

Georgia's "Right to Repair Act"

By Timothy N. Toler, Esq.

Residential construction disputes are notoriously difficult to resolve in a cost-effective manner. Such disputes are ripe with emotion and typically chock-full of defective work claims that run the gamut from minor punch-list items to severe structural issues. Resolving homeowner claims can be staggeringly expensive and time-consuming.

In 2004 the Georgia General Assembly recognized the need for "an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners."¹ The legislature passed a mandatory dispute resolution procedure commonly known as the "Right to Repair Act" (the "Act"). The 2006 Session of the General Assembly brought substantial revisions to the Act.² Although the full scope of the Act is well beyond the reach of this article, and the meaning of its provisions the subject of much debate, residential contractors in Georgia should at least have some familiarity with the Act's mandatory dispute resolution procedures.

Homeowner's Notice of Claim

The Act essentially provides that anyone who asserts a claim against a residential contractor for a construction defect must comply with certain dispute resolution procedures before bringing a lawsuit or arbitration demand. If a homeowner fails to comply, the contractor is entitled to obtain a "stay" of the lawsuit or arbitration until the homeowner has complied. "Contractor" is very broadly defined to include anyone engaged in the business of designing, developing, constructing, or selling a single-family house, duplex or multi-family unit. So what procedures must a homeowner follow?

Before filing a lawsuit or arbitration demand, a homeowner must provide the contractor written notice of the claim in order to permit resolution of the dispute without litigation or arbitration. The notice must be provided at least ninety days prior to filing an action. The contractor has thirty days to respond to the homeowner's notice of claim.

Contractor's Response

The contractor may respond to the homeowner's notice of claim by: (1) offering to settle the claim by way of payment, repairs or both; or (2) requesting an inspection, including testing, to obtain additional information. A rejection of the claim, or failure to respond within thirty days, frees the homeowner to proceed with litigation or arbitration.

¹ O.C.G.A. § 8-2-35.

² The Act is found at O.C.G.A. §§ 8-2-35 through 8-2-43.

If the contractor timely responds to the homeowner's notice of claim by offering a settlement, and the homeowner rejects the offer, the homeowner must provide the contractor with written notice of the rejection, including the reasons for the rejection. If, instead, the contractor timely responds to the homeowner's notice of claim by requesting an inspection, the homeowner must provide the contractor access for inspection and testing within thirty days. Within fourteen days of the inspection, the contractor must respond, in writing, to the homeowner's notice of claim by: (1) offering to settle the claim by way of payment, repairs or both; or (2) rejecting the claim with reasons for the rejection.

If the contractor either rejects the claim or fails to respond within the time required, the homeowner may then bring a formal action for the claim as previously noticed. If the contractor, instead, responds with an offer, the homeowner must then either accept the offer or provide written notice of rejection, including the reasons for rejection.

The Act goes on to provide for supplemental offers and the rejection of supplemental offers, and sets forth rather severe financial consequences for the homeowner who rejects a reasonable offer.

Contractor's Notice to Owner

The Act requires a contractor to provide early written notice to the homeowner of the contractor's most basic rights under the Act. This notice must be provided at the time the initial contract for sale, construction, or improvement is entered into between the contractor and owner/buyer. The notice must be conspicuous and must be in substantially the form set forth in the Act, which is as follows:

GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

Because the Act specifically provides that the notice may be included as part of the contract, that is probably the best way to comply with this particular notice provision.

The Act does not address the consequences to a contractor of failing to provide this notice. It is not yet known, for example, whether a contractor's failure to provide the notice will excuse a homeowner's failure to comply with the Act, either in whole or in part. That issue will be resolved by the courts unless first clarified in further legislative amendments to the Act.

Conclusion

The Act sets forth a mandatory procedure by which residential construction defect disputes can be resolved between contractor and homeowner prior to litigation or arbitration. But the procedure, involving various notices, offers, responses, rights of inspection, supplemental offers and supplemental responses, is anything but simple. Both contractor and homeowner must be diligent to follow the rather involved requirements of the Act. Whether the Act will serve to reduce litigation and arbitration, or the expense of construction defect dispute resolution, remains to be seen.

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