

# Addressing the High Cost of Building: Keeping a Lid on Liability Insurance

A recent spate of legal actions against housing contractors has created a problem for builders, whose liability insurance rates have increased dramatically. In some instances, builders have found that liability insurance is no longer available. While this litigation has an impact on all contractors, it could also create serious difficulties for those who specialize in affordable housing.

Recognizing the chilling effect these actions could have on construction, some states have enacted legislation to establish a process whereby the builder has an opportunity to remedy the construction defect before a lawsuit can be brought. As of May 2004, 21 states have enacted some form of "notice and opportunity to repair" legislation. The legislative approaches between the States of Florida and Washington are compared below.

## Properties Covered

Usually only owner-occupied residential properties are covered under the "notice and opportunity to repair" legislation. [Washington's](#) statute defines a residence as a single-family house, duplex, triplex, quadraplex, or an individually owned unit in a multi-unit residential structure. [Florida's](#) statute also includes manufactured and modular housing in the definition.

## Homeowners and Construction Professionals Defined

Most of the new statutes define who falls under the umbrella of this legislation. Washington and Florida define the claimant as an association or homeowner. They also include subsequent purchasers as homeowners. Florida, however, excludes contractors, subcontractors, suppliers, or design professionals from those who can file a lawsuit under the Florida law.

Washington defines a construction professional as an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector who provides any type of construction services. The Florida statute does not use a single term for those who fall under the law, but rather defines separate terms for contractor, design professional, subcontractor, and supplier.

## Notification

All of the statutes require that communication between the parties be in writing and establish specific timeframes for action. Washington's and Florida's statutes require the claimant or property owner to notify the building professional and the court of a list of known or initial construction defects. The list must contain enough detail to determine the general nature of each defect. Washington further requires those who wish to file a claim to notify the construction professional of the problem at least 45 days before they file a claim in court. In Florida, the deadline is 60 days.

## Response

In general, the "notice and opportunity to repair" statutes also require the building industry to respond to the claimant in writing. Washington has a two-phased process for responding to the claim. A construction professional has 21 days to respond in writing to the claim and may request to inspect the property, offer to settle, offer to purchase the property, or dispute the claim. If the claimant accepts the request to inspect the property, the construction professional must inspect the property and, within 30 days of the inspection, respond in writing to the claimant.

Washington claimants have the option of accepting or rejecting the construction professional's offer to repair the defect or to pay a sum to have the defect repaired, but must do so in writing within 30 days. According to the statute, if the offer is not accepted within 30 days, the construction professional can withdraw the offer.

Authorities in Florida provide a much shorter timeframe for resolving construction defect disputes. The statute requires the contractor to inspect the dwelling within five business days of receiving the notice of claim. All parties must respond in writing to the claimant within 25 days. As in other states, construction professionals can offer to remedy the defect or settle the claim with a monetary payment. In Florida, the claimant is assumed to have accepted the offer unless they reject the offer in writing within 15 days.

Most other deadlines are contained in the offers made by the construction professional. In Florida, however, an offer to settle the claim with a payment must state that the payment will be within 30 days of the claimant's acceptance of the offer.

## Conclusion

Increased liability insurance expenses have the potential to increase the cost of housing; a troubling thought for home buyers in general, but especially so for those who need affordable housing. In addition to Washington and Florida, 19 other states have taken slightly different routes to address this potential problem in affordable housing. One common denominator, though, is that they have all sought to formalize a process for settling these disputes before expensive litigation begins. In doing so, they have reduced the chances that those who develop and build affordable housing will be forced to increase prices and make housing less affordable.