

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1403

S.P. 492

In Senate, March 22, 2005

**An Act To Create an Alternative Method of Dispute Resolution in
Homeowner Claims of Defective Workmanship or Materials for
Manufactured Housing**

Reference to the Committee on Business, Research and Economic Development suggested
and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator COWGER of Kennebec.
Cosponsored by Senators: DAVIS of Piscataquis, HASTINGS of Oxford, PLOWMAN of
Penobscot, WESTON of Waldo, Representatives: GERZOFSKY of Brunswick, RECTOR of
Thomaston, ROBINSON of Raymond, SMITH of Monmouth.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 14 MRSA c. 755** is enacted to read:

6 **CHAPTER 755**

8 **HOMEOWNER CLAIMS**

10 **§8551. Legislative findings**

12 The Legislature finds that it is beneficial to have an
14 alternative method to resolve construction disputes for
16 manufactured housing to reduce the need for litigation and
18 protect the rights of homeowners. An effective alternative
20 dispute resolution mechanism in certain construction defect
22 matters should involve the claimant's filing a notice of claim
with the manufacturer or dealer of the manufactured housing that
the claimant asserts is responsible for the defect and should
provide the manufacturer or dealer of the manufactured housing
with an opportunity to resolve the claim without resort to
further legal process.

24 **§8552. Definitions**

26 **1. Action.** "Action" means a civil action or arbitration
28 proceeding for damages or indemnity asserting a claim for damage
30 to or loss of a residence or personal property caused by an
32 alleged construction defect, but does not include an
administrative action or civil action or arbitration proceeding
asserting a claim for alleged personal injuries arising out of an
alleged construction defect.

34 **2. Association.** "Association" means an association
36 organized pursuant to the laws of the State that represents the
38 interests of a group of owners of residential property,
including, but not limited to, a condominium association, a
cooperative or an association that represents the owners of
mobile homes on rented lots in a mobile home park.

40 **3. Claimant.** "Claimant" means a homeowner who asserts a
42 claim against a contractor concerning a defect in the
44 construction of a residence or in the substantial remodeling or
repair of a residence. "Claimant" does not include a contractor,
subcontractor, supplier or design professional.

46 **4. Construction defect.** "Construction defect" means a
48 deficiency in or arising out of the design, specifications,
surveying, planning, supervision, observation of construction,
construction, repair, alteration or remodeling of a residence,

2 any appurtenance to the residence or the real property to which
3 the residence or appurtenance is affixed resulting from:

4 A. Defective material, products or components used in the
5 construction or remodeling;

6 B. A violation of the applicable laws or codes in effect at
7 the time of construction or remodeling that gives rise to a
8 cause of action under section 8553;

9 C. A failure of the design of the residence to meet the
10 applicable professional standards of care at the time of
11 governmental approval; or

12 D. A failure to construct or remodel the residence in
13 accordance with generally accepted trade standards at the
14 time of construction.

15 5. Contractor. "Contractor" means a person licensed under
16 Title 10, section 9021.

17 6. Homeowner. "Homeowner" means a person, company, firm,
18 partnership, corporation or association that contracts with a
19 contractor for the design, development, construction, sale or
20 construction and sale of a residence; for the repair of a new or
21 existing residence; or for the construction, alteration, addition
22 or repair of an appurtenance to a new or existing residence.
23 "Homeowner" includes, but is not limited to, a subsequent
24 purchaser of a residence from any homeowner.

25 7. Manufactured housing. "Manufactured housing" has the
26 same meaning as in Title 10, section 9002, subsection 7.

27 8. Residence. "Residence" means a single-family house,
28 duplex or multifamily unit designed for residential use in which
29 title to each individual unit is transferred to the owner under a
30 condominium or cooperative system and includes common areas and
31 improvements that are owned or maintained by an association or by
32 members of an association. "Residence" includes the systems,
33 other components, improvements, other structures or recreational
34 facilities that are appurtenant to but not necessarily a part of
35 the house, duplex or multifamily unit at the time of its initial
36 sale.

