

By: Representative Eads

To: Judiciary A

HOUSE BILL NO. 1194

1 AN ACT TO ADDRESS CONSTRUCTION DEFECT CLAIMS; TO DEFINE
2 CERTAIN TERMS; TO PROVIDE NOTICE OF ACTIONS AND CLAIMS ABOUT
3 CONSTRUCTION DEFECTS; TO REQUIRE THE LISTING OF KNOWN DEFECTS; TO
4 PROVIDE FOR ACTIONS BY BOARDS OF DIRECTORS; TO REQUIRE NOTICE FROM
5 CONSTRUCTION PROFESSIONALS; TO PROVIDE FOR THE APPLICATION OF THIS
6 ACT TO CONTRACTS; TO PROVIDE A STATUTE OF LIMITATIONS; AND FOR
7 RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 **SECTION 1.** This act may be cited as "An Act to Address
10 Construction Defect Claims."

11 **SECTION 2.** The Legislature finds, declares and determines
12 that limited changes in the law are necessary and appropriate
13 concerning actions claiming damages, indemnity or contribution in
14 connection with alleged construction defects. It is the intent of
15 the Legislature that this act apply to these types of civil
16 actions while preserving adequate rights and remedies for property
17 owners who bring and maintain such actions.

18 **SECTION 3.** The following words and phrases shall have the
19 meanings ascribed herein unless the context clearly indicates
20 otherwise:

21 (a) "Action" means any civil lawsuit or action in
22 contract or tort for damages or indemnity brought against a
23 construction professional to assert a claim, whether by complaint,
24 counterclaim, or cross claim, for damage or the loss of use of
25 real or personal property caused by a defect in the construction
26 of a residence or in the substantial remodel of a residence.
27 "Action" does not include any civil action in tort alleging
28 personal injury or wrongful death to a person or persons resulting
29 from a construction defect.



30 (b) "Association" means an association, master
31 association or sub association.

32 (c) "Claimant" means a homeowner or association who
33 asserts a claim against a construction professional concerning a
34 defect in the construction of a residence or in the substantial
35 remodel of a residence.

36 (d) "Construction professional" means an architect,
37 builder, builder vendor, contractor, subcontractor, engineer or
38 inspection, including, but not limited to, a dealer and a
39 declarant performing or furnishing the design, supervision,
40 inspection, construction or observation of the construction of any
41 improvement to real property, whether operating as a sole
42 proprietor, partnership, corporation or other business entity.

43 (e) "Homeowner" means:

44 (i) Any person, company, firm, partnership,
45 corporation or association who contracts with a construction
46 professional for the construction, sale or construction and sale
47 of a residence; and

48 (ii) An "association" as defined in this section.
49 "Homeowner" includes, but is not limited to, a subsequent
50 purchaser of a residence from any homeowner.

51 (f) "Residence" means a single-family house, duplex,
52 triplex, quadraplex or a unit in a multiunit residential structure
53 in which title to each individual unit is transferred to the owner
54 under a condominium or cooperative system and shall include common
55 elements and common areas.

56 (g) "Serve" or "service" means personal service or
57 delivery by certified mail to the last known address of the
58 addressee.

59 (h) "Substantial remodel" means a remodel of a
60 residence, for which the total cost exceeds one-half (1/2) of the
61 assessed value of the residence for property tax purposes at the
62 time the contract for the remodel work was made.



63 SECTION 4. (1) In every construction defect action brought
64 against a construction professional, the claimant shall, no later
65 than sixty (60) days before filing an action, serve written notice
66 of claim on the construction professional. The notice of claim
67 shall state that the claimant asserts a construction defect claim
68 against the construction professional and shall describe the claim
69 in reasonable detail sufficient to determine the general nature of
70 the defect.

71 (2) Within twenty-one (21) days after service of the notice
72 of claim, the construction professional shall serve a written
73 response on the claimant by registered mail or personal service.
74 The written response shall:

75 (a) Propose to inspect the residence that is the
76 subject of the claim and to complete the inspection within a
77 specified time frame. The proposal shall include the statement
78 that the construction professional shall, based on the inspection,
79 offer to remedy the defect, compromise by payment or dispute the
80 claim.

81 (b) Offer to compromise and settle the claim by
82 monetary payment without inspection. A construction
83 professional's offer under this subsection (2)(b) to compromise
84 and settle a homeowner's claim may include, but is not limited to,
85 an express offer to purchase the claimant's residence that is the
86 subject of the claim, and to pay the claimant's reasonable
87 relocation costs; or

88 (c) State that the construction professional disputes
89 the claim and will neither remedy the construction defect nor
90 compromise and settle the claim.

91 (3) (a) If a construction professional disputes the claim
92 or does not respond to the claimant's notice of claim within the
93 time stated in subsection (2) of this section, the claimant may
94 bring an action against the construction professional for the
95 claim described in the notice of claim without further notice.



