Subrogation & Recovery Alert!

News Concerning Recent Subrogation & Recovery Issues

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This Alert! continues our survey of Residential Construction Liability – type acts. Part 1 reviewed the RCLA–type statutes adopted in Alaska, Arizona, and California. This Alert!, Part 2, will review those statutes adopted in Colorado, Florida and Idaho.

STATE: COLORADO
(effective date: August 8, 2001)

1. Who Is Subject to Act?
All persons asserting claims for damage to real or personal property, or for personal injury, caused by a defect in the design or construction of an improvement to real property. Colo. Rev. Stat. §13-20-802.5(1).

2. Who Is Protected?
Architects, engineers, contractors, subcontractors, developers, builders, building vendors, inspectors, and, in the case of commercial properties, prior owners at the time the work was performed. Colo. Rev. Stat. §13-20-802.5(4).

3. Notice Required Before Filing Suit
Written notice no later than 75 days before filing action or commencing arbitration (90 days for commercial property).

Following filing of suit, claimant must file and serve within 60 days after commencement of action a list of alleged construction defects. Colo. Rev. Stat. §13-20-803(1).

4. Consequences Of Claimant’s Failure To Comply

5. Consequences Of Respondent’s Failure To Comply
If respondent fails to respond to notice of claim or does not substantially

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<th>Seattle</th>
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<td>1900 Market Street</td>
<td>(856) 910-5000</td>
<td>(303) 292-9080</td>
<td>(973) 286-1200</td>
<td>(206) 340-1000</td>
<td>(316) 609-3380</td>
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<tr>
<td>Philadelphia, PA 19103</td>
<td>(800) 989-0499</td>
<td>(877) 467-0305</td>
<td>(888) 200-9521</td>
<td>(800) 423-1950</td>
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<td>(312) 382-3100</td>
<td>(213) 892-7900</td>
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*Affiliated with the Law Offices of J. Goldberg & D. Grossman
comply with offer to settle or remedy claim, and if claimant proves violation of Colorado Consumer Protection Act, then respondent may be liable for treble damages under the Colorado Consumer Protection Act; however said damages shall be limited to $250,000, inclusive of attorneys fees. Colo. Rev. Stat. §13-20-806(2), (3).

6. Effect On Statute Of Limitations

7. Effect On Damages
Unless claimant proves violation of Colorado Consumer Protection Act and settlement offer by respondent or respondent’s offer to repair is less than 85% of amount awarded to claimant, then claimant may only recover its “actual damages” in action. Colo. Rev. Stat. §13-20-806(1).

“Actual damages” to real property are defined as the fair market value of the property without the defect, the replacement cost of the property, or the reasonable cost to repair the defect, whichever is less. “Actual damages” in personal injury action are defined as all damages allowed by law, except that non-economic damages or derivative non-economic damages are limited to $250,000. Colo. Rev. Stat. §13-20-802.5(2), §13-20-806(4).


8. Other Considerations
Any applicable contractual mediation procedure must be completed before the filing of suit where no offer is made by respondent to notice of claim or where claimant rejects offer. Colo. Rev. Stat. §13-20-803.5(6).

No negligence claim seeking damages for construction defect may be asserted from a failure to construct an improvement to real property in substantial compliance with applicable codes or industry standards, unless such failure results in actual damage to real or personal property, actual loss of use of property, bodily injury, wrongful death, or a risk of bodily injury, death, or threat to the life, health, safety of occupants of residential property. Colo. Rev. Stat. §13-20-804(1).

Act does not prohibit, limit or impair tort claims other than negligence claims, contract or warranty claims, or claims that arise from violation of statute or ordinance other than a building code. Colo. Rev. Stat. §13-20-804(2).


STATE: FLORIDA
(effective date: May 27, 2003)

1. Who Is Subject to Act?
Homeowners, including subsequent purchasers, tenants or homeowner

2. Who Is Protected?

3. Notice Required Before Filing Suit
Written notice no later than 60 days before filing suit. Claimant “shall endeavor” to serve notice of claim within 15 days after discovery of defect. Id.

4. Consequences Of Claimant’s Failure To Comply

5. Consequences Of Respondent’s Failure To Comply

6. Effect On Statute Of Limitations
Written notice of claim tolls statute of limitations until the later of 60 days after the respondent receives notice of claim or thirty days after end of repair period stated in respondent’s offer to repair if claimant has accepted respondent’s offer. Parties may by stipulation extend the repair period. Fla. Stat. Ann. §558.005(12).

7. Effect On Damages
None

8. Other Considerations


STATE: IDAHO
(effective date: 2003)

1. Who Is Subject to Act?
Homeowners, including subsequent purchasers, or homeowner associations, making claims for damage to real or personal property. Idaho Code §6-2502(3).

2. Who Is Protected?
Architects, engineers, contractors, subcontractors, developers, inspectors, or others with statutory right to lien on property. Idaho Code §6-2502(4).
3. Notice Required Before Filing Suit
Written notice prior to commencing action. Idaho Code §6-2503(1).

4. Consequences Of Claimant’s Failure To Comply
If claimant denies request to inspect, unreasonably rejects an offer to remedy defect, or unreasonably denies the respondent an opportunity to repair pursuant to an accepted offer of settlement, then claimant may not recover damages in subsequent action in excess of 1) reasonable cost of the offered repairs or the amount of the reasonable settlement offer made to claimant, together with reasonable costs and attorneys fees incurred before the respondent’s offer was rejected. Idaho Code §6-2504(3).

5. Consequences Of Respondent’s Failure To Comply
If respondent fails to make reasonable offer to repair or reasonable settlement offer, or fails to complete agreed upon repairs in a good and workmanlike manner, the limitations on damages and defenses to actions provided in the Act shall not apply. Idaho Code §6-2504(2).

6. Effect On Statute Of Limitations
Statute of limitations is tolled until 60 days after period of time during which filing of action is barred. Idaho Code §6-2503(1).

7. Effect On Damages
Claimant may only recover: 1) reasonable cost of repairs necessary to cure defect, 2) reasonable expenses for temporary housing, 3) reduction in market value, if any, resulting from defect, and 4) reasonable and necessary attorneys fees. Idaho Code §6-2504(1).

Total damages awarded in suit may not exceed the greater of the purchase price for the residence or the current fair market value of the residence without the defect. Idaho Code §6-2504(4).

8. Other Considerations
Act does not apply to actions for personal injury or wrongful death. Idaho Code §6-2502(1).

Respondent’s liability for defects may be excused, in whole or in part, if it is proved that the damage was caused by: 1. Unforeseen acts of nature; 2. Claimant’s unreasonable failure to mitigate damages 3. Claimant’s failure to follow respondent’s or manufacturers’ recommendations, or failure to follow normal household maintenance procedures; provided, however, that this defense may only be asserted if the respondent proves that the claimant had written notice of these recommendations and procedures and that they were reasonable; 4. Normal wear and tear, misuse, abuse, neglect, alteration, or use of the structure for something other than its intended purposes. Idaho Code §6-2504(5).

Liability may also be excused if 1) the time period for filing actions bars the claims, 2) the claimant has released the respondent, or 3) the respondent’s repairs were successful in curing the defect. Id.