

SECOND REGULAR SESSION

HOUSE BILL NO. 1166

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PRATT (Sponsor), YATES, SCHNEIDER, HANAWAY, DUSENBERG, PEARCE, RECTOR, DIXON, DEEKEN, BYRD, MAYER, COOPER (120), CROWELL, ERVIN, LUETKEMEYER, DEMPSEY, HOBBS, RICHARD, BROWN, STEFANICK, BRUNS, JOHNSON (47), EMERY, WOOD, PARKER, ROARK, JETTON, HUNTER, BAKER, WASSON, BLACK, RUESTMAN, WILSON (130), HUBBARD, HOSKINS, WILLOUGHBY, DOUGHERTY, LeVOTA, BISHOP, SKAGGS AND VOGT (Co-sponsors).

Read 1st time January 20, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3811L.02I

AN ACT

To amend chapter 431, RSMo, by adding thereto six new sections relating to the resolution of disputes concerning alleged defective residential construction.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 431, RSMo, is amended by adding thereto six new sections, to be known as sections 431.300, 431.303, 431.306, 431.309, 431.312, and 431.315, to read as follows:

431.300. As used in sections 431.300 to 431.315, unless the context clearly requires otherwise, the following terms shall mean:

(1) "Action", any civil lawsuit, action, or arbitration proceeding in contract or tort or otherwise for damages or indemnity brought to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage to or the loss of use of real or personal property caused by an alleged defect arising out of or related to the design, construction, condition, or sale of a residence or substantial remodel of a residence. Action does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect;

(2) "Association":

(a) An association or unit owners' association as defined in subdivision (3) of section 448.1-103, RSMo;

(b) A homeowner's association, including but not limited to a nonprofit corporation or unincorporated association of home owners created under a declaration to own and

15 operate portions of a planned community or other residential subdivision and which has
16 the power under the declaration to assess association members to pay the costs and
17 expenses incurred in the performance of the association's obligations under the
18 declaration, or tenants-in-common with respect to the ownership of common areas or
19 amenities of a planned community or other residential subdivision; or

20 (c) Any cooperative form of ownership of multiunit housing;

21 (3) "Claimant", a homeowner or association that asserts a claim against a
22 contractor concerning a defect arising from the design, construction, or sale of a residence
23 or in the substantial remodel of a residence;

24 (4) "Construction defect", a deficiency in or out of any of the following:

25 (a) Defective material, products, or components used in new residential
26 construction or from a substantial remodel;

27 (b) Violation of the applicable codes and ordinances, including those ordinances
28 that regulate zoning and the subdivision of land, in effect at the time of the commencement
29 of construction of residential improvements, or if it is a substantive remodel, at the
30 commencement of such substantial remodel; provided however, that any matter that is in
31 compliance with applicable codes and ordinances, including, without limitation, those
32 ordinances that regulate zoning and the subdivision of land, in effect at the commencement
33 of construction of residential improvements, or to a substantial remodel as the case may
34 be, shall conclusively establish that such matter is not and shall not be deemed or construed
35 to be a construction defect unless a construction defect as to such matter is established
36 because of defective material, products, or components used in new residential construction
37 or in a substantial remodel;

38 (c) Failure to construct residential improvements in accordance with accepted trade
39 standards for good and workmanlike construction at the time of construction. Compliance
40 with the applicable codes and ordinances, including, without limitation, those ordinances
41 that regulate zoning and the subdivision of land, in effect at the commencement of
42 construction, or of a substantial remodeling as the case may be, shall conclusively establish
43 construction in accordance with accepted trade standards for good and workmanlike
44 construction, with respect to all matters specified in those codes;

45 (5) "Contractor", any person, company, firm, partnership, corporation,
46 association, or other entity that is engaged in the business of designing, developing,
47 constructing, or remodeling residences;

48 (6) "Homeowner", any person, company, firm, partnership, corporation,
49 association, or other entity who contracts with a contractor for the construction,
50 substantial remodel of a residence, or the sale of a residence constructed by such

51 contractor. Homeowner also includes a subsequent purchaser of a residence from any
52 homeowner;

53 (7) "Residence", a single-family house, duplex, triplex, quadraplex, or a unit in a
54 multiunit residential structure in which title to each individual unit is transferred to the
55 owner under a condominium or cooperative system, and shall include common areas and
56 common elements as defined in subdivision (4) of section 448.1-103, RSMo. Residence shall
57 include the land and improvements to land under and around the house, unit, or structure;

58 (8) "Serve" or "service", personal service to the person intended to be notified or
59 mailing by certified mail to the last known address of such person;

60 (9) "Substantial remodel", a remodel of a residence for which the total cost exceeds
61 one-half of the assessed value of the residence for property tax purposes at the time the
62 contract for the remodel work was made.

