of this section. If a permit is required to
22 perform the repair or replacement, reasonable efforts shall
23 be made to begin repairs or replacements within ten days
24 after receipt of the permit or thirty days after the seller's
25 notice of intent to repair or replace was sent pursuant to

1 Subsection D of this section, whichever is later;

2 (3) all repairs or replacements shall be
3 completed using reasonable care under the circumstances and
4 within a commercially reasonable time frame considering the
5 nature of the repair or replacement, any access issues or
6 unforeseen events that are not caused by the seller or the
7 seller's construction professional;

8 (4) the purchaser shall provide reasonable
9 access during normal working hours for the repairs or
10 replacements;

11 (5) the purchaser and seller may negotiate a
12 release or waiver upon the satisfaction of the purchaser or
13 in exchange for monetary compensation or other consideration
14 in lieu of repair; and

15 (6) at the conclusion of any repairs or
16 replacements, the purchaser may reinitiate the process set
17 forth in this section regarding any claim for inadequate
18 repair or replacement.

19 I. A purchaser may send a new notice pursuant to
20 Subsection A of this section to include each alleged
21 construction defect identified after submission of the
22 original notice. The seller and the seller's construction
23 professional shall have a reasonable period of time to
24 conduct an inspection, if requested, and thereafter the
25 parties shall comply with the requirements of Subsections B

1 through H of this section for each additional alleged
2 construction defect identified in reasonable detail in the
3 notice.

4 J. The time periods provided for in this section
5 shall be reasonably extended for delays that are beyond the
6 control of seller and otherwise by written agreement of the
7 seller and purchaser.

8 K. If the seller does not comply with the
9 requirements of this section and the failure is not due to
10 any fault of the purchaser or a result of delays that are
11 beyond the control of seller, including weather conditions or
12 government delay, the purchaser shall follow any remedy
13 provided for in the construction contract or file a complaint
14 in court if no dispute resolution mechanism is provided for
15 in the contract with the seller.

16 L. Nothing in the Right to Repair Act negates or
17 supersedes the existence of any remedy provided for in the
18 construction contract.

19 M. The statute of repose pursuant to Section
20 37-1-27 NMSA 1978 or other applicable statute of limitation
21 shall be tolled during the repair and replacement process for
22 items specified in the notice.

23 SECTION 4. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2023. _____