

Missouri Right to Cure Law (S.B. 168)(2005)

RSMo. 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 proceeding, in contract or tort, or otherwise, for damages or indemnity, brought to assert a claim, whether by petition, complaint, counterclaim, or cross-claim, for damage to, diminution in the value of, or the loss of use of real or personal property caused by an alleged construction defect. Action does not include any claim originating in small claims court, or any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from an alleged construction defect;

(2) "Association":

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

(b) A homeowners' association, including but not limited to, a nonprofit corporation or unincorporated association of home owners created pursuant to a declaration to own and operate portions of a planned community or other residential subdivision and which has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration, or tenants-in-common with respect to the ownership of common areas or amenities of a planned community or other residential subdivision; or

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

(3) "Claimant", a homeowner or association which asserts a claim against a contractor concerning an alleged construction defect;

(4) "Construction defect", for the purposes of sections 431.300 to 431.315, a deficiency in, or a deficiency arising from, any of the following:

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

(b) Violation of the applicable codes and ordinances, including those ordinances which regulate zoning and the subdivision of land, in effect at the time of the commencement of construction of residential improvements, or as to a substantive remodel, at the commencement of such substantial remodel; provided however, that any matter that is in compliance with applicable codes and ordinances, including without limitation, those ordinances which regulate zoning and the subdivision of land, in effect at the commencement of construction of residential improvements, or to a substantial remodel as the case may be, shall conclusively establish that such matter is not, nor shall it be deemed or construed to be a construction defect, unless a construction defect as to such matter is established because of defective material, products, or components used in new residential construction or in a substantial remodel;

(c) Failure to construct residential improvements in accordance with accepted trade standards for good and workmanlike construction at the time of construction. Compliance with the applicable codes and ordinances, including without limitation, those ordinances which regulate zoning and the subdivision of land, in effect at the commencement of construction, or of a substantial remodeling as the case may be, shall conclusively

establish construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes;

(d) Failure to construct residential improvements in accordance with the agreement between the contractor and the claimant, notwithstanding anything to the contrary in this subdivision;

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

(6) "Homeowner", any person, company, firm, partnership, corporation, association, or other entity who contracts with a contractor for the construction, substantial remodel of a residence, or the sale of a residence constructed by such contractor. Homeowner also includes a subsequent purchaser of a residence from any homeowner;

(7) "Residence", a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system, and shall include common areas and common elements as defined in subdivision (4) of section 448.1-103, RSMo. Residence shall include the land and improvements to land under and around the house, unit, or structure. Residence shall not include a manufactured home as defined in section 700.010, RSMo;

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

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

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

2. The notice required by this subsection shall provide time frame guidelines to comply with sections 431.300 to 431.315 for both the claimant and contractor and shall be in substantially the following form:

SECTIONS 431.300 TO 431.315 OF MISSOURI REVISED STATUTES PROVIDES YOU WITH CERTAIN RIGHTS IF YOU HAVE A DISPUTE WITH A CONTRACTOR REGARDING CONSTRUCTION DEFECTS. EXCEPT FOR CLAIMS FILED IN SMALL

CLAIMS COURT, IF YOU HAVE A DISPUTE WITH A CONTRACTOR, YOU MUST DELIVER TO THE CONTRACTOR A WRITTEN CLAIM OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR. READ THIS NOTICE CAREFULLY. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER SECTIONS 431.300 TO 431.315 WHICH MUST BE OBEYED IN ORDER TO PRESERVE YOUR ABILITY TO FILE A LAWSUIT. OTHER THAN REPAIRS TO WORK DONE BY THE CONTRACTOR THAT ARE NECESSARY TO PROTECT THE LIFE, HEALTH, OR SAFETY OF PERSONS LIVING IN A RESIDENCE, OR TO AVOID ADDITIONAL SIGNIFICANT AND MATERIAL DAMAGE TO THE RESIDENCE PURSUANT TO SECTION 431.306.10, YOU MAY NOT INCLUDE IN CLAIMS AGAINST YOUR CONTRACTOR THE COSTS OF OTHER REPAIRS YOU PERFORM BEFORE YOU ARE ENTITLED TO FILE A LAWSUIT UNDER SECTIONS 431.300 TO 431.315.

3. Nothing in sections 431.300 to 431.315 shall preclude or bar any action if a notice is not given to the claimant as required by this section, and the provisions of sections 431.300 to 431.315 shall not apply to any claim of a claimant against a contractor if such contractor failed to provide the written notice required by this section.