431.303. 1. A contractor shall provide notice to each homeowner upon entering into
2 a contract for sale, construction, or substantial remodel of a residence of the contractor's
3 right to offer to cure construction defects before a homeowner may commence litigation
4 against the contractor under sections 431.300 to 431.315. Such notice shall be conspicuous
5 and may be included as part of the underlying contract signed by the homeowner. In the
6 sale of a condominium unit, the requirement for delivery of such notice shall be deemed
7 satisfied if contained in a public offering statement in accordance with the laws of this
8 state.

9 2. The notice required by this subsection shall be in substantially the following
10 form:

11 SECTIONS 431.300 TO 431.315 OF THE MISSOURI REVISED STATUTES
12 PROVIDES YOU WITH CERTAIN RIGHTS IF YOU HAVE A DISPUTE WITH A
13 CONTRACTOR REGARDING CONSTRUCTION DEFECTS. IF YOU HAVE A
14 DISPUTE WITH A CONTRACTOR YOU MUST DELIVER TO THE CONTRACTOR
15 A WRITTEN CLAIM OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE
16 DEFECTIVE AND PROVIDE YOUR CONTRACTOR THE OPPORTUNITY TO MAKE
17 AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED
18 TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR. UNLESS YOUR
19 CONTRACTOR REFUSES TO RESPOND TO YOUR NOTICE OR REFUSES TO
20 MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS, YOU WILL BE
21 REQUIRED TO ATTEMPT TO RESOLVE YOUR DISPUTE THROUGH MEDIATION
22 PRIOR TO FILING SUIT. BEFORE YOU MAY FILE A LAWSUIT, YOU MUST FILE
23 A CLAIM AS NOTED ABOVE AND ATTEMPT TO RESOLVE THE CONSTRUCTION
24 DEFECT DISPUTE AT LEAST NINETY DAYS BEFORE YOU FILE A LAWSUIT.

25 **READ THIS NOTICE CAREFULLY. THERE ARE STRICT DEADLINES AND**
26 **PROCEDURES UNDER SECTIONS 431.300 TO 431.315 WHICH MUST BE OBEYED**
27 **IN ORDER TO PRESERVE YOUR ABILITY TO FILE A LAWSUIT. OTHER THAN**
28 **REPAIRS TO WORK DONE BY THE CONTRACTOR THAT ARE NECESSARY TO**
29 **PROTECT THE HEALTH AND SAFETY OF PERSONS LIVING IN A RESIDENCE OR**
30 **TO AVOID ADDITIONAL SIGNIFICANT AND MATERIAL DAMAGE TO THE**
31 **RESIDENCE, UNDER SUBDIVISION (10) OF SECTION 431.306, YOU MAY NOT**
32 **INCLUDE IN CLAIMS AGAINST YOUR CONTRACTOR THE COSTS OF OTHER**
33 **REPAIRS YOU PERFORM BEFORE YOU ARE ENTITLED TO FILE A LAWSUIT**
34 **UNDER SECTIONS 431.300 TO 431.315.**

35 **3. Nothing in sections 431.300 to 431.315 shall preclude or bar any action if notice**
36 **is not given to the homeowner or association as required by this section.**

431.306. 1. In every action against a contractor arising from construction or
2 **substantial remodel of a residence, a claimant shall serve the contractor with a written**
3 **notice of claim of construction defects. The claimant must wait ninety days after serving**
4 **the contractor with the written notice of claim of construction defect before filing an action.**
5 **The notice of claim shall state that the claimant asserts a construction defect claim against**
6 **the contractor and shall describe the claim in reasonable detail sufficient to determine the**
7 **general nature of the defect and known results of the defect.**