37 9. Service. "Service" means delivery by certified mail,
38 return receipt requested, to the last known address of an
39 addressee, acknowledgment of receipt by the addressee or service
40 of process by a deputy sheriff. For a corporation, limited
41 partnership, limited liability company or other registered
42 business organization, "service" means service on the registered
43

2 agent or other agent for service of process authorized by state
3 law.

4 **§8553. Action; dismissal without prejudice**

6 A claimant may file an action under this chapter for damages
7 or indemnity asserting a claim for damage to or loss of a
8 residence or personal property caused by an alleged construction
9 defect to manufactured housing in a transaction requiring a home
10 construction contract under Title 10, chapter 219-A. If a
11 claimant files an action without first complying with the
12 requirements of this chapter, the court shall on application by a
13 party to the action dismiss the action without prejudice and the
14 action may not be refiled or resumed until the claimant has
15 complied with the requirements of this chapter.

16 **§8554. Notice and opportunity to repair**

18 **1. Notice of claim required.** In an action brought under
19 this chapter, the claimant shall, no later than 90 days before
20 initiating an action against a contractor, provide service of
21 written notice of claim on that contractor. The notice of claim
22 must state that the claimant asserts a construction defect claim
23 and is providing notice of the claim pursuant to the requirements
24 of this chapter. The notice of claim must describe the claim in
25 detail sufficient to explain the nature of the alleged
26 construction defect and the damage or loss resulting from the
27 defect, if known. In addition, the claimant shall provide to the
28 contractor any evidence that depicts the nature and cause of the
29 construction defect, including expert reports, photograph, and
30 videotapes, if that evidence would be discoverable under this
31 State's evidentiary rules. If, after proper request, the claimant
32 fails to provide evidence as required under this subsection, then
33 the claimant may not introduce the evidence in an action. This
34 subsection does not preclude a claimant from filing an action
35 sooner than 90 days after service of written notice as expressly
36 provided in subsection 5 or 6.

38 **2. Response to notice of claim.** Within 30 days after
39 service of the notice of claim required in subsection 1, a
40 contractor who has received the notice of claim shall serve on
41 the claimant, and on any other contractor who has received the
42 notice of claim, a written response to the claim that:

44 A. Offers to remedy the alleged construction defect at no
45 cost to the claimant, without inspection, and includes a
46 detailed description of the proposed repairs necessary to
47 remedy the defect and a timetable for the completion of such
48 repairs;

50

2 B. Offers to compromise and settle the claim by monetary
3 payment, without inspection, and includes a timetable for
4 making payment;

5 C. Offers to compromise and settle the claim by a
6 combination of repairs and monetary payment, without
7 inspection, and includes a detailed description of the
8 proposed repairs and a timetable for the completion of such
9 repairs and making payment;

10 D. Proposes to inspect the residence that is the subject of
11 the claim; or

12 E. Disputes the claim and states that the contractor will
13 not remedy the defect or compromise and settle the claim.

14 3. Proposal for inspection. If a proposal for an inspection
15 is made pursuant to subsection 2, paragraph D, the claimant
16 shall, within 30 days of receiving the contractor's proposal,
17 provide the contractor and a subcontractor, agent, expert or
18 consultant of the contractor prompt and complete access to the
19 residence so that they may inspect the residence, document any
20 alleged construction defect and perform any destructive or
21 nondestructive testing required to fully and completely evaluate
22 the nature, extent and cause of the claimed defect and the nature
23 and extent of any repairs or replacements that may be necessary
24 to remedy the alleged defect. If destructive testing is required,
25 the contractor shall give the claimant advance notice of the test
26 and shall, after completion of the test, return the residence to
27 as close to its pretested condition as is reasonably practicable.
28 If an inspection or test reveals a condition that requires
29 additional testing to allow the contractor to fully and
30 completely evaluate the nature, cause and extent of the
31 construction defect, the contractor shall provide notice to the
32 claimant of the need for the additional testing and the claimant
33 shall provide access as required by this subsection. If a claim
34 is asserted on behalf of owners of multiple residences or
35 multiple owners of units within a multifamily complex, then the
36 contractor is entitled to inspect each residence or unit.