4. In those lawsuits originally filed by a contractor against a homeowner, if a homeowner files a counterclaim or an affirmative defense in such lawsuit that includes a claim based on a construction defect allegedly caused by the contractor, then the provisions of sections 431.300 to 431.315 shall not apply to said lawsuit, and the homeowner or association claimant will not be required to adhere to sections 431.300 to 431.315 for those claims made pursuant to the lawsuit, provided a claimant shall be required to follow those provisions for any claim not otherwise covered by said lawsuit.

RSMo. 431.306. 1. In every action against a contractor arising from construction or substantial remodel of a residence, a claimant shall serve the contractor with a written notice of claim of construction defects. The notice of claim shall state that the claimant asserts a construction defect claim against the contractor and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect as well as any known results of the defect.

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

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

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

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

(4) Offer to compromise and settle all of a claim without inspection. A contractor's offer pursuant to this subdivision to compromise and settle a claimant's or association's

claim may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim; or

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

3. (1) If the contractor disputes the claim pursuant to subdivision (5) of subsection 2 of this section or does not respond to the claimant's notice of claim within the time stated in subsection 2 of this section, the claimant may bring an action against the contractor for the defect described in the notice of claim without further notice.

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

(3) If the claimant elects to accept the offer of the contractor to remedy the claim without an inspection pursuant to subdivision (2) of subsection 2 of this section, or if the claimant elects to accept the offer of the contractor to remedy part of the claim without inspection and compromise and settle the remainder of the claim by monetary payment pursuant to subdivision (3) of subsection 2 of this section, the claimant shall provide the contractor and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction or work in accordance with the timetable stated in the offer. Any dispute relating to performance of the remedial construction or work by the contractor may be resolved by mediation in accordance with section 431.312. If the dispute is not resolved by mediation, the claimant may bring an action against the contractor for the defect described in the notice of claim.

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

(2) Within fourteen days following completion of the inspection, the contractor shall serve a report of the scope of the inspection and the findings and results of the inspection on the claimant, and either:

(a) A written offer to remedy all of the claim at no cost to the claimant, including a description of the construction or work necessary to remedy the defect described in the claim, and a timetable for the completion of such construction or work; or

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

(c) A written offer to compromise and settle all of the claim by monetary payment pursuant to subdivision (4) of subsection 2 of this section; or

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

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

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

5. (1) Any claimant accepting the offer of a contractor to remedy all or part of the construction defect pursuant to paragraph (a) or (b) of subdivision (2) of subsection 4 of this section shall do so by serving the contractor with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claimant shall provide the contractor and its subcontractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction or work by the timetable stated in the offer. Any dispute relating to performance of the remedial construction or work by the contractor may be resolved by mediation in accordance with section 431.312. If the dispute is not resolved by mediation, the claimant may bring an action against the contractor for the defect described in the notice of claim.

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

6. Any action commenced by a claimant prior to compliance with the requirements of this section shall, upon motion by a party to the action, be subject to dismissal without prejudice, and shall not be recommenced until the claimant has complied with the requirements of this section if the court finds the claimant knowingly violated the sections of said act.

7. The claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim and shall otherwise comply with the requirements of this section for the additional claims. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the contractor of the defect and allowing for response under subsection 2 of this section.

8. If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitations period would otherwise expire, the claimant may file an action against the contractor, but such action shall be immediately abated pending completion of the notice of claim process described in this section. This subsection shall not be construed either to revive a statute of limitations period that has expired prior to the date on which a claimant's written notice of claim is served or extend any applicable statute of repose.

9. A written notice of claim and any written response by a contractor shall be treated as a settlement offer and shall not be admissible in an action related to a construction defect asserted therein, except as otherwise permitted by law. A written notice of claim and any written response by a contractor shall not be admissible as a prior inconsistent statement.

10. In the event that immediate action must be taken by a claimant to prevent imminent injury to persons because of alleged construction defects, including defective garage doors, that threaten the life or safety of persons, or alleged construction defects, including defective garage doors, that if not addressed will result in significant and material additional damage to the residence, the homeowner or another person designated by the homeowner including the contractor may undertake reasonable repairs necessary to mitigate the emergency situation. Claimants may thereafter include the cost of such repairs in the written notice of claim of construction defects provided for in subsection 1 of this section. Provided, however, that other than the undertaking of immediate repairs to remedy an emergency situation, any repairs to construction defects undertaken by homeowners shall not be included in claims initiated under subsection 1 of this section, and shall not be the subject of an action.