8 **2. Within thirty days after service of the notice of claim, the contractor shall serve**
9 **a written response on the claimant which shall:**

10 **(1) Propose to inspect the residence that is the subject of the claim and to complete**
11 **the inspection within a specified time frame. The proposal shall include the statement that**
12 **the contractor shall, based on the inspection, thereafter offer to remedy the defect,**
13 **compromise by payment, or dispute the claim; or**

14 **(2) Offer to remedy the claim, without an inspection, within a specified time frame;**
15 **or**

16 **(3) Offer to remedy part of the claim without inspection, and compromise and settle**
17 **the remainder of the claim by monetary payment within a specified time frame; or**

18 **(4) Offer to compromise and settle the claim by monetary payment without**
19 **inspection. A contractor's offer under this subdivision to compromise and settle a**
20 **homeowner or association's claim may include, but is not limited to, an express offer to**
21 **purchase the claimant's residence that is the subject of the claim; or**

22 **(5) State that the contractor disputes the claim and will neither remedy the**
23 **construction defect nor compromise and settle the claim.**

24 **3. (1) If the contractor disputes the claim under subdivision (5) of subsection 2 of**

25 this section or does not respond to the claimant's notice of claim within the time stated in
26 subsection 2 of this section, the claimant may bring an action against the contractor for the
27 defect described in the notice of claim without further notice.

28 (2) If the claimant rejects the inspection proposal or the settlement offer made by
29 the contractor under subsection 2 of this section, the claimant shall serve written notice of
30 the claimant's rejection on the contractor. The notice shall include the basis for claimant's
31 rejection. After service of the rejection, the claimant and contractor shall attempt to
32 resolve the claim through mediation in accordance with section 431.312. If the claim is not
33 resolved through mediation, the claimant may bring an action against the contractor for
34 the construction defect claim described in the notice of claim without further notice. If the
35 contractor has not received from the claimant within thirty days after the claimant's
36 receipt of the contractor's response either an acceptance or rejection of the inspection
37 proposal or settlement offer, the contractor may at any time thereafter terminate the
38 proposal or offer by serving written notice to the claimant. If the contractor so terminates
39 the proposal, the claimant may then bring an action against the contractor for the
40 construction defect claim described in the notice of claim without further notice.

41 4. (1) If the claimant elects to allow the contractor to inspect in accordance with
42 the contractor's proposal under subdivision (1) of subsection 2 of this section, within
43 fourteen days after the date of the claimant's election to allow an inspection is
44 communicated to the contractor the claimant and contractor shall agree on a time and date
45 for the inspection, and such inspection shall occur within fourteen days from the date of
46 the communication of such election for an inspection unless the claimant and contractor
47 agree to a later date. The claimant shall provide the contractor and its subcontractors,
48 suppliers, or other agents reasonable access to the claimant's residence during normal
49 working hours to inspect the premises and the claimed defect. The contractor shall
50 perform the inspection at its own cost. If destructive testing is necessary, the contractor
51 shall repair all damage caused by the testing.

52 (2) Within fourteen days following completion of the inspection, the contractor
53 shall serve on the claimant:

54 (a) A written offer to remedy all of the claim at no cost to the claimant, including
55 a report of the scope of the inspection, the findings and results of the inspection, a
56 description of the construction or work necessary to remedy the defect described in the
57 claim, and a timetable for the completion of such construction or work; or

58 (b) A written offer to remedy part of the claim, and compromise and settle the
59 remainder of the claim by monetary payment, within a specified time frame; or

60 (c) A written offer to compromise and settle all of the claim by monetary payment

61 under subdivision (3) of subsection 2 of this section; or

62 (d) A written statement that the contractor will not proceed further to remedy the
63 defect.

64 (3) If the contractor does not proceed further to remedy the construction defect
65 within the stated timetable, or if the contractor fails to comply with the provisions of
66 subdivision (2) of this subsection, the claimant may bring an action against the contractor
67 for the claim described in the notice of claim without further notice.

