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SENATE BILL 50

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY
Peter Wirth

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. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Right to Repair Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Right to Repair Act:

A. "association" means an association organized pursuant to the Condominium Act or the Homeowner Association Act;

B. "construction codes" means building codes enforced by the authority having jurisdiction in which the dwelling is located;

C. "construction defect" means a material deficiency in the construction of a dwelling that is the result

1 of a violation of construction codes applicable to the
2 construction of the dwelling;

3 D. "construction professional" means a contractor,
4 subcontractor, developer or builder performing the construction
5 of a dwelling;

6 E. "dwelling" means a single or multifamily housing
7 unit designed for residential use. "Dwelling" includes common
8 areas and improvements that are owned or maintained by an
9 association or members of an association; "dwelling" includes
10 the systems, other components and improvements that are part of
11 a single or multifamily housing unit at the time of
12 construction;

13 F. "dwelling action" means any legal proceeding
14 involving an alleged construction defect brought by a purchaser
15 against the seller of a dwelling arising out of or related to
16 the construction, condition or sale of the dwelling;

17 G. "material deficiency" means a deficiency that
18 actually impairs the structural integrity or functionality of a
19 dwelling at the time of the claim;

20 H. "purchaser" means a person or entity who has
21 purchased a dwelling;

22 I. "reasonable detail" includes all of the
23 following:

24 (1) an itemized list that describes each
25 alleged construction defect with sufficient detail to allow a

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1 seller or seller's construction professional to identify each
2 alleged construction defect;

3 (2) the location of each alleged construction
4 defect in each dwelling that is the subject of the notice;

5 (3) the impairment to a dwelling that has
6 occurred as a result of each alleged construction defect; and

7 (4) the street address for each dwelling that
8 is the subject of the notice; and

9 J. "seller" means the party responsible for
10 construction of the dwelling.

11 **SECTION 3. [NEW MATERIAL] NOTICE AND RIGHT TO REPAIR.--**

12 A. A purchaser shall first comply with the
13 provisions of this section before filing a dwelling action. A
14 purchaser shall give written notice by certified mail, return
15 receipt requested, to the seller specifying the reasonable
16 detail of each alleged defect. A seller who receives notice
17 pursuant to this subsection shall promptly forward a copy of
18 the notice to the last known address of each construction
19 professional that the seller reasonably believes is responsible
20 for an alleged defect specified in the notice. The seller's
21 notice to each construction professional may be delivered by
22 electronic means.

23 B. After receipt of the notice described in
24 Subsection A of this section, the seller and the seller's
25 construction professional may inspect the dwelling to determine

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1 the nature and cause of each alleged construction defect and
2 the nature and extent of any repairs or replacements necessary
3 to remedy each alleged construction defect. The purchaser
4 shall ensure the dwelling is made available for inspection
5 during normal working hours not later than ten days after the
6 purchaser receives the seller's and the seller's construction
7 professional's request for an inspection. The seller and the
8 seller's construction professional shall provide reasonable
9 notice to the purchaser before conducting the inspection. The
10 inspection shall be conducted at a reasonable time. The seller
11 and the seller's construction professional may use reasonable
12 measures, including testing, to determine the nature and cause
13 of each alleged construction defect and the nature and extent
14 of any repairs or replacements necessary to remedy each alleged
15 construction defect. The seller's construction professional
16 shall restore the dwelling within sixty days of the testing.

17 C. Within sixty days after receipt of the notice
18 provided for in Subsection A of this section, the seller shall
19 send to the purchaser, by certified mail, return receipt
20 requested, a good faith written response to the purchaser's
21 notice. The response may:

22 (1) invoke any alternative dispute resolution
23 requirement;

24 (2) offer to repair or replace each alleged
25 construction defect or to have each alleged construction defect

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1 repaired or replaced by another construction professional
2 chosen by the purchaser at the seller's or seller's
3 construction professional's expense; or

4 (3) offer to provide monetary compensation to
5 the purchaser.

6 D. A written offer to repair or replace pursuant to
7 Paragraph (2) of Subsection C of this section shall describe in
8 reasonable detail all repairs or replacements that the seller
9 and the seller's construction professional intend to make or
10 provide to the dwelling and a reasonable estimate of the date
11 by which the repairs or replacements will be made. This
12 subsection does not prohibit the seller from offering monetary
13 compensation or other consideration instead of or in addition
14 to a repair or replacement.

15 E. The purchaser may accept or reject an offer of
16 monetary compensation or other consideration, other than a
17 repair or replacement, but shall allow the seller or the
18 seller's construction professional the opportunity to make
19 repairs or replacements of each alleged construction defect.

20 F. The purchaser and seller may negotiate for a
21 release of claims regarding the noticed construction defect if
22 an offer involving monetary compensation or other consideration
23 is accepted or the purchaser is satisfied with the repairs or
24 replacements.

25 G. If the response provided pursuant to Subsection
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1 C of this section includes a notice of intent to repair or
2 replace each alleged construction defect, the purchaser shall
3 allow the seller and the seller's construction professional a
4 reasonable opportunity to repair or replace each alleged
5 construction defect or cause each alleged construction defect
6 to be repaired or replaced as follows:

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

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

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1 ten days after receipt of the permit or thirty-five days after
2 the seller's notice of intent to repair or replace was sent
3 pursuant to Subsection C of this section, whichever is later;

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

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

13 (5) the seller is not entitled to a release or
14 waiver of claims solely in exchange for any repair or
15 replacement made pursuant to this subsection, except that the
16 purchaser and seller may negotiate a release or waiver upon the
17 satisfaction of the purchaser or in exchange for monetary
18 compensation or other consideration in lieu of repair; and

19 (6) at the conclusion of any repairs or
20 replacements, the purchaser may reinitiate the alternative
21 dispute resolution process set forth in this section regarding
22 any claim for inadequate repair or replacement.

23 H. A purchaser may send a new notice pursuant to
24 Subsection A of this section to include each alleged
25 construction defect identified in good faith after submission

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1 of the original notice. The seller and the seller's
2 construction professional shall have a reasonable period of
3 time to conduct an inspection, if requested, and thereafter the
4 parties shall comply with the requirements of Subsections B
5 through G of this section for each additional alleged
6 construction defect identified in reasonable detail in the
7 notice.

8 I. The time periods provided for in this section
9 shall be reasonably extended for delays that are beyond the
10 control of seller and otherwise by written agreement of the
11 seller and purchaser.

12 J. If the seller does not comply with the
13 requirements of this section and the failure is not due to any
14 fault of the purchaser or a result of delays that are beyond
15 the control of seller, including weather conditions or
16 government delay, the purchaser may commence a dwelling action.

17 K. Nothing in the Right to Repair Act negates or
18 supersedes the existence of any alternative dispute resolution.

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

22 SECTION 4. [NEW MATERIAL] APPLICABILITY.--The Right to
23 Repair Act applies to single or multifamily unit dwellings
24 designed for residential use.

25 SECTION 5. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2023.

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