

MAR 8 2006
Place On Calendar

HOUSE FILE 2722
BY COMMITTEE ON COMMERCE,
REGULATION AND LABOR

(SUCCESSOR TO HSB 741)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to deficiencies in the construction or design of
2 residential real property.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2722

1 Section 1. NEW SECTION. 657B.1 DEFINITIONS.

2 For the purposes of this chapter, the following definitions
3 shall apply:

4 1. "Builder" means a builder or developer of a new
5 residential unit that is sold on or after July 1, 2006.

6 2. "Claimant" includes an individual owner of a single-
7 family home, an individual unit owner of an attached dwelling,
8 and, in the case of a common interest development, an
9 association. "Claimant" does not include a person not in
10 privity of contract with a builder.

11 Sec. 2. NEW SECTION. 657B.2 NOTICE OF CLAIM.

12 1. Prior to filing an action for recovery of property
13 damages arising out of, or related to deficiencies in, the
14 residential construction, design, specifications, survey,
15 plan, supervision, testing, or observation of construction
16 against a builder, the claimant shall provide written notice
17 by certified mail, overnight mail, or personal delivery to the
18 builder that the construction, design, specifications, survey,
19 plan, supervision, testing, or observation of construction of
20 the claimant's residence is deficient or violates the
21 applicable housing code or city ordinance. The notice shall
22 state the claimant's name, address, and contact information,
23 and shall describe the nature of the claim in sufficient
24 detail in order to determine the nature and location of the
25 alleged violation. The document shall have the same force and
26 effect as a notice of commencement of a lawsuit.

27 2. The notice requirements of this section do not preclude
28 a claimant from seeking redress through a customer service
29 procedure set forth in a contract, warranty, or other document
30 generated by the builder.

31 Sec. 3. NEW SECTION. 657B.3 BUILDER'S RECEIPT OF CLAIM
32 -- ACKNOWLEDGEMENT.

33 Within ten days of receipt of a claimant's notice of claim,
34 the builder shall provide the claimant a written
35 acknowledgement of receipt of the claim by certified mail,

1 overnight mail, or personal delivery.

2 Sec. 4. NEW SECTION. 657B.4 REPAIRS.

3 Within ten business days of the builder's acknowledgment of
4 a claimant's notice of claim, the builder may make an offer in
5 writing which shall include either of the following:

6 1. A bona fide offer to compensate the claimant for repair
7 of the defect and property damages caused by the defect.

8 2. An offer to repair with a detailed statement
9 identifying the particular deficiency to be repaired, an
10 explanation of the nature, scope, and location of the repair
11 needed, and the estimated completion date of the repair, which
12 shall occur within either twenty-one business days of the
13 builder's receipt of the claimant's notice of claim, or within
14 reasonable weather-related construction conditions, or as
15 otherwise agreed to by the parties.

16 Sec. 5. NEW SECTION. 657B.5 CIVIL ACTION.

17 A claimant may file an action seeking recovery of damages
18 against a builder if the builder does any of the following:

19 1. Fails to make an offer to repair, performs an
20 inadequate repair, or does not complete a repair within a
21 reasonable period of time.

22 2. Fails to comply with any other requirement of this
23 chapter.

24 Sec. 6. NEW SECTION. 657B.6 STATUTE OF LIMITATIONS.

25 If a builder makes an offer to repair pursuant to section
26 657B.4, the provision of a notice of claim pursuant to section
27 657B.2 tolls any applicable statute of limitations from the
28 date of service of the notice of claim through the estimated
29 completion date of the repair.

30 EXPLANATION

31 This bill relates to deficiencies in residential real
32 property. The bill requires a claimant, as defined by the
33 bill, to provide a builder of residential real property with a
34 notice of a claim against the builder prior to commencing an
35 action against the builder for property damages arising from

1 deficiencies in the construction, design, specifications,
2 survey, plan, supervision, testing, or observation of
3 construction of the residential real property. The notice of
4 claim is required by the bill to state the claimant's name,
5 address, and contact information, and to describe in detail
6 the nature and location of the violation alleged against the
7 builder.