11. Any mediation shall take place in the county where the claimant resides or in a mutually agreed to location.

RSMo. 431.309. 1. If an association's governing board rejects a written settlement offer from the contractor and has satisfied applicable provisions of section 431.306, and upon

written request by the contractor as part of said offer that the association hold a meeting of the members, the provisions of this section shall apply prior to the association filing an action alleging construction defects in the common areas and common elements.

2. The board shall hold a meeting open to each member of the association. The meeting shall be held no less than fifteen days before the association commences an action against the contractor.

3. No less than fifteen days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(1) That a meeting will take place to discuss construction defects that may lead to the filing of an action, and the date, time, and place of the meeting;

(2) The options that are available to address the construction defects, including the filing of an action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases;

(3) The complete text of any written final settlement offer from the contractor and a concise explanation of the contractor's specific reasons for the terms of the offer.

4. The discussions at the meeting and the contents of the notice and the items required to be specified in the notice under subsection 3 of this section are privileged communications and are not admissible in evidence in any action, unless the association consents to their admission.

5. No more than one request to meet and discuss a written settlement offer under this section may be made by the contractor.

RSMo. 431.312. 1. At any time, either a claimant or contractor may offer to resolve a claim against a contractor through mediation. Mediation pursuant to this section shall be nonbinding and independently administered. The contractor and claimant shall mutually agree upon a qualified independent and neutral mediator and shall equally share the cost of the mediator. If the parties agree upon a mediator, then the mediation shall take place within a reasonable time period, but in no event later than forty-five days after service of a request for mediation by a claimant upon a contractor or a request by a contractor upon a claimant. A contractor who receives a request for mediation from a claimant shall serve a response in writing within fourteen days and may include within the response the name of a proposed mediator and mediation date. A claimant who receives a request for mediation from a contractor shall serve a response in writing within fourteen days and may include within the response the name of a proposed mediator and mediation date.

2. The contractor or claimant may include in the mediation any person or entity reasonably necessary for resolution of the claim asserted. This subsection shall not be construed to mandate attendance at a mediation by a person or entity other than the contractor or claimant served with a notice of claim.

3. If all the parties to a dispute agree in writing to submit their dispute to any forum for arbitration, conciliation, or mediation, then no person who serves as arbitrator, conciliator or mediator, nor any agent or employee of that person, shall be subpoenaed or otherwise compelled to disclose any matter disclosed in the process of setting up or conducting the arbitration, conciliation, or mediation.

4. Arbitration, conciliation, and mediation proceedings shall be regarded as settlement negotiations and the confidentiality of such proceeding shall be as set forth in supreme court rule 17.

5. Notwithstanding any provisions of law or the agreements of the parties to the contrary, the resolution of the dispute by the parties through mediation or otherwise shall not operate to release any claim of the claimant except the claim described in the notice of defect, and shall not operate to release the claim described in the notice of defect until the agreed upon remedy has been accomplished.

RSMo. 431.315. 1. Nothing in sections 431.300 to 431.315 shall be construed to create a theory or cause of action upon which liability may be based or to limit any causes of action or remedies otherwise available to a homeowner or contractor pursuant to law after giving effect to the provisions of sections 431.300 to 431.315, nor to hinder or otherwise affect the employment, agency, or contractual relationship between homeowners and contractors during the process of construction or remodeling, and does not preclude the termination of those relationships as allowed under current law. Nothing in sections 431.300 to 431.315 shall negate or otherwise restrict a contractor's right to access or inspection provided by law, covenant, easement, or contract.

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

3. The provisions of sections 431.300 to 431.315 shall not apply to an action brought by an insurer, subrogated to the rights of a claimant, if payment was made by the insurer pursuant to a claim under an insurance policy.

Section 1. If any provision of sections 431.300 to 431.315, RSMo, is found by a court of competent jurisdiction to be invalid or unconstitutional it is the stated intent of the general assembly that the general assembly would have approved the remaining portions of sections 431.300 to 431.315, RSMo, and the remaining portions of sections 431.300 to 431.315, RSMo, shall remain in full force and effect.

Kansas Statutes
Chapter 60. Article 47. CONSTRUCTION DEFECTS (2003)

60-4701. Definitions. As used in this act:

(a) "Action" means any civil action or arbitration proceeding between a claimant and a contractor for damages or indemnity asserting a claim for injury or loss to a dwelling or personal property caused by an alleged defect arising out of or related to the construction or a remodel of a dwelling.

