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SENATE BILL 6627

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State of Washington

59th Legislature

2006 Regular Session

By Senators Weinstein and Fairley

Read first time 01/17/2006. Referred to Committee on Financial Institutions, Housing & Consumer Protection.

1 AN ACT Relating to tolling the statute of limitations for  
2 construction defect actions; and amending RCW 64.50.020.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to read  
5 as follows:

6 (1) In every construction defect action brought against a  
7 construction professional, the claimant shall, no later than forty-five  
8 days before filing an action, serve written notice of claim on the  
9 construction professional. The notice of claim shall state that the  
10 claimant asserts a construction defect claim against the construction  
11 professional and shall describe the claim in reasonable detail  
12 sufficient to determine the general nature of the defect.

13 (2) Within twenty-one days after service of the notice of claim,  
14 the construction professional shall serve a written response on the  
15 claimant by registered mail or personal service. The written response  
16 shall:

17 (a) Propose to inspect the residence that is the subject of the  
18 claim and to complete the inspection within a specified time frame.

1 The proposal shall include the statement that the construction  
2 professional shall, based on the inspection, offer to remedy the  
3 defect, compromise by payment, or dispute the claim;

4 (b) Offer to compromise and settle the claim by monetary payment  
5 without inspection. A construction professional's offer under this  
6 subsection (2)(b) to compromise and settle a homeowner's claim may  
7 include, but is not limited to, an express offer to purchase the  
8 claimant's residence that is the subject of the claim, and to pay the  
9 claimant's reasonable relocation costs; or

10 (c) State that the construction professional disputes the claim and  
11 will neither remedy the construction defect nor compromise and settle  
12 the claim.

13 (3)(a) If the construction professional disputes the claim or does  
14 not respond to the claimant's notice of claim within the time stated in  
15 subsection (2) of this section, the claimant may bring an action  
16 against the construction professional for the claim described in the  
17 notice of claim without further notice.

18 (b) If the claimant rejects the inspection proposal or the  
19 settlement offer made by the construction professional pursuant to  
20 subsection (2) of this section, the claimant shall serve written notice  
21 of the claimant's rejection on the construction professional. After  
22 service of the rejection, the claimant may bring an action against the  
23 construction professional for the construction defect claim described  
24 in the notice of claim. If the construction professional has not  
25 received from the claimant, within thirty days after the claimant's  
26 receipt of the construction professional's response, either an  
27 acceptance or rejection of the inspection proposal or settlement offer,  
28 then at anytime thereafter the construction professional may terminate  
29 the proposal or offer by serving written notice to the claimant, and  
30 the claimant may thereafter bring an action against the construction  
31 professional for the construction defect claim described in the notice  
32 of claim.

33 (4)(a) If the claimant elects to allow the construction  
34 professional to inspect in accordance with the construction  
35 professional's proposal pursuant to subsection (2)(a) of this section,  
36 the claimant shall provide the construction professional and its  
37 contractors or other agents reasonable access to the claimant's

1 residence during normal working hours to inspect the premises and the  
2 claimed defect.

3 (b) Within fourteen days following completion of the inspection,  
4 the construction professional shall serve on the claimant:

5 (i) A written offer to remedy the construction defect at no cost to  
6 the claimant, including a report of the scope of the inspection, the  
7 findings and results of the inspection, a description of the additional  
8 construction necessary to remedy the defect described in the claim, and  
9 a timetable for the completion of such construction;

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

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

14 (c) If the construction professional does not proceed further to  
15 remedy the construction defect within the agreed timetable, or if the  
16 construction professional fails to comply with the provisions of (b) of  
17 this subsection, the claimant may bring an action against the  
18 construction professional for the claim described in the notice of  
19 claim without further notice.

20 (d) If the claimant rejects the offer made by the construction  
21 professional pursuant to (b)(i) or (ii) of this subsection to either  
22 remedy the construction defect or to compromise and settle the claim by  
23 monetary payment, the claimant shall serve written notice of the  
24 claimant's rejection on the construction professional. After service  
25 of the rejection notice, the claimant may bring an action against the  
26 construction professional for the construction defect claim described  
27 in the notice of claim. If the construction professional has not  
28 received from the claimant, within thirty days after the claimant's  
29 receipt of the construction professional's response, either an  
30 acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of  
31 this subsection, then at anytime thereafter the construction  
32 professional may terminate the offer by serving written notice to the  
33 claimant.

34 (5)(a) Any claimant accepting the offer of a construction  
35 professional to remedy the construction defect pursuant to subsection  
36 (4)(b)(i) of this section shall do so by serving the construction  
37 professional with a written notice of acceptance within a reasonable  
38 time period after receipt of the offer, and no later than thirty days

1 after receipt of the offer. The claimant shall provide the  
2 construction professional and its contractors or other agents  
3 reasonable access to the claimant's residence during normal working  
4 hours to perform and complete the construction by the timetable stated  
5 in the offer.

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

10 (6) Any action commenced by a claimant prior to compliance with the  
11 requirements of this section shall be subject to dismissal without  
12 prejudice, and may not be recommenced until the claimant has complied  
13 with the requirements of this section. If an action is dismissed  
14 without prejudice under this section, the applicable statute of  
15 limitations for the claims shall be tolled from the earlier of the  
16 commencement of the dismissed action or the service of the original  
17 notice of claim, and shall remain tolled until sixty days after the  
18 period of time during which the filing of a subsequent action is barred  
19 under this section.

20 (7) Nothing in this section may be construed to prevent a claimant  
21 from commencing an action on the construction defect claim described in  
22 the notice of claim if the construction professional fails to perform  
23 the construction agreed upon, fails to remedy the defect, or fails to  
24 perform by the timetable agreed upon pursuant to subsection (2)(a) or  
25 (5) of this section.

26 (8) Prior to commencing any action alleging a construction defect,  
27 or after the dismissal of any action without prejudice pursuant to  
28 subsection (6) of this section, the claimant may amend the notice of  
29 claim to include construction defects discovered after the service of  
30 the original notice of claim, and must otherwise comply with the  
31 requirements of this section for the additional claims. The service of  
32 an amended notice of claim shall relate back to the original notice of  
33 claim for purposes of tolling statutes of limitations and repose.  
34 Claims for defects discovered after the commencement or recommencement  
35 of an action may be added to such action only after providing notice to  
36 the construction professional of the defect and allowing for response

1 under subsection (2) of this section.

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