8 The bill requires builders to provide a claimant with a
9 written acknowledgment within 10 days after receiving the
10 notice of claim.

11 The bill allows a builder to offer to compensate the
12 claimant for a deficiency or repair the deficiency. The offer
13 to compensate or repair must be made within 10 business days
14 after the builder provides an acknowledgment of the claimant's
15 notice of claim. An offer to compensate must be a bona fide
16 offer and an offer to repair must include a detailed statement
17 identifying the particular deficiency to be repaired, an
18 explanation of the nature, scope, and location of the repair,
19 and an estimated completion date of the repair. The estimated
20 completion date of the repair is required by the bill to be
21 within 21 days of the builder's receipt of the notice of
22 claim, within reasonable weather conditions, or as otherwise
23 agreed to by the parties.

24 The bill provides that a claimant may file an action for
25 damages against a builder if the builder has failed to make an
26 offer to repair as provided by the bill, performed an
27 inadequate repair, failed to complete a repair within a
28 reasonable time, or failed to comply with any other provision
29 of the bill. The bill does not prohibit a claimant from
30 otherwise seeking other remedies available by contract,
31 warranty, or a similar customer service remedy provided by the
32 builder.

33 The bill provides that if a builder makes an offer to
34 repair as provided by the bill, the applicable statute of
35 limitations is tolled from the date of the service of the

1 notice of claim to the estimated completion date of the
2 repair.

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SOWERBERG, CH
JENKINS
OLSON

HSB 741
COMMERCE, REGULATION & LABOR

HOUSE FILE _____ 02722
BY (PROPOSED COMMITTEE ON
COMMERCE, REGULATION AND
LABOR BILL BY CHAIRPERSON
JENKINS)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to deficiencies in the construction or design of
2 residential real property.

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1 Section 1. NEW SECTION. 657B.1 DEFINITIONS.

2 1. "Builder" includes a builder, developer, or original
3 seller of residential real property that is sold on or after
4 July 1, 2006.

5 2. "Claimant" means an individual owner of residential
6 real property and includes an owner of a condominium unit and
7 an association of a common interest community. "Claimant"
8 does not include a person not in privity of contract with a
9 builder.

10 3. "Residential real property" means real property which
11 is an owner-occupied single-family or two-family dwelling,
12 located in this state, occupied or used or intended to be
13 occupied or used for residential purposes, including an
14 interest in any real property covered under chapter 499B.

15 Sec. 2. NEW SECTION. 657B.2 NOTICE OF CLAIM.

16 Prior to filing an action for the recovery of damages
17 arising out of, or related to, a deficiency in the
18 construction, design, specifications, survey, plan,
19 supervision, testing, or observation of construction of
20 residential real property against a builder, the claimant
21 shall provide written notice by certified mail or personal
22 service to the builder that the construction, design,
23 specifications, survey, plan, supervision, testing, or
24 observation of construction of the claimant's residence is
25 deficient or violates an applicable housing code or city
26 ordinance. The notice shall state the claimant's name,
27 address, and contact information. The notice shall also state
28 that the claimant alleges a deficiency or violation against
29 the builder and shall describe the nature of the claim in
30 sufficient detail for the builder to determine the nature and
31 location of the alleged deficiency or violation.

32 Sec. 3. NEW SECTION. 657B.3 BUILDER REQUIREMENTS.

33 1. A builder who receives notice pursuant to section
34 657B.2 shall provide the claimant a written acknowledgment of
35 receipt of the claimant's notice of claim within ten business

1 days after receiving the notice of claim.

2 2. Prior to the transfer of title of newly constructed
3 residential real property, the builder shall provide written
4 notice to the purchaser of the availability of mediation
5 services pursuant to chapter 679C. After receiving a notice
6 pursuant to this subsection, the purchaser shall provide the
7 builder with written acknowledgment of receiving the notice.

