

House Study Bill 575 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON NUNN)

A BILL FOR

1 An Act relating to notice and opportunity to repair
2 construction defects and including effective date and
3 applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 686.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Action*" means any civil action or arbitration proceeding
5 for damages or indemnity asserting a claim for injury to
6 property, real or personal, or injury to person or wrongful
7 death arising out of the unsafe or defective condition of an
8 improvement to real property based on tort, breach of contract,
9 or express or implied warranty.

10 2. "*Association*" means an entity or homeowners association
11 created for the purposes of managing the operations of a
12 community as set forth in a declaration of covenants or
13 declaration of submission of property to horizontal property
14 regime filed of record in the county that the property is
15 located.

16 3. "*Claimant*" means an owner, a subsequent owner, or an
17 association who asserts a claim for damages against a general
18 contractor or subcontractor concerning a construction defect.

19 4. "*Construction defect*" means an alleged or actual unsafe
20 or defective condition of an improvement to real property.

21 5. "*General contractor*" means a person who does work or
22 furnishes materials by contract, express or implied, with an
23 owner.

24 6. "*Owner*" means the legal or equitable titleholder of
25 record to real property or the holder of a leasehold interest.

26 7. "*Serve*", "*served*", or "*service*" means delivery by
27 certified mail with a United States postal service record
28 of evidence of delivery or attempted delivery to the last
29 known address of the addressee, by hand delivery with written
30 evidence of delivery, or by delivery by any courier with
31 written evidence of delivery.

32 8. "*Subcontractor*" means a person furnishing material
33 or performing labor upon any building, erection, or other
34 improvement to land, except those having contracts directly
35 with the owner.

1 **Sec. 2. NEW SECTION. 686.2 Action — compliance.**

2 A claimant shall not file an action without first complying
3 with the requirements of this chapter. If a claimant files an
4 action alleging a construction defect without first complying
5 with the requirements of this chapter, on timely motion by a
6 party to the action, the court shall stay the action, without
7 prejudice, and the action shall not proceed until the claimant
8 has complied with the requirements.

9 **Sec. 3. NEW SECTION. 686.3 Notice and opportunity to**
10 **repair.**

11 1. Prior to commencing an action alleging a construction
12 defect, the claimant shall, at least sixty days before
13 filing any action, or at least one hundred twenty days before
14 filing an action involving a class action or an association
15 representing more than twenty owners, serve written notice of
16 claim on the general contractor and subcontractor. The notice
17 of claim shall refer to this chapter and must describe the
18 claim in reasonable detail sufficient to determine the general
19 nature of each alleged construction defect, a description of
20 the damage or loss resulting from the defect, if known, and
21 any work or inspections completed to determine the cause of
22 the damage or loss or correct the construction defect. This
23 subsection does not preclude a claimant from filing an action
24 sooner than sixty or one hundred twenty days, as applicable,
25 after service of written notice as expressly provided in
26 subsection 6, 7, or 8.

27 2. *a.* Within thirty days after service of the notice of
28 claim, or within sixty days after service of the notice of
29 claim involving a class action or an association representing
30 more than twenty owners, the person served with the notice of
31 claim under subsection 1 is entitled to perform a reasonable
32 inspection of the property or of each unit subject to the claim
33 to assess each alleged construction defect. The claimant
34 shall provide the person served with notice under subsection
35 1 and the person's general contractors, subcontractors, or

1 agents reasonable access to the property during normal working
2 hours to inspect the property to determine the nature and
3 cause of each alleged construction defect and the nature and
4 extent of any repairs or replacements necessary to remedy each
5 construction defect. The person served with notice under
6 subsection 1 shall reasonably coordinate the timing and manner
7 of any and all inspections with the claimant to minimize the
8 number of inspections. The inspection may include reasonable
9 destructive testing by mutual agreement under the following
10 terms and conditions:

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

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

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

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

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

30 3. The general contractor or subcontractor may serve a
31 copy of the notice of claim to each subcontractor or general
32 contractor whom the general contractor or subcontractor
33 reasonably believes is responsible for a construction defect
34 specified in the notice of claim and shall note the specific
35 construction defect for which the subcontractor or general

1 contractor is alleged to be responsible. The notice described
2 in this subsection shall not be construed as an admission of
3 any kind. A general contractor or subcontractor may inspect
4 the property in the manner described in subsection 2.