96 (b) If the claimant rejects the inspection proposal or
97 the settlement offer made by the construction professional
98 pursuant to subsection (2) of this section, the claimant shall
99 serve written notice of the claimant's rejection on the
100 construction professional. After service of the rejection, the
101 claimant may bring an action against the construction professional
102 for the construction defect claim described in the notice of
103 claim. If the construction professional has not received from the
104 claimant, within thirty (30) days after the claimant's receipt of
105 the construction professional's response, either an acceptance or
106 rejection of the inspection proposal or settlement offer, then at
107 anytime thereafter the construction professional may terminate the
108 proposal or offer by serving written notice to the claimant, and
109 the claimant may thereafter bring an action against the
110 construction professional for the construction defect claim
111 described in the notice of claim.

112 (4) (a) If the claimant elects to allow the construction
113 professional to inspect, in accordance with the construction
114 professional's proposal pursuant to subsection (2)(a) of this
115 section, the claimant shall provide the construction professional
116 and its contractors or other agents reasonable access to the
117 claimant's residence during normal working hours to inspect the
118 premises and the claimed defect.

119 (b) Within fourteen (14) days following completion of
120 the inspection, the construction professional shall serve on the
121 claimant:

122 (i) A written offer to remedy the construction
123 defect at no cost to the claimant, including a report of the scope
124 of the inspection, the findings and results of the inspection, a
125 description of the additional construction necessary to remedy the
126 defect described in the claim and a timetable for the completion
127 of such construction.



128 (ii) A written offer to compromise and settle the
129 claim by monetary payment pursuant to subsection (2)(b) of this
130 section; or

131 (iii) A written statement that the construction
132 professional will not proceed further to remedy the defect.

133 (c) If the construction professional does not proceed
134 further to remedy the construction defect within the agreed
135 timetable, or if the construction professional fails to comply
136 with the provisions of (b) of this subsection, the claimant may
137 bring an action against the construction professional for the
138 claim described in the notice of claim without further notice.

139 (d) If the claimant rejects the offer made by the
140 construction professional pursuant to (b)(i) or (ii) of this
141 subsection to either remedy the construction defect or to
142 compromise and settle the claim by monetary payment, the claimant
143 shall serve written notice of the claimant's rejection on the
144 construction professional. After service of the rejection notice,
145 the claimant may bring an action against the construction
146 professional for the construction defect claim described in the
147 notice of claim. If the construction professional has not
148 received from the claimant, within thirty (30) days after the
149 claimant's receipt of the construction professional's response,
150 either an acceptance or rejection of the offer made pursuant to
151 (b)(i) or (ii) of this subsection, then at anytime thereafter the
152 construction professional may terminate the offer by serving
153 written notice to the claimant.

154 (5) (a) Any claimant accepting the offer of a construction
155 professional to remedy the construction defect pursuant to
156 subsection (4)(b)(i) of this section shall do so by serving the
157 construction professional with a written notice of acceptance
158 within a reasonable time period after receipt of the offer, and no
159 later than thirty (30) days after the receipt of the offer. The
160 claimant shall provide the construction professional and its



161 contractors or other agents reasonable access to the claimant's
162 residence during normal working hours to perform and complete the
163 construction by the timetable stated in the offer.

164 (b) The claimant and construction professional may, by
165 written mutual agreement, alter the extent of construction or the
166 timetable for completion of construction stated in the offer,
167 including, but not limited to, repair of additional defects.

168 (6) Any action commenced by a claimant prior to compliance
169 with the requirements of this section shall be subject to
170 dismissal without prejudice and may not be recommenced until the
171 claimant has complied with the requirements of this section.

172 (7) Nothing in this section may be construed to prevent a
173 claimant from commencing an action on the construction defect
174 claim described in the notice of claim if the construction
175 professional fails to perform the construction agreed upon, fails
176 to remedy the defect or fails to perform by the timetable agreed
177 upon pursuant to subsection (2)(a) or (5) of this section.

178 (8) Prior to commencing any action alleging a construction
179 defect, or after the dismissal of any action without prejudice
180 pursuant to subsection (6) of this section, the claimant may amend
181 the notice of claim to include construction defects discovered
182 after the service of the original notice of claim, and must
183 otherwise comply with the requirements of this section for the
184 additional claims. The service of an amended notice of claim
185 shall relate back to the original notice of claim for purposes of
186 tolling statutes of limitations and repose. Claims for defects
187 discovered after the commencement or recommencement of an action
188 may be added to such action only after providing notice to the
189 construction professional of the defect and allowing for response
190 under subsection (2) of this section.

191 **SECTION 5.** (1) In every action brought against a
192 construction professional, the claimant, including a construction
193 professional asserting a claim against another construction



194 professional, shall file with the court and serve on the defendant
195 a list of known construction defects in accordance with this
196 section.

197 (2) The list of known construction defects shall contain a
198 description of the construction that the claimant alleges to be
199 defective. The list of known construction defects shall be filed
200 with the court and served on the defendant within thirty (30) days
201 after the commencement of the action or within such longer period
202 as the court in its discretion may allow.

