

2009 -- S 0935

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY

Introduced By: Senators Walaska, and Raptakis

Date Introduced: May 14, 2009

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 9 of the General Laws entitled "COURTS and CIVIL PROCEDURE-
2 PROCEDURE GENERALLY" is hereby amended by adding thereto the following chapter:

3 CHAPTER 1.2

4 RHODE ISLAND CONSTRUCTION FAIR REMEDY ACT

5 **9-1.2-1. Short title.** – This chapter shall be known and may be cited as the "Rhode Island
6 Construction Fair Remedy Act".

7 **9-1.2-2. Legislative declaration.** – The general assembly hereby declares that alternative
8 dispute resolution can help to achieve resolutions of disputes without litigation. The general
9 assembly declares that an effective alternative dispute resolution mechanism in certain
10 construction defect matters should involve the claimant filing a notice of claim with the person or
11 entity that the claimant asserts to be responsible for the defect, and providing such person or
12 entity the opportunity to resolve the claim without litigation. The general assembly determines
13 that the requirements for the notice of claim and a certified list of construction defects should be
14 utilized in the event a claimant brings a civil action on the claim. It is the intent of the general
15 assembly that this chapter apply to certain civil actions for damages and indemnity asserting
16 construction defect claims against construction professionals, including architects, engineers,
17 builders, builder vendors, and contractors, for property loss or damage.

18 **9-1.2-3. Definitions.** – As used in this chapter, unless the context otherwise requires:

19 (1) "Action" means any civil action in contractor or tort for damages or indemnity

1 brought against a construction professional to assert a claim, whether by complaint, counterclaim
2 or cross claim, for injury or loss to, or the loss of use of real or personal property caused by a
3 defect in the construction of a residence or commercial structure.

4 (2) "Architect" means a person duly licensed under the provisions of chapter 5-1, to
5 engage in the practice of architecture, as defined in section 5-1.2. For purposes of this chapter,
6 "architect" shall also include any company, firm, partnership, or corporation by or through which
7 such person is affiliated and engages in the practice of architecture.

8 (3) "Builder" means any person, company, firm, partnership, or corporation that contracts
9 or subcontracts to perform all or any portion of the construction of a residence or commercial
10 structure. For purposes of this chapter, "builder" does not include a person, company, firm,
11 partnership, or corporation that sells home warranty insurance.

12 (4) "Builder vendor" means any person, company, firm, partnership, or corporation that
13 contracts for the sale of, but not the construction of, a new residence or new commercial
14 structure.

15 (5) "Claimant" means a homeowner, an owner of a commercial structure, or a
16 construction professional that asserts a claim against a construction professional concerning a
17 defect in the construction of a residence or commercial structure.

18 (6) "Commercial structure" means any building, other than a residence, that is used in the
19 operation of a business or commercial enterprise.

20 (7)(i) "Construction" means the process of designing, planning, building, fabricating,
21 erecting, installing, modifying, altering, adding to, repairing, improving, demolishing, or
22 inspecting a residence or commercial structure.

23 (ii) "Construction" shall also include, but is not limited to, the observation by a
24 construction professional of any process described in paragraph (7)(i) above.

25 (8) "Construction professional" means an architect, engineer, builder, builder vendor or a
26 contractor.

27 (9) "Contractor" means any person, company, firm, partnership or corporation that is a
28 party to a contract with a homeowner, an owner of a commercial structure or a construction
29 professional for the complete or partial construction of a residence or commercial structure.
30 "Contractor" shall also include, but is not limited to, any construction professional acting as a
31 subcontractor.

32 (10) "Engineer" means a person duly licensed under the provisions of chapter 5-8, to
33 engage in the practice of engineering, as defined in section 5-8-2. For purposes of this chapter,
34 "engineer" shall also include any company, firm, partnership or corporation by or through which

1 such person is affiliated and engages in the practice of engineering.

2 (11) “Homeowner” means any person, company, firm, partnership, corporation or
3 association including, but not limited to, a unit owners association and master association that
4 contracts with a construction professional for the construction, sale or the construction and sale of
5 a residence. “Homeowner” shall also include, but is not limited to, a subsequent purchaser of a
6 residence from any homeowner described in this subdivision (11).

7 (12) “Residence” means a single-family house, duplex, triplex, quadraplex or a unit in a
8 multi-unit residential structure in which title to each individual unit is transferred to the owner
9 under a condominium or cooperative system.

10 **9-1.2-3 Prerequisite for actions against construction professionals – notice of claim**

11 **– right to remedy or settle claim.** - (a)(1) No later than forty-five (45) days before filing an
12 action under this chapter, the claimant shall serve written notice on each construction professional
13 against whom the claimant asserts a construction defect claim, by registered mail or personal
14 service. The notice of claim shall state that the claimant asserts a construction defect claim
15 against the construction professional and shall describe the claim in reasonable detail.

16 (2) The service of the notice of claim required under this subsection shall be a
17 prerequisite for filing an action under this chapter.