37 4. Response to notice of claim following inspection.
38 Within 15 days following completion of the inspection and testing
39 under subsection 3, the contractor shall serve on the claimant a
40 written response to the notice of claim that:

41 A. Offers to remedy the alleged construction defect at no
42 cost to the claimant and includes a detailed description of
43 the proposed repairs necessary to remedy the defect and a
44 timetable for the completion of such repairs;

45

2 B. Offers to compromise and settle the claim by monetary
payment and includes a timetable for making payment;

4 C. Offers to compromise and settle the claim by a
combination of repairs and monetary payment and includes a
6 detailed description of the proposed repairs and a timetable
for the completion of such repairs and making payment; or

8
10 D. Disputes the claim and states that the contractor will
not remedy the defect or compromise and settle the claim.

12 **5. Contractor's rejection of claim; failure to respond or**
remedy. If a claimant receives a written statement that the
14 contractor will not proceed further to remedy the defect pursuant
to subsection 2, paragraph E or subsection 4, paragraph D or the
16 contractor does not respond to the claimant's notice of claim
within the time required by subsection 2, the claimant may bring
18 an action against the contractor for the claim described in the
notice of claim without further notice except as otherwise
20 provided by this Title.

22 **6. Claimant's acceptance of offer; failure to respond or**
remedy. If a claimant accepts a contractor's offer made pursuant
24 to subsection 2, paragraph A, B or C or subsection 4, paragraph
A, B or C and the contractor does not make the monetary payment
26 or remedy the construction defect within the agreed timetable,
the claimant may bring an action against the contractor for the
28 claim described in the notice of claim without further notice
except as otherwise provided by this Title and file the
30 contractor's offer and claimant's acceptance, which creates a
rebuttable presumption that a binding and valid settlement
32 agreement was created.

34 **7. Claimant's rejection of offer.** If the claimant rejects
36 an offer made by a contractor pursuant to subsection 2 or 4 to
remedy a construction defect or to settle a claim by monetary
38 payment or a combination of both, the claimant may serve written
notice of the claimant's rejection on the contractor. The notice
40 must include the known specific factual and legal reasons for the
claimant's rejection of the contractor's offer.

42 **8. Supplemental offer.** Upon receipt of a claimant's
44 rejection and the reasons for the rejection under subsection 7,
the contractor may, within 15 days of receiving the rejection,
46 make a supplemental offer pursuant to subsection 2, paragraph A,
B or C or subsection 4, paragraph A, B or C.

48 **9. Claimant's rejection of supplemental offer.** If the
50 claimant rejects a supplemental offer made by the contractor
pursuant to subsection 8, the claimant may serve written notice

2 of the claimant's rejection on the contractor. The notice must
4 include the known specific factual and legal reasons for the
6 claimant's rejection of the contractor's supplemental settlement
8 offer. After securing written notice under this subsection, the
10 claimant may bring an action against the contractor for the claim
12 described in the notice of claim without further notice except as
14 otherwise provided in this Title.

10 10. Written notice of acceptance. A claimant who accepts
12 an offer of a contractor under this section to remedy a
14 construction defect must serve the contractor with a written
16 notice of acceptance within 30 days after receipt of the
18 contractor's settlement offer. If a claimant initiates an action
20 under this chapter without first accepting or rejecting the
22 offer, the court shall dismiss the action pursuant to section
24 8553.

18 11. Reasonable access required. If a claimant accepts a
20 contractor's offer to repair a construction defect described in a
22 notice of claim under subsection 1, the claimant shall provide
24 the contractor and a subcontractor, agent, expert or consultant
26 of the contractor prompt and reasonable access to the residence
28 to perform and complete the repair by the timetable stated in the
30 settlement offer.

26 12. Statute of limitations. A claimant's service of the
28 written notice of claim under subsection 1 tolls the statute of
30 limitations relating to any person covered by this chapter until
32 the later of:

32 A. Ninety days after the contractor's receipt of the notice
34 of claim pursuant to subsection 1; and

34 B. Thirty days after the end of the repair period or
36 payment period stated in the offer, if the claimant has
38 accepted the offer. By stipulation of the parties, the
40 period may be extended and the statute of limitations is
42 tolled during the extension.