68 (4) If the claimant rejects the offer made by the contractor under paragraph (a),
69 (b), or (c) of subdivision (2) of this subsection to either remedy the construction defect or
70 to compromise and settle the claim by monetary payment, the claimant shall serve written
71 notice of the claimant's rejection and the reasons for the rejection on the contractor. After
72 service of the rejection notice, the claimant and contractor shall attempt to resolve the
73 dispute through mediation in accordance with section 431.312. If the dispute is not
74 resolved through mediation, the claimant may bring an action against the contractor for
75 the construction defect claim described in the notice of claim. If the contractor has not
76 received from the claimant within thirty days after the claimant's receipt of the
77 contractor's response either an acceptance or rejection of the offer made under paragraph
78 (a), (b), or (c) of subdivision (2) of this subsection, the contractor may at any time
79 thereafter terminate the offer by serving written notice to the claimant. If the contractor
80 so terminates its offer, the claimant may bring an action against the contractor for the
81 claim described in the notice of claim without further notice.

82 (5) If the claimant accepts the offer of the contractor to remedy part of the
83 construction defect without inspection and compromise and settle the remainder of the
84 claim by monetary payment under paragraph (b) of subdivision (2) of this subsection, the
85 claimant shall provide the contractor and its contractors or other agents reasonable access
86 to the claimant's residence during normal working hours to perform and complete the
87 construction or work by the timetable stated in the offer. Any dispute relating to
88 performance of the remedial construction or work by the contractor shall be subject to
89 mediation in accordance with section 431.312. If the dispute is not resolved by mediation,
90 the claimant may bring an action against the contractor for the construction defect set
91 forth in the notice of claim.

92 5. (1) Any claimant accepting the offer of a contractor to remedy the construction
93 defect under paragraph (a) of subdivision (2) of subsection 4 of this section shall do so by
94 serving the contractor with a written notice of acceptance within a reasonable time period
95 after receipt of the offer and no later than thirty days after receipt of the offer. The
96 claimant shall provide the contractor and its contractors or other agents reasonable access

97 to the claimant's residence during normal working hours to perform and complete the
98 construction or work by the timetable stated in the offer. Any dispute relating to
99 performance of the remedial construction or work by the contractor shall be subject to
100 mediation in accordance with section 431.312. If the dispute is not resolved by mediation,
101 the claimant may bring an action against the contractor for the construction defect set
102 forth in the notice of claim.

103 (2) The claimant and contractor may, by mutual written agreement, alter the extent
104 of construction or the timetable for completion of construction stated in the offer,
105 including, but not limited to, repair of additional defects.

106 6. Any action commenced by a claimant prior to compliance with the requirements
107 of this section shall, upon motion by a party to the action, be subject to dismissal without
108 prejudice, and shall not be recommenced until the claimant has complied with the
109 requirements of this section.

110 7. Prior to commencing any action alleging a construction defect or after the
111 dismissal of any action without prejudice under subsection 6 of this section, the claimant
112 may amend the notice of claim to include construction defects discovered after the service
113 of the original notice of claim and shall otherwise comply with the requirements of this
114 section for the additional claims. The service of an amended notice of claim shall relate
115 back to the original notice of claim for purposes of tolling statutes of limitations and
116 repose. Claims for defects discovered after the commencement or recommencement of an
117 action may be added to such action only after providing notice to the contractor of the
118 defect and allowing for response under subsection 2 of this section.

119 8. A claimant's written notice of claim under subsection 1 of this section shall toll
120 the applicable statute of limitation until ninety days after receipt by the contractor of the
121 written notice of claim.

122 9. A written notice of claim and any written response by a contractor shall be
123 treated as a settlement offer and shall not be admissible in an action related to a
124 construction defect asserted therein, or ninety days after mediation required by this
125 section, whichever is later.

431.309. 1. (1) If an association or an executive board acting on behalf of an
2 association institutes an action asserting defects in the construction of two or more
3 residences, common elements, or common areas, the provisions of this section shall apply.
4 For purposes of this section, "action" has the same meaning as set forth in subsection 1 of
5 section 431.300.

6 (2) The board of directors or executive board of the association shall substantially
7 comply with the provisions of this section.