5 4. Within fifteen days after service of a copy of the notice
6 of claim pursuant to subsection 3, or within thirty days after
7 service of the copy of the notice of claim involving a class
8 action or an association representing more than twenty owners,
9 the general contractor or subcontractor must serve a written
10 response to the general contractor or subcontractor who served
11 a copy of the notice of claim. The written response shall
12 include a report, if any, of the scope of any inspection of
13 the property, the findings and results of the inspection, a
14 statement of whether the subcontractor or general contractor is
15 willing to make repairs to the property or whether the claim
16 is disputed, a description of any repairs the subcontractor or
17 general contractor is willing to make to remedy the alleged
18 construction defect, and a timetable for the completion of
19 the repairs. This response may also be served on the initial
20 claimant by the general contractor or subcontractor.

21 5. Within forty-five days after service of the notice
22 of claim, or within seventy-five days after service of the
23 notice of claim involving a class action or an association
24 representing more than twenty owners, the person who was served
25 the notice under subsection 1 shall serve a written response to
26 the claimant. The response shall be served to the attention
27 of the person who signed the notice of claim, unless otherwise
28 designated in the notice of claim. The written response must
29 provide for one of the following:

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

34 b. A written offer to compromise and settle the claim by
35 monetary payment, that will not obligate the person's insurer,

1 and a timetable for making payment.

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

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

10 *e.* A written statement that a monetary payment, including
11 insurance proceeds, if any, will be determined by the person's
12 insurer after notification to the insurer by means of serving
13 the claim, which service shall occur at the same time the
14 claimant is notified of this settlement option, which the
15 claimant may accept or reject. A written statement under this
16 paragraph may also include an offer under paragraph "*c*", but
17 such offer shall be contingent upon the claimant also accepting
18 the determination of the insurer whether to make any additional
19 monetary payment.

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

31 7. A claimant who receives a timely settlement offer shall
32 accept or reject the offer by serving written notice of such
33 acceptance or rejection on the person making the offer within
34 forty-five days after receiving the settlement offer. If
35 a claimant initiates an action without first accepting or

1 rejecting the offer, the court shall stay the action upon
2 timely motion until the claimant complies with this subsection.

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

21 9. This section does not prohibit or limit a claimant from
22 making any necessary emergency repairs to the property as are
23 required to protect the health, safety, and welfare of any
24 person.

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

30 11. This section does not relieve the person who is served
31 a notice of claim under subsection 1 from complying with all
32 contractual provisions of any liability insurance policy as
33 a condition precedent to coverage for any claim under this
34 section.

35 Sec. 4. NEW SECTION. 686.4 Multiple construction defects.

1 The procedures in this chapter apply to each construction
2 defect. However, a claimant may include multiple defects in
3 one notice of claim. A claimant may amend the initial list of
4 construction defects to identify additional or new construction
5 defects as the defects become known to the claimant. The court
6 shall allow the action to proceed to trial only as to alleged
7 construction defects that were noticed and for which the
8 claimant has complied with this chapter and as to construction
9 defects reasonably related to, or caused by, the construction
10 defects previously noticed. Nothing in this section shall
11 preclude subsequent or further actions.

12 **Sec. 5. NEW SECTION. 686.5 Limitations of chapter.**

13 This chapter does not do any of the following:

14 1. Bar or limit any rights, including the right of specific
15 performance to the extent such right would be available in the
16 absence of this chapter, any causes of action, or any theories
17 on which liability may be based, except as specifically
18 provided in this chapter.

19 2. Bar or limit any defense, or create any new defense,
20 except as specifically provided in this chapter.

21 3. Create any new rights, causes of action, or theories on
22 which liability may be based.

23 **Sec. 6. NEW SECTION. 686.6 Effect of arbitration clauses.**

24 To the extent that an arbitration clause in a contract for
25 the sale, design, construction, or remodeling of real property
26 conflicts with this chapter, this chapter shall control.

27 **Sec. 7. EFFECTIVE DATE.** This Act, being deemed of immediate
28 importance, takes effect upon enactment.

29 **Sec. 8. APPLICABILITY.** This Act applies to defects to
30 all real property or to any improvement to real property,
31 including all real property or improvements in existence prior
32 to the effective date of this Act, for which litigation has not
33 commenced prior to the effective date of this Act.