40 **§8555. Additional construction defects; additional notice and**
42 **opportunity to repair not required**

44 A construction defect that is discovered after a claimant
46 has provided a contractor with a notice of claim under section
48 8554, subsection 1 and that is substantially related to the
50 factual circumstances, acts or omissions giving rise to the
construction defects alleged in the notice of claim may be
alleged in an action involving the claims alleged in the notice
of claim without following the notice of claim procedure required
by this chapter.

2 **§8556. Release; insurance**

4 **1. Action barred.** If a claimant accepts an offer under
6 section 8554 and the contractor fulfills the offer:

8 A. The claimant is barred from bringing an action for the
10 claim described in the notice of claim under section 8554,
12 subsection 1; and

14 B. The contractor is deemed for insurance purposes to have
16 been legally obligated to make the repairs or the monetary
18 payment as if the claimant had recovered a judgment against
20 the contractor in the combined amount of the cost of any
22 repairs and the amount of any monetary payment. The repairs
24 and monetary payment under this paragraph are enforceable as
26 a judicial settlement but do not constitute a legal judgment
28 against the contractor for the purposes of obtaining
30 insurance coverage or submitting a competitive bid.

32 **2. Exception for code violations.** Notwithstanding the
34 provisions of subsection 1, if a construction defect that gave
36 rise to the notice of claim involves a violation of a legally
38 enforceable building code, including, but not limited, to a state
40 or local building, electrical, plumbing or other code, or the
42 provisions of Title 10, chapter 951 and if after the homeowner
44 accepts an offer made in compliance with this chapter by the
46 contractor and the contractor fulfills that offer the violation
48 is not corrected, the homeowner may bring an action for that
50 portion of the claim described in the notice of claim that
 involves the violation.

§8557. Contract of sale; provisions

1. Notice required. Upon entering into a contract for the
 design, development, construction, sale or construction and sale
 of a residence; for the repair of a new or existing residence; or
 for the construction, alteration, addition or repair of an
 appurtenance to a new or existing residence in which the contract
 amount exceeds the amount requiring a home construction contract
 pursuant to Title 10, chapter 219-A, the contractor must provide
 written notice to the homeowner of the contractor's right to
 resolve alleged construction defects before a homeowner may
 commence litigation against the contractor under this chapter.
 The notice required by this section must be conspicuous and may
 be included as part of the contract.

2. Form of notice. The notice required by subsection 1
 must be in substantially the following form:

2 MAINE LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE
3 YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION
4 AGAINST THE CONTRACTOR WHO CONSTRUCTED, REMODELED OR REPAIRED
5 YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER
6 ACTION, YOU MUST SERVE THE CONTRACTOR WITH A WRITTEN NOTICE OF
7 ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE
8 LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR
9 AND/OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY
10 OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND
11 PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT
12 YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

13 **§8558. Limitations**

14 The procedures in this chapter do not create a cause of
15 action on behalf of a claimant or contractor. This chapter does
16 not apply to a contractor's right to seek contribution from or
17 indemnity or recovery against a subcontractor, supplier or design
18 professional for any claim made against the contractor by a
19 claimant.

20 **§8559. Effective date**

21 This chapter applies to an action commenced after January 1,
22 2006, regardless of the date of sale or substantial completion of
23 the residence at issue in the action.

24 **SUMMARY**

25 **30**
26 This bill requires a homeowner who intends to file an action
27 against a manufacturer or dealer of manufactured housing alleging
28 a construction defect to first provide written notice of each
29 alleged construction defect to the manufacturer or dealer of
30 manufactured housing 90 days before a suit is filed and provide
31 the evidence supporting the claim. A claimant must provide the
32 manufacturer or dealer of manufactured housing reasonable access
33 to the residence to determine the nature and extent of the
34 defect. The manufacturer or dealer of manufactured housing must
35 respond to the claimant within 30 days of the notice and may
36 offer to inspect the property, remedy the defect, compromise by
37 payment or reject in whole or in part the claim. A court must
38 dismiss an action commenced against a manufacturer or dealer of
39 manufactured housing by a claimant who has failed to comply with
40 the notice and opportunity to repair requirements. This bill also
41 requires a manufacturer or dealer of manufactured housing
42 contractor to provide notice of the provisions of this bill to a
43 homeowner upon entering a home construction contract.