

House Bill 4111

Sponsored by Representative REARDON (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes presumptions regarding receipt of notice of defect in residence. Establishes presumptions regarding sending and receipt of secondary notice.

Provides that notice of defect is deemed given by all owners of residence. Creates exceptions. Makes notice of defect invalid regarding matter within scope of earlier notice of defect sent to same recipient.

Extends time for owner to commence action against contractor, subcontractor or material supplier that does not respond to notice of defect in residence. Extends time for commencing action following termination of mediation or nonbinding arbitration proceeding.

Extends time for sender of secondary notice to commence action against recipient.

A BILL FOR AN ACT

1
2 Relating to defects in residences; creating new provisions; and amending ORS 701.565, 701.570 and
3 701.585.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 701.565 is amended to read:

6 701.565. (1) Except as provided in ORS 701.600, an owner may not compel arbitration or com-
7 mence a court action against a contractor, subcontractor or supplier to assert a claim arising out
8 of or related to any defect in the construction, alteration or repair of a residence, or in any system,
9 component or material incorporated into a residence, located in this state unless the owner has sent
10 that contractor, subcontractor or supplier a notice of defect as provided in this section and has
11 complied with ORS 701.575.

12 (2)(a) An owner must send a notice of defect by registered or certified mail, return receipt re-
13 quested. If a notice of defect is sent to a contractor or subcontractor, the owner must send the no-
14 tice to the last known address for the contractor or subcontractor as shown in the records of the
15 Construction Contractors Board. If a notice of defect is sent to a supplier, the owner must send the
16 notice to the Oregon business address of the supplier or, if none, to the registered agent of the
17 supplier.

18 **(b) Unless the return receipt establishes an earlier date, a notice of defect mailed in**
19 **compliance with this subsection is conclusively presumed for purposes of ORS 701.560 to**
20 **701.595 to have been received by the contractor, subcontractor or supplier on the third**
21 **business day following the date of mailing.**

22 (3) A notice of defect sent by an owner must include:

23 (a) The name and mailing address of the owner or the owner's legal representative, if any;

24 (b) A statement that the owner may seek to compel arbitration or bring a court action against
25 the contractor, subcontractor or supplier;

26 (c) The address and location of the affected residence;

27 (d) A description of:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) Each defect;

2 (B) The remediation the owner believes is necessary; and

3 (C) Any incidental damage not curable by remediation as described in subparagraph (B) of this
4 paragraph; and

5 (e) Any report or other document evidencing the existence of the defects and any incidental
6 damage.

7 **(4)(a) A notice of defect that complies with this section is deemed for purposes of ORS**
8 **701.560 to 701.595 to have been sent by all owners of the residence. However, notwithstanding**
9 **any other provision of this subsection, the owner or legal representative whose name and**
10 **address are included in the notice of defect is deemed the owner for purposes of ORS 701.570**
11 **(2), (3) and (5) and 701.575.**

12 **(b) A notice of defect is not valid for purposes of ORS 701.560 to 701.595 with regard to**
13 **any matter that is within the scope of an earlier notice of defect sent to the same recipient.**

14 **SECTION 2.** ORS 701.570 is amended to read:

15 701.570. (1)(a) A contractor, subcontractor or supplier that receives a notice of defect sent under
16 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-
17 tice to any other known contractor, subcontractor or supplier that may be responsible for some or
18 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must
19 send the secondary notice by registered or certified mail, return receipt requested, to an address
20 described in ORS 701.565 (2)(a). The secondary notice must be accompanied by a statement de-
21 scribing the basis for contending that the other contractor, subcontractor or supplier may be re-
22 sponsible for some or all of the defects.

23 **(b) Unless the return receipt establishes an earlier date, a secondary notice mailed in**
24 **compliance with this subsection is conclusively presumed for purposes of ORS 701.560 to**
25 **701.595 to have been received by the contractor, subcontractor or supplier on the third**
26 **business day following the date of mailing. For purposes of subsections (2), (3) and (5) of this**
27 **section, there is a conclusive presumption that a secondary notice received by a contractor,**
28 **subcontractor or supplier was sent within the time specified by this subsection.**

29 (2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
30 may send the owner a written request to conduct a visual examination of the residence. The written
31 request must be sent not later than 14 days after the requesting contractor, subcontractor or sup-
32 plier receives a notice of defect or secondary notice. The written request to conduct a visual ex-
33 amination of the residence must state the estimated time required for the visual examination.

34 (3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
35 may send the owner a written request to inspect the residence. The written request must be sent
36 not later than 14 days after the requesting contractor, subcontractor or supplier conducted a visual
37 examination of the residence. The written request to inspect the residence must state the nature and
38 scope of the inspection, whether any testing is to be performed and the estimated time required for
39 the inspection. The recipient of a secondary notice that requests to inspect the residence shall send
40 a copy of the request to the sender of the secondary notice.