18 (b) Within twenty (20) days after service of the notice of claim, the construction
19 professional shall serve a written response on the claimant by registered mail or personal service.
20 The written response shall include:

21 (1) A proposal to inspect the residence or commercial structure that is the subject of the
22 claim and, based upon such inspection, to elect whether to offer to remedy the construction defect
23 through additional construction at no cost to the claimant;

24 (2) An offer to compromise and settle the claim by monetary payment. An offer made
25 under this paragraph (2) to compromise and settle a homeowner’s claim includes, but is not
26 limited to, an express offer to purchase the claimant’s residence that is the subject of the claim,
27 and to pay the claimant’s reasonable relocation costs; or

28 (3) A statement that the construction professional disputes the claim and will not remedy
29 the construction defect or compromise and settle the claim.

30 (c) (1) If the construction professional disputes the claim or does not respond to the
31 claimant’s notice of claim, the claimant may, in accordance with this chapter, bring an action
32 against the construction professional for the claim described in the notice of claim.

33 (2) If the claimant rejects the inspection proposal or the settlement offer made by the
34 construction professional pursuant to subsection (b) of this section, the claimant shall, within ten

1 (10) days after receiving the construction professional's response, serve written notice of the
2 claimant's rejection on the construction professional by registered mail or personal service. After
3 service of the rejection, the claimant may, in accordance with this chapter, bring an action against
4 the construction professional for the construction defect claim described in the notice of claim.

5 (d) (1) If the claimant elects to consider the inspection proposal of the construction
6 professional made pursuant to subdivision (b)(1) above, the claimant shall provide the
7 construction professional and its contractors or other agents reasonable access to the claimant's
8 residence or commercial structure during normal working hours to inspect the premises and the
9 claimed defect so that the construction professional may verify the claim.

10 (2) Within ten (10) days following the inspection, the construction professional shall
11 serve on the claimant, by registered mail or personal service:

12 (i) A written offer to remedy the construction defect at no cost to the claimant, including
13 a description of the additional construction that the construction professional has determined from
14 the inspection will be necessary to remedy the defect, and a timetable for the completion of such
15 construction;

16 (ii) A written offer to compromise and settle the claim by monetary payment pursuant to
17 subdivision (b)(1) above; or

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

20 (3) If the construction professional does not proceed further to remedy the construction
21 defect, or if the construction professional fails to comply with the provisions of subdivision (d)(1)
22 above, the claimant may, in accordance with this chapter, bring an action against the construction
23 professional for the claim described in the notice of claim.

24 (4) If the claimant rejects the offer made by the construction professional pursuant to
25 paragraph (d)(2)(i) or (d)(2)(ii) above to either remedy the construction defect or to compromise
26 and settle the claim by monetary payment, the claimant shall, within five (5) days after receiving
27 such offer, serve written notice of the claimant's rejection on the construction professional by
28 registered mail or personal service. After serve of the rejection notice, the claimant may, in
29 accordance with this chapter, bring an action against the construction professional for the
30 construction defect claim described in the notice of the claim.

31 (e)(1) Any claimant accepting the offer of a construction professional to remedy the
32 construction defect, pursuant to paragraph (d)(2)(i), shall do so by serving the construction
33 professional with a written notice of acceptance, by personal service or registered mail, within
34 seven (7) days after receipt of the offer. The claimant shall promptly provide the construction

1 professional and its contractors or other agents reasonable access to the claimant's residence or
2 commercial structure during normal working hours to perform and complete the construction by
3 the timetable stated in the offer.

4 (2) The claimant and construction professional may, by written mutual agreement, alter
5 the extent of construction or the timetable for completion of construction stated in the offer.

6 (f) No action brought pursuant to this chapter shall be commenced until after the claimant
7 has complied with the requirements of this section.

8 (g) Nothing in this section shall be construed to prevent a claimant from commencing an
9 action on the construction defect claim described in the notice of claim if:

10 (1) The construction professional fails to perform the construction agreed upon or fails to
11 perform by the timetable agreed upon pursuant to subsection (5) of this section; or

12 (2) Notwithstanding the completion of the construction agreed upon, the claimant later
13 discovers latent construction defects that the claimant attributes to the construction professional,
14 but that were not discoverable by a reasonable person at the time of such completion. Any
15 claimant who intends to bring an action for such latent construction defects may do so only after
16 complying with the requirements of this section.

17 (h) Nothing in this chapter shall be construed to alter or amend the applicable time
18 periods described in the general laws for the commencement of actions

19 **9-1.2-4. Actions against construction professional – Certified list of defects required.**

20 – (a) In every action brought by a claimant against a construction professional, the claimant shall
21 file with the court and serve on the defendant a certified list of construction defects that the
22 claimant attributes to each construction professional named as a party to the action. The claimant
23 shall file and serve the certified list within sixty (60) days after service of the pleading containing
24 the construction defect claim, unless the court determines that a longer period is necessary for
25 good cause shown.