(b) "Association" means a non-profit homeowners organization as defined in K.S.A. 60-3611, and amendments thereto.

(c) "Claimant" means a homeowner, including a subsequent purchaser, or association who asserts a claim against a contractor concerning a defect in the construction or in the remodel of a dwelling.

(d) "Construction defect" or "defect" means a deficiency in, or a deficiency arising out of the specifications, planning, supervision or construction of residential improvements that results from any of the following:

(1) Defective material, products or components used in the construction of residential improvements.

(2) Violation of the applicable codes in effect at the time of construction of residential improvements.

(3) Failure to construct residential improvements in accordance with accepted trade standards for good and workmanlike construction at the time of construction.

(e) "Contractor" means any person, firm, partnership, corporation, association or other organization that is engaged in the business of constructing dwellings.

(f) "Dwelling" means a single-family house, duplex or multifamily unit designed for residential use in which title to each individual unit is transferred to the owner under a condominium or cooperative system and shall include common areas and improvements that are owned or maintained by an association or by members of an association. A dwelling includes the systems and other components and improvements that are part of a single or multifamily unit at the time of construction. For the purposes of this act "dwelling" does not mean manufactured home as defined in K.S.A. 58-4202, and amendments thereto.

(g) "Serve" or "service" means personal service or delivery by certified mail, return receipt requested, to the last known address of the addressee.

(h) "Subcontractor" means a contractor who performs work on behalf of a contractor in the construction of a dwelling.

History: L. 2003, ch. 74, § 1; July 1.

60-4702. Filing of action; notice requirements. (a) If a claimant files an action against a contractor without service of notice under this act, the action shall be dismissed without prejudice upon motion of the contractor filed within 60 days of service of process. An action against a contractor cannot be refiled until the parties have complied with the provisions of this act. A dismissal pursuant to this subsection shall not count as a dismissal for purposes of subsection (a)(1) of K.S.A. 60-241, and amendments thereto.

(b) If the statute of limitations would expire during the time period necessary to allow the parties to comply with the provisions of this act, the statute of limitations shall be tolled if the claimant gives notice of the claim to the contractor within 90 days of entry of the order of dismissal of the action without prejudice pursuant to subsection (a).

(c) If the statute of limitations would expire during the time period necessary to allow the parties to comply with the provisions of this act, the claimant's notice of claim shall serve to toll the statute of limitations for 180 days after the latest of the following three dates: (1) The date the claimant personally serves or mails the notice of claim; (2) the date agreed upon for the contractor to make payment under subsection (c)(3) or (g)(2) of K.S.A. 2004 Supp. 60-4704, and amendments thereto; or (3) the date agreed upon for the contractor to completely remedy the construction defect under subsection (c)(2) or (g)(1) of K.S.A. 2004 Supp. 60-4704, and amendments thereto.

(d) Nothing in this section shall be interpreted to shorten the statute of limitations under K.S.A. 60-501 *et seq.*, and amendments thereto, otherwise applicable to a claimant's action against a contractor.

History: L. 2003, ch. 74, § 2; July 1.

60-4703. Application of act. (a) Nothing in this act shall apply to actions arising out of claims for personal injury or death or where the defect or damage to the dwelling is so substantial that it is not habitable.

(b) This act shall not supersede express warranty, implied warranty or other provisions of a contract between the contractor and the claimant.

History: L. 2003, ch. 74, § 3; July 1.

60-4704. Initial notice of claim; service; response; inspection proposal; settlement offer; offer to remedy; acceptance or rejection of offer; failure to respond. (a) Before the filing of an action brought against a contractor arising out of the construction of a dwelling, the claimant shall serve written initial notice of claim on the contractor. The initial notice of claim shall state that the claimant asserts a construction defect claim and the notice of claim shall describe the claim or claims in detail sufficient to determine the general nature of any alleged construction defects.

(b) Within 15 days after service of the notice of claim, the contractor shall serve a copy of the notice to each subcontractor who may be responsible for a defect specified in the notice and include with the notice the specific defect for which the contractor believes the subcontractor may be responsible.