41 (4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold
42 the recipient of the secondary notice liable for a defect described in a notice of defect shall coor-
43 dinate the scheduling of any inspection with the owner and all recipients of a secondary notice from
44 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a
45 copy of any written request to inspect the residence to each recipient of the secondary notice in

1 time to provide the recipient with an opportunity to attend the requested inspection and to partic-
 2 ipate in any remediation. The sender of a secondary notice shall give reasonable advance notice to
 3 the owner or the owner’s legal representative, if any, of the identity of any contractor, subcontrac-
 4 tor or supplier who will attend the inspection.

5 (5) Unless otherwise agreed to by the owner, a contractor, subcontractor or supplier that re-
 6 ceives a notice of defect or secondary notice shall send a written response to the owner not later
 7 than 90 days after the contractor, subcontractor or supplier receives a notice of defect or secondary
 8 notice. A contractor, subcontractor or supplier that receives a secondary notice also shall send a
 9 copy of the written response to the sender of the secondary notice. The written response must be
 10 sent by registered or certified mail, return receipt requested. The written response must include:

11 (a) One or more of the following for each defect described in the notice of defect or secondary
 12 notice or discovered during the course of any visual examination or inspection:

13 (A) An acknowledgment of the existence, nature and extent of the defect without regard to re-
 14 sponsibility for the defect.

15 (B) A statement describing the existence of a defect different in nature or extent from the defect
 16 described in the notice of defect or secondary notice, without regard to responsibility for the defect.

17 (C) A denial of the existence of the defect.

18 (b) A copy of the documents described in ORS 701.575 (4).

19 (c) One or more of the following:

20 (A) An offer to perform some or all of the remediation. The offer must specify the date by which
 21 the offered remediation will be completed.

22 (B) An offer to pay a stated amount of monetary compensation to the owner for some or all of
 23 the acknowledged defects and any incidental damage. The offer must specify the date by which
 24 payment will be made.

25 (C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

26 **SECTION 3.** ORS 701.585 is amended to read:

27 701.585. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within
 28 the time **normally** allowed for the owner to commence a court action against that contractor, sub-
 29 contractor or supplier for a claim described in ORS 701.565, [*the time for the owner to commence the*
 30 *action shall be extended,*] notwithstanding any statute of limitation or statute of ultimate repose,
 31 [*until*] **the time for the owner to commence the action is** the later of:

32 (a) **The time allowed under the statutes of limitation and statutes of ultimate repose for**
 33 **that type of claim;**

34 (b) **One hundred twenty days after:**

35 (A) **The owner sends the notice of defect, if no response is received from the contractor,**
 36 **subcontractor or supplier;**

37 [(a)] (B) [*One hundred and twenty days after*] The owner receives a written response from the
 38 contractor, subcontractor or supplier that received the notice of defect if the written response does
 39 not contain a written offer to perform remediation or pay monetary compensation for one or more
 40 of the defects or incidental damage described in the notice of defect; **or**

41 [(b)] (C) [*One hundred and twenty days after*] The owner rejects a written offer by any contrac-
 42 tor, subcontractor or supplier to perform remediation or pay monetary compensation for one or more
 43 of the defects or incidental damage described in the notice of defect; [*or*]

44 (c) **Sixty days after:**

45 (A) **The end of an unsuccessful joint attempt by the parties to resolve the claim through**

1 **mediation; or**

2 **(B) The issuance of a nonbinding arbitration decision on the claim; or**

3 [(c)] **(d)** Thirty days after the date specified in an accepted written offer by which the offering
4 contractor, subcontractor or supplier is to complete the remediation or complete payment of mone-
5 tary compensation for one or more of the defects and any incidental damage described in the notice
6 of defect.

7 *[(2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim in*
8 *accordance with applicable statutes of ultimate repose and statutes of limitation.]*

9 **(2) If the sender of a secondary notice complies with ORS 701.570 (1) and (5),**
10 **notwithstanding any statute of limitation or statute of ultimate repose, the time for the**
11 **sender to commence an action against the recipient of the secondary notice is the later of:**

12 **(a) The time allowed under the statutes of limitation and statutes of ultimate repose for**
13 **that type of claim; or**

14 **(b) Thirty days after the owner commences a timely action against the sender.**

15 (3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS
16 701.570 does not act to toll the expiration of any right of the owner to commence a court action
17 against the recipient of the secondary notice.

18 (4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 does not
19 constitute a new performance and, for purposes of ORS 12.135, relates back to the earliest date of
20 substantial completion or abandonment of the construction, alteration or repair of the improvement
21 to real property.

22 **SECTION 4. (1) The amendments to ORS 701.565 by section 1 of this 2016 Act apply to a**
23 **notice of defect sent on or after the effective date of this 2016 Act.**

24 **(2) The amendments to ORS 701.570 by section 2 of this 2016 Act apply to a secondary**
25 **notice sent on or after the effective date of this 2016 Act.**

26 **(3) The amendments to ORS 701.585 by section 3 of this 2016 Act apply to the com-**
27 **mencement of an action:**

28 **(a) By an owner that sends a notice of defect under ORS 701.565 on or after the effective**
29 **date of this 2016 Act; or**

30 **(b) By a contractor, subcontractor or supplier that sends a secondary notice under ORS**
31 **701.570 on or after the effective date of this 2016 Act.**

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