8 Sec. 4. NEW SECTION. 657B.4 BUILDER'S OFFER TO REPAIR.

9 Within ten business days after the builder provides an
10 acknowledgment of the claimant's notice of claim pursuant to
11 section 657B.3, the builder may offer in writing to compensate
12 the claimant or repair the deficiency. An offer to compensate
13 the claimant shall be a bona fide offer to compensate the
14 claimant for damages to the residential real property of the
15 claimant. An offer to repair the deficiency shall include a
16 detailed statement identifying the particular deficiency to be
17 repaired, an explanation of the nature, scope, and location of
18 the repair needed, and an estimated completion date of the
19 repair which shall be within twenty-one business days of the
20 builder's receipt of the notice of claim, assuming reasonable
21 weather-related construction conditions, or as otherwise
22 agreed to by the parties.

23 Sec. 5. NEW SECTION. 657B.5 CLAIMANT'S REMEDIES.

24 1. A claimant shall not file an action for the recovery of
25 damages arising out of, or related to, deficiencies in the
26 construction, design, specifications, survey, plan,
27 supervision, testing, or observation of construction of
28 residential real property against a builder, unless the
29 claimant has provided a notice of claim as required by section
30 657B.2 and the builder fails to do any of the following:

31 a. Make an offer to compensate the claimant or repair a
32 deficiency in compliance with section 657B.4.

33 b. Compensate a claimant or perform an adequate repair to
34 correct the deficiency after making an offer to compensate or
35 repair under section 657B.4, which is accepted by the

1 claimant.

2 c. Complete a repair within the time required by section
3 657B.4.

4 d. Comply with any other requirement of this chapter.

5 2. This section does not preclude a claimant from seeking
6 remedies available through a customer service procedure
7 described in a contract, warranty, or other document provided
8 by the builder.

9 Sec. 6. NEW SECTION. 657B.6 STATUTE OF LIMITATIONS.

10 If a builder makes an offer to repair pursuant to section
11 657B.4, the provision of a notice of claim pursuant to section
12 657B.2 tolls any applicable statute of limitations from the
13 date of service of the notice of claim through the estimated
14 completion date of the repair.

15 EXPLANATION

16 This bill relates to deficiencies in residential real
17 property. The bill requires a claimant, as defined by the
18 bill, to provide a builder of residential real property with a
19 notice of a claim against the builder prior to commencing an
20 action against the builder for damages arising from
21 deficiencies in the construction, design, specifications,
22 survey, plan, supervision, testing, or observation of
23 construction of the residential real property. The notice of
24 claim is required by the bill to state the claimant's name,
25 address, and contact information, and to describe in detail
26 the nature of the violation alleged against the builder.

27 The bill requires builders to provide a claimant with a
28 written acknowledgment within 10 days after receiving the
29 notice of claim. The bill requires builders to provide a
30 written notice to any claimant of the availability of
31 mediation services. A claimant who receives a notice of
32 available mediation services shall provide the builder an
33 acknowledgment of receiving the notice.

34 The bill allows a builder to offer to compensate the
35 claimant for a deficiency or repair the deficiency. The offer

1 to compensate or repair must be made within 10 business days
2 after the builder provides an acknowledgment of the claimant's
3 notice of claim. An offer to compensate must be a bona fide
4 offer and an offer to repair must include a detailed statement
5 identifying the particular deficiency to be repaired, an
6 explanation of the nature, scope, and location of the repair,
7 and an estimated completion date of the repair. The estimated
8 completion date of the repair is required by the bill to be
9 within 21 days of the builder's receipt of the notice of
10 claim, within reasonable weather conditions, or as otherwise
11 agreed to by the parties.

12 The bill prohibits a claimant from filing an action for
13 damages from deficiencies in construction, design,
14 specifications, survey, plan, supervision, testing, or
15 observation of construction of residential real property
16 against a builder unless the claimant has provided a notice of
17 claim to the builder and the builder has failed to make an
18 offer to compensate or repair as provided by the bill, failed
19 to compensate or perform an adequate repair, failed to
20 complete a repair within the time required by the bill, or
21 failed to comply with any other provision of the bill. The
22 bill does not prohibit a claimant from otherwise seeking other
23 remedies available by contract, warranty, or a similar
24 customer service remedy provided by the builder.

25 The bill provides that if a builder makes an offer to
26 repair as provided by the bill, the applicable statute of
27 limitations is tolled from the date of the service of the
28 notice of claim to the estimated completion date of the
29 repair.

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