

686.3 Notice and opportunity to repair.

1. Prior to commencing an action alleging a construction defect, the claimant shall, at least one hundred twenty days before filing an action, serve written notice of claim on the general contractor and subcontractor. The notice of claim shall refer to [this chapter](#) and must describe the claim in reasonable detail sufficient to determine the general nature of each alleged construction defect, a description of the damage or loss resulting from the defect, if known, and any work or inspections completed to determine the cause of the damage or loss or correct the construction defect. [This subsection](#) does not preclude a claimant from filing an action sooner than one hundred twenty days, after service of written notice as expressly provided in [subsection 6, 7, or 8](#).

2. *a.* Within sixty days after service of the notice of claim, the person served with the notice of claim under [subsection 1](#) is entitled to perform a reasonable inspection of the property or of each unit subject to the claim to assess each alleged construction defect. The claimant shall provide the person served with notice under [subsection 1](#) and the person's general contractors, subcontractors, or agents reasonable access to the property during normal working hours to inspect the property to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or replacements necessary to remedy each construction defect. The person served with notice under [subsection 1](#) shall reasonably coordinate the timing and manner of any and all inspections with the claimant to minimize the number of inspections. The inspection may include reasonable destructive testing by mutual agreement under the following terms and conditions:

(1) If the person served with notice under [subsection 1](#) determines that destructive testing is necessary to determine the nature and cause of the alleged construction defects, the person shall notify the claimant in writing.

(2) The notice shall describe the destructive testing to be performed, the person selected to do the testing, the estimated anticipated damage and repairs to or restoration of the property resulting from the testing, the estimated amount of time necessary for the testing and to complete the repairs or restoration, and the financial responsibility offered for covering the costs of repairs or restoration.

(3) The testing shall be done at a mutually agreeable time.

(4) The claimant or a representative of the claimant may be present to observe the destructive testing.

b. If the claimant refuses to agree and permit reasonable destructive testing, the claimant shall have no claim for damages which could have been avoided or mitigated had destructive testing been allowed when requested and had a feasible remedy been promptly implemented.

3. The general contractor or subcontractor may serve a copy of the notice of claim to each subcontractor or general contractor whom the general contractor or subcontractor reasonably believes is responsible for a construction defect specified in the notice of claim and shall note the specific construction defect for which the subcontractor or general contractor is alleged to be responsible. The notice described in [this subsection](#) shall not be construed as an admission of any kind. A general contractor or subcontractor may inspect the property in the manner described in [subsection 2](#).

4. Within thirty days after service of the notice of claim pursuant to [subsection 3](#), the general contractor or subcontractor must serve a written response to the general contractor or subcontractor who served the notice of claim. The written response shall include a report, if any, of the scope of any inspection of the property, the findings and results of the inspection, a statement of whether the subcontractor or general contractor is willing to make repairs to the property or whether the claim is disputed, a description of any repairs the subcontractor or general contractor is willing to make to remedy the alleged construction defect, and a timetable for the completion of the repairs. This response may also be served on the initial claimant by the general contractor or subcontractor.

5. Within seventy-five days after service of the notice of claim, the person who was served the notice under [subsection 1](#) shall serve a written response to the claimant. The response

shall be served to the attention of the person who signed the notice of claim, unless otherwise designated in the notice of claim. The written response must provide for one of the following:

a. A written offer to remedy the alleged construction defect at no cost to the claimant, a description of the proposed repairs necessary to remedy the construction defect, and a timetable for the completion of such repairs.

b. A written offer to compromise and settle the claim by monetary payment, that will not obligate the person's insurer, and a timetable for making payment.

c. A written offer to compromise and settle the claim by a combination of repairs and monetary payment that will not obligate the person's insurer, and which includes a detailed description of the proposed repairs and a timetable for the completion of such repairs and making payment.

d. A written statement that the person disputes the claim and will not remedy the construction defect or compromise and settle the claim.

e. A written offer of a monetary payment, including insurance proceeds, to be determined by the person and the person's insurer, which the claimant may accept or reject.

6. If the person served with a notice of claim pursuant to [subsection 1](#) disputes the claim and will neither remedy the construction defect nor compromise and settle the claim, or does not respond to the claimant's notice of claim within the time provided in [subsection 5](#), the claimant may, without further notice, proceed with an action against that person for the claim described in the notice of claim. Nothing in [this chapter](#) shall be construed to preclude a partial settlement or compromise of the claim as agreed to by the parties and, in that event, the claimant may, without further notice, proceed with an action on the unresolved portions of the claim.

7. A claimant who receives a timely settlement offer shall accept or reject the offer by serving written notice of such acceptance or rejection on the person making the offer within forty-five days after receiving the settlement offer. If a claimant initiates an action without first accepting or rejecting the offer, the court shall stay the action upon timely motion until the claimant complies with [this subsection](#).

8. If the claimant timely and properly accepts the offer to repair an alleged construction defect, the claimant shall provide the offeror and the offeror's agents reasonable access to the claimant's property during normal working hours to perform the repair by the agreed-upon timetable as stated in the offer. If the offeror does not make the payment or repair the construction defect within the agreed time and in the agreed manner, except for reasonable delays beyond the control of the offeror, including but not limited to weather conditions, delivery of materials, claimant's actions, or issuance of any required permits, the claimant may, without further notice, proceed with an action against the offeror based upon the claim in the notice of claim. If the offeror makes payment or repairs to the defect within the agreed time and in the agreed manner, the claimant is barred from proceeding with an action for the claim described in the notice of claim or as otherwise provided in the accepted settlement offer.

9. [This section](#) does not prohibit or limit a claimant from making any necessary emergency repairs to the property as are required to protect the health, safety, and welfare of any person.

10. Any offer or failure to offer, pursuant to [subsection 5](#), to remedy a construction defect or to compromise and settle the claim by monetary payment does not constitute an admission of liability with respect to the defect and is not admissible in an action that is subject to [this chapter](#).

11. [This section](#) does not relieve the person who is served a notice of claim under [subsection 1](#) from complying with all contractual provisions of any liability insurance policy as a condition precedent to coverage for any claim under [this section](#).

[2019 Acts, ch 25, §3, 8, 9](#)

Section applies to actions for which litigation has not commenced prior to April 15, 2019; 2019 Acts, ch 25, §8, 9