26 (b)(1) If the claimant fails to file a certified list of construction defects as required by
27 subsection (a) of this section, the construction professional against whom the construction defect
28 claim is asserted may file a motion with the court for an order requiring the claimant to file the
29 certified list. In no event shall the court allow the case to be set for trial without deciding the
30 motion.

31 (2) The failure of a claimant to file a certified list of defects after being ordered by the
32 court to do so shall result in the dismissal of the claimant's construction defect claim.

33 (c)(1) The certified list of construction defects shall be signed by the attorney for the
34 claimant, or if the claimant does not have an attorney, by the claimant. The certified list of

1 construction defects shall state:

2 (i) That the attorney for the claimant, or the claimant if he or she has no attorney, has
3 consulted a person not a party to the action with expertise in the area of the construction defect
4 that is the subject of the action; and

5 (ii) That the person consulted has inspected the residence or commercial structure for
6 which the construction defect is claimed; has reviewed the known facts, including such records,
7 documents, and other materials he or she has found to be relevant to the construction defect; and
8 that based on such person's inspection and review of the known facts, he or she concludes that the
9 claim has substantial justification.

10 (2) The certified list of construction defects shall include:

11 (i) A certification that the person consulted pursuant to this subsection can demonstrate
12 by competent evidence that, as a result of training, education, knowledge, and experience, the
13 person consulted is competent to testify as an expert and render an opinion as to the alleged
14 construction defect;

15 (ii) A certification signed by the person consulted stating:

16 (A) Such person's name, address, qualifications, and credentials that render him or her
17 competent to express an expert opinion as to the alleged construction defect;

18 (B) He or she has inspected the residence or commercial structure and reviewed the
19 known facts, including such records, documents, and other materials which such person has found
20 to be relevant to the defect in construction; and

21 (C) As to each residence or commercial structure for which a construction defect claim is
22 asserted, an identification of the homeowner or the owner of the commercial structure, the
23 location and date of the construction, and identification of each claimed construction defect and
24 its specific location within the residence or commercial structure.

25 (iii) A computation of the damages alleged for each construction defect;

26 (iv) An identification, with respect to each residence, commercial structure, and
27 construction defect, of each construction professional alleged to be responsible for such defect;

28 (v) A certification that each construction professional alleged to be responsible for the
29 alleged construction defect has been given written notice of the defect and an opportunity to
30 remedy the defect and that the defect has not been remedied; and

31 (vi) A copy of the notice of claim served by the claimant on each construction
32 professional that is named as a party to the action.

33 (d) The provisions of this section shall not affect the rights and obligations or under court
34 rules governing the filing and signing of pleadings and papers.

1 **9-1.2-5. Damages.** – (a) Notwithstanding any provision to the contrary in the general
2 laws in any action where a construction professional is found liable to a claimant on a
3 construction defect claim concerning injury, loss, loss of use, or damage to real property, the
4 construction professional shall be subject to an award of damages in an amount equal to the sum
5 of:

6 (1) The difference between the reasonable market value of the real property immediately
7 before, and its reasonable market value immediately after, the occurrence of the injury or the
8 reasonable cost of repairing the real property, whichever is less; and

9 (2) Compensation for the loss of the use of the real property during the reasonable time
10 required to sell the real property or to make reasonable and necessary repairs to the real property.

11 (b) No construction professional shall be assessed treble damages in any action if, prior to
12 the claimant’s filing of the action:

13 (1) The construction professional offered to remedy the construction defect; or

14 (2) The construction professional offered to compromise and settle a construction defect
15 claim concerning a residence by expressly offering to purchase the claimant’s residence and pay
16 the claimant’s reasonable relocation costs.

17 **9-1.2-6. Disclosure – Limited liability.** – (a) A claimant whose construction defect claim
18 concerning a residence was resolved by a construction professional, shall not be liable to a
19 subsequent purchaser for a construction defect of the residence if, prior to the sale of the
20 residence, the claimant provides full disclosure in writing to the subsequent purchaser stating:

21 (1) The claimant had a claim for a construction defect against a construction professional
22 concerning the residence.

23 (2) A description of the construction defect that was the basis for the claim and
24 description of the construction undertaken by the construction professional to remedy the defect.

25 (b) A construction professional that purchases a claimant's residence shall not be liable to
26 a subsequent purchaser for a construction defect of the residence that was the subject of the claim
27 if, prior to the sale of the residence, the construction professional provides full disclosure in
28 writing to the subsequent purchaser stating:

29 (1) The construction professional purchased the residence from the claimant;

30 (2) The homeowner from whom the construction professional purchased the residence
31 had a construction defect claim against the construction professional concerning the residence;

32 (3) A description of the construction defect that was the basis for the claim; and

33 (4) A description of the construction, if any, undertaken by the construction professional
34 at any time in connection with such construction defect.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE - PROCEDURE GENERALLY

1 This act would create the "Rhode Island Construction Fair Remedy Act" in order to
2 encourage the resolution of construction claims prior to litigation.

3 This act would take effect upon passage.

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