34 **EXPLANATION**

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill relates to notice and opportunity to repair
3 construction defects. The bill proposes a new Code chapter
4 which provides a mandatory dispute resolution process for
5 construction defects to new property or improvements to an
6 existing property. The bill is effective upon enactment and
7 applies to defects to all real property or to any improvement
8 to real property, including all real property or improvements
9 in existence prior to the effective date of the bill, for
10 which litigation has not commenced prior to the effective date
11 of the bill. The bill provides that a claimant must comply
12 with the requirements set forth in the bill before filing an
13 action. The bill provides that if a claimant files an action
14 alleging a construction defect without first complying with
15 the requirements of the bill, the court shall stay the action
16 without prejudice until the requirements have been met. The
17 bill sets forth specific time frames for each part of the
18 dispute resolution.

19 The bill provides that the claimant shall serve written
20 notice of a construction defect claim on the general contractor
21 and subcontractor. In the notice, the claimant shall refer
22 to the new Code chapter and describe the claim in reasonable
23 detail sufficient to determine the general nature of each
24 alleged construction defect, provide a description of the
25 damage or loss resulting from the defect, if known, and
26 describe any work or inspections completed to determine the
27 cause of the damage or loss or correct the construction defect.

28 The bill provides that after being served with the notice
29 of claim, the person is entitled to perform a reasonable
30 inspection of the property or of each unit subject to the
31 claim to assess each alleged construction defect. The bill
32 provides that the claimant shall provide the person served with
33 notice reasonable access to the property during normal working
34 hours to inspect the property to determine the nature and
35 cause of each alleged construction defect and the nature and

1 extent of any repairs or replacements necessary to remedy each
2 construction defect. The bill provides additional details,
3 including providing for destructive testing.

4 The bill provides that the general contractor or
5 subcontractor may serve a copy of the notice of claim to
6 each subcontractor or general subcontractor whom the general
7 contractor or subcontractor reasonably believes is responsible
8 for each construction defect specified in the notice of claim.
9 The bill provides that subcontractors shall be entitled to
10 inspect in the same manner as general contractors. The general
11 contractor or subcontractor must then serve a written response,
12 which shall include a report, if any, of the scope of any
13 inspection of the property, the findings and results of the
14 inspection, a statement of whether the general contractor or
15 subcontractor is willing to make repairs to the property or
16 whether such claim is disputed, a description of any repairs
17 they are willing to make, and a timetable for the completion of
18 the repairs. This response may also be served on the initial
19 claimant by the general contractor.

20 The bill provides that the person who was served the notice
21 must serve a written response to the claimant. The bill
22 provides that the written response must fall into one of five
23 categories, which are laid forth in the bill.

24 If the person served with a notice of claim disputes the
25 claim and will neither remedy the construction defect nor
26 compromise and settle the claim, or does not respond to the
27 claimant's notice of claim within the time provided in the
28 bill, the claimant may, without further notice, proceed with
29 an action against that person for the claim described in the
30 notice of claim.

31 A claimant who receives a timely settlement offer must
32 accept or reject the offer by serving written notice of such
33 acceptance or rejection on the person or company making the
34 offer within the time period set forth in the bill after
35 receiving the settlement offer. The bill specifies that if

1 a claimant initiates an action without first accepting or
2 rejecting the offer, the court shall stay the action upon
3 timely motion until the claimant complies with the requirement.

4 The bill provides that if the claimant timely and properly
5 accepts the offer to repair an alleged construction defect,
6 the claimant shall provide the offeror and the offeror's
7 agents reasonable access to the claimant's property during
8 normal working hours to perform the repair by the agreed-upon
9 timetable as stated in the offer. If the offeror does not make
10 the payment or repair the construction defect within the agreed
11 time and in the agreed manner, except for reasonable delays
12 beyond the control of the offeror, the claimant may, without
13 further notice, proceed with an action against the offeror
14 based upon the claim in the notice of claim. If the offeror
15 makes payment or repairs the defect within the agreed time and
16 in the agreed manner, the claimant is barred from proceeding
17 with an action for the claim described in the notice of claim
18 or as otherwise provided in the accepted settlement offer.

19 The bill does not bar or limit any rights, including the
20 right of specific performance to the extent such right would be
21 available in the absence of the new Code chapter, any causes of
22 action, or any theories on which liability may be based, except
23 as specifically provided in the bill. Additionally, the bill
24 does not bar or limit any defense, or create any new defense,
25 except as specifically provided in the new Code chapter.
26 Finally, the bill does not create any new rights, causes of
27 actions, or theories on which liability may be based.

28 The bill provides that to the extent that an arbitration
29 clause in a contract for the sale, design, construction, or
30 remodeling of real property conflicts with the bill, the bill
31 shall control.