(c) Within 30 days after service of the notice of claim by claimant, each contractor that has received such notice shall serve a written response on the claimant. The written response shall:

(1) Propose to inspect the dwelling that is the subject of the claim;

(2) offer to remedy the alleged construction defect at no cost to the claimant including a description of the additional construction necessary to remedy the defect, a specification of the date when the contractor proposes to commence the work and the date the work will be completed;

(3) offer to compromise and settle the claim by monetary payment without inspection including a specification of the amount of the payment and the date the payment will be made; or

(4) state that the contractor disputes the claim and will neither remedy the alleged construction defect nor compromise and settle the claim.

(d) If the contractor refuses service under subsection (a), disputes the claim pursuant to subsection (c)(4), does not respond to the claimant's notice of claim within the time stated in subsection (c), does not commence or complete the work on the alleged construction defect on the date specified in subsection (c)(2) or does not make the payment in the time specified in subsection (c)(3), the claimant may bring an action against the contractor without further notice.

(e) If the claimant rejects the inspection proposal or the settlement offer made by the contractor pursuant to subsection (c), the claimant shall serve written notice of the claimant's rejection on the contractor. After service of the rejection, the claimant may bring an action against the contractor without further notice. The claimant may alternatively elect an arbitration process pursuant to K.S.A. 5-201 *et. seq.*, and amendments thereto. Failure to give the notice required by this subsection shall not require the dismissal of the action under subsection (a) of K.S.A. 2004 Supp. 60-4702, and amendments thereto.

(f) If the claimant elects to allow the contractor to inspect the dwelling in accordance with the contractor's proposal pursuant to subsection (c)(1) the claimant shall notify the contractor and shall provide the contractor and its agents access to the claimant's dwelling during normal working hours to inspect the premises and the claimed defect to determine the nature and cause of the alleged defects and the nature and extent of any repairs or replacements necessary to repair the alleged defects. Such inspection shall occur within 30 days of the claimant's notification to the contractor under this section.

(g) Within 30 days following completion of the inspection, the contractor shall serve on the claimant a written:

(1) Offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect, a specification of the date when the contractor proposes to commence the work and the date the work will be completed;

(2) offer to compromise and settle the claim by monetary payment including a specification of the amount of the payment and the date the payment will be made; or

(3) statement that the contractor will not proceed further to remedy the defect.

(h) If a claimant accepts a contractor's offer made pursuant to subsection (g)(1) or (g)(2) and the contractor does not proceed to remedy the construction defect or make the monetary payment within the agreed timetable, the claimant may bring an action against the contractor without further notice.

(i) If the contractor does not respond within the time period specified by subsection (g) or a claimant receives a written statement that the contractor will not proceed further to remedy the defect, the claimant may bring an action against the contractor without further notice.

(j) If the claimant rejects the offer made by the contractor to either remedy the construction defect or to make the monetary payment, the claimant shall serve written notice of the claimant's rejection on the contractor. After service of the rejection the claimant may bring an action against contractor without further notice.

(k) Any claimant accepting the offer of the contractor to remedy the construction defects shall do so by serving the contractor with a written notice of acceptance no later than 30 days after receipt of the offer.

(l) If a claimant accepts a contractor's offer to repair a defect described in a notice of claim, the claimant shall provide the contractor and its agents reasonable access to the claimant's dwelling during normal working hours to perform and complete the construction by the timetable stated in the offer.

(m) Absent good cause, the contractor's failure to respond in good faith to the claimant's notice of claim shall preclude the contractor from asserting that the claimant did not comply with the provisions of this act.

History: L. 2003, ch. 74, § 4; July 1.

60-4705. Notice of construction defect to insurer. (a) A contractor who receives a notice of a construction defect pursuant to this act, may present the notice to an insurer who issued a policy of insurance covering all or part of the conduct or business of the contractor or subcontractor.

(b) Such notice provided to an insurer:

(1) Constitutes the making of a claim under the policy; and

(2) requires the contractor, subcontractor and the insurer to perform any obligations or duties required by the policy upon the making of a claim.

History: L. 2003, ch. 74, § 5; July 1.

60-4706. Notice to potential claimant of contractor's right to offer repair; form. (a) Upon entering into a contract for construction or remodel of a dwelling, the contractor shall provide notice to the potential claimant of the contractor's right to offer to repair construction defects before a claimant may commence litigation against the contractor. Such notice shall be conspicuous and may be included as part of the underlying contract.

(b) Such notice shall be in substantially the following form:

Kansas law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your home. Ninety days before you file your lawsuit, you must deliver to the contractor a written notice of any construction conditions you allege are defective and provide your contractor the opportunity to make an offer