203 (3) The list of known construction defects may be amended by
204 the claimant to identify additional construction defects as they
205 become known to the claimant.

206 (4) The list of known construction defects must specify, to
207 the extent known to the claimant, the construction professional
208 responsible for each alleged defect identified by the claimant.

209 (5) If a subcontractor or supplier is added as a party to an
210 action under this section, the party making the claim against such
211 subcontractor or supplier shall serve on the subcontractor or
212 supplier the list of construction defects in accordance with this
213 section within thirty (30) days after service of the complaint
214 against the subcontractor or supplier or within such period as the
215 court in its discretion may allow.

216 **SECTION 6.** (1) (a) In the event the board of directors
217 institutes an action asserting defects in the construction of two
218 (2) or more residences, common elements or common areas, this
219 section shall apply. For purposes of this section, "action" has
220 the same meaning as set forth in Section 3 of this act.

221 (b) The board of directors shall substantially comply
222 with the provisions of this section.

223 (2) (a) Prior to the service of the summons and complaint
224 on any defendant with respect to an action governed by this
225 section, the board of directors shall mail or deliver written
226 notice of the commencement or anticipated commencement of such



227 action to each homeowner at the last known address described in
228 the association's records.

229 (b) The notice required by (a) of this subsection shall
230 state a general description of the following:

231 (i) The nature of the action and the relief
232 sought; and

233 (ii) The expenses and fees that the board of
234 directors anticipates will be incurred in prosecuting the action.

235 (3) Nothing in this section may be construed to:

236 (a) Require the disclosure in the notice or the
237 disclosure to a unit owner of attorney-client communications or
238 other privileged communications;

239 (b) Permit the notice to serve as a basis for any
240 person to assert the waiver of any applicable privilege or right
241 of confidentiality resulting from, or to claim immunity in
242 connection with, the disclosure of information in the notice; or

243 (c) Limit or impair the authority of the board of
244 directors to contract for legal services or limit or impair the
245 ability to enforce such a contract for legal services.

246 **SECTION 7.** (1) The construction professional shall provide
247 notice to each homeowner upon entering into a contract for sale,
248 construction or substantial remodel of a residence, of the
249 construction professional's right to offer to cure construction
250 defects before a homeowner may commence litigation against the
251 construction by the homeowner. In the sale of a condominium unit,
252 the requirement for delivery of such notice shall be deemed
253 satisfied if contained in a public offering statement.

254 (2) The notice required by this subsection shall be in
255 substantially the following form:

256 "This act contains important requirements you must
257 follow before you may file a lawsuit for defective
258 construction against the seller or builder of your home.
259 sixty (60) days before you file your lawsuit, you must



260 deliver to the seller or builder a written notice of any
261 construction conditions you allege are defective and
262 provide your seller or builder the opportunity to make
263 an offer to repair or pay for the defects. you are not
264 obligated to accept any offer made by the builder or
265 seller. there are strict deadlines and procedures under
266 state law, and failure to follow them may affect your
267 ability to file a lawsuit."

268 (3) This act shall not preclude or bar any action if notice
269 is not given to the homeowner as required by this section.

270 **SECTION 8.** Nothing in this act shall be construed to hinder
271 or otherwise affect the employment, agency or contractual
272 relationship between and among homeowners and construction
273 professionals during the process of construction or remodeling and
274 does not preclude the termination of those relationships as
275 allowed under current law. Nothing in this act shall negate or
276 otherwise restrict a construction professional's right to access
277 or inspection provided by law, covenant, easement or contract.

278 **SECTION 9.** If a written notice of claim is served under
279 Section 4 of this act within the time prescribed for the filing of
280 an action under this act, the statutes of limitations for
281 construction-related claims are tolled until sixty (60) days after
282 the period of time during which the filing of an action is barred
283 under Section 4 of this act.

284 **SECTION 10.** All claims or causes of action as set forth in
285 this act and the applicable statute of limitation shall begin to
286 run only during the period within six (6) years after substantial
287 completion of construction or during the period within six (6)
288 years after the services enumerated in this act. The phrase
289 "substantial completion of construction" shall mean the state of
290 completion reached when an improvement upon real property may be
291 used or occupied for its intended use. Any cause of action which
292 has not accrued within six (6) years after such substantial



293 completion of construction, or within six (6) years after such
294 termination of services, whichever is later, shall be barred,
295 provided that this limitation shall not be asserted as a defense
296 by any owner, tenant or other person in possession and control of
297 the improvement at the time such cause of action accrues. The
298 limitations prescribed in this section apply to all claims or
299 causes of action as set forth in this act brought in the name or
300 for the benefit of the state which are made or commenced after
301 July 1, 2003.

302 If a written notice is filed under Section 4 of this act
303 within the time prescribed for the filing of an action under this
304 act, the period of time during which the filing of an action is
305 barred under Section 4 of this act plus sixty (60) days shall not
306 be a part of the period limited for the commencement of an action
307 nor for the application of this section.

308 **SECTION 11.** This act shall take effect and be in force from
309 and after July 1, 2003.