8 **2. (1) Prior to filing an action alleging defective construction, the association or**
9 **board of directors or executive board shall serve written notice of the anticipated**
10 **commencement of such action to each homeowner who is a member of the association at**
11 **the last known address described in the association's records.**

12 **(2) The notice required by subdivision (1) of this subsection shall state a general**
13 **description of the following:**

14 **(a) The nature of the action and the relief sought; and**

15 **(b) The expenses and fees that the board of directors or executive board anticipates**
16 **will be incurred in prosecuting the action.**

17 **(3) The association or board of directors or executive board shall obtain written**
18 **consent to proceed with the action from a majority of the homeowners who are members**
19 **of the association.**

20 **3. Nothing in this section shall be construed to:**

21 **(1) Require the disclosure in the notice or the disclosure to a unit owner of**
22 **attorney-client communications or other privileged communications;**

23 **(2) Permit the notice to serve as a basis for any person to assert the waiver of any**
24 **applicable privilege or right of confidentiality resulting from or to claim immunity in**
25 **connection with the disclosure of information in the notice; or**

26 **(3) Limit or impair the authority of the association or executive board to contract**
27 **for legal services, limit or impair the ability of the association or executive board to make**
28 **such repairs to a unit, common area, or common element as are required to protect the**
29 **health, safety, and welfare of the units' owners, or limit or impair the ability to enforce**
30 **such a contract for legal services.**

431.312. 1. Unless a contractor fails to respond to a written notice of claim or
2 **completely disputes a written notice of claim and refuses to remedy under subdivision (1)**
3 **of subsection 3 of section 431.306, or a contractor takes no action to remedy a defect**
4 **following inspection or takes no action following an offer to remedy or takes no action**
5 **following an offer to remedy part of a defect and compromise and settle the remainder, or**
6 **does not provide a written offer to remedy or compromise as provided in section 431.306,**
7 **a claimant shall attempt to resolve a claim against a contractor through mediation before**
8 **commencing an action against a contractor arising from construction or substantial**
9 **remodel of a residence. Mediation under this section shall be nonbinding and the**
10 **contractor and claimant shall mutually agree upon a qualified independent mediator and**
11 **shall equally share the cost of the mediator. If the parties cannot agree upon a mediator,**
12 **either party may request appointment of a mediator by a court with jurisdiction. The**
13 **mediation shall take place within a reasonable time period, but in no event not later than**

14 **forty-five days after service of a request for mediation by a claimant upon a contractor or**
15 **a request by a contractor upon a claimant. A contractor which receives a request for**
16 **mediation from a claimant shall serve a response in writing within fourteen days and shall**
17 **include within the response the name of a proposed mediator and mediation date. A**
18 **claimant who receives a request for mediation from a contractor shall serve a response in**
19 **writing within fourteen days and shall include within the response the name of a proposed**
20 **mediator and mediation date.**

21 **2. A contractor may include in the mediation any party reasonably necessary for**
22 **resolution of the claim asserted, including but not limited to subcontractors, suppliers,**
23 **insurers, or other agents. This subsection shall not be construed to mandate attendance**
24 **at a mediation by a party other than the contractor served with a notice of claim.**

431.315. 1. Nothing in sections 431.300 to 431.315 shall be construed to create a
2 **theory or cause of action upon which liability may be based, nor to hinder or otherwise**
3 **affect the employment, agency, or contractual relationship between homeowners and**
4 **contractors during the process of construction or remodeling, and does not preclude the**
5 **termination of those relationships as allowed under current law. Nothing in sections**
6 **431.300 to 431.315 shall negate or otherwise restrict a contractor's right to access or**
7 **inspection provided by law, covenant, easement, or contract.**

8 **2. Nothing in sections 431.300 to 431.315 shall be construed to prevent contracts**
9 **between contractors and homeowners from specifying that disputes shall be resolved by**
10 **binding arbitration under chapter 435, RSMo. In contracts between contractors and**
11 **homeowners that specify binding arbitration as the means of dispute resolution, sections**
12 **431.300 to 431.315 shall not be applicable; provided that, in those contracts between**
13 **contractors and homeowners that specify binding arbitration as the means of dispute**
14 **resolution, the contractor shall provide notice under section 435.460, RSMo, that disputes**
15 **may be resolved by binding arbitration and sections 431.300 to 431.315 are not applicable**
16 **to such transactions.**