

411.258 Written notice of claim to be served on construction professional in construction defect action -- Offer to remedy or settle -- Acceptance or rejection of offer -- Commencement of action -- Notice of claim tolls statute of limitations.

- (1) In every construction defect action brought against a construction professional, the claimant shall serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect.
- (2) Within twenty-one (21) days after service of the notice of claim, the construction professional shall serve a written response on the claimant by registered mail or personal service. The written response shall:
 - (a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;
 - (b) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this paragraph to compromise and settle a homeowner's claim may include but is not limited to an express offer to purchase the claimant's residence that is the subject of the claim, and to pay the claimant's reasonable relocation costs; or
 - (c) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.
- (3)
 - (a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, then the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.
 - (b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, then the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty (30) days after the claimant's receipt of the construction professional's response, either an acceptance or a rejection of the inspection proposal or settlement offer, then at any time thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

- (4) (a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, then the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.
- (b) Within fourteen (14) days following completion of the inspection, the construction professional shall serve on the claimant:
1. A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of this construction; or
 2. A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or
 3. A written statement that the construction professional will not proceed further to remedy the defect.

The claimant shall have the right to accept or reject the proposed construction defect correction, or the monetary offer to settle the claim.

- (c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of paragraph (b) of this subsection, then the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.
- (d) If the claimant rejects the offer made by the construction professional pursuant to paragraph (b)1. or 2. of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, then the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty (30) days after the claimant's receipt of the construction professional's response, either an acceptance or a rejection of the offer made pursuant to paragraph (b)1. or 2. of this subsection, then at any time thereafter the construction professional may terminate the offer by serving written notice to the claimant.
- (5) (a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)1. of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty (30) days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access

to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

- (b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including but not limited to repair of additional defects.
- (6) If a claimant files a complaint, counterclaim, or cross-claim prior to meeting the requirements of this section, then the court may issue an order holding the action in abeyance until the parties comply with this section.
- (7) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.
- (8) The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose.

Effective: June 24, 2003

History: Created 2003 Ky. Acts ch. 123, sec. 5, effective June 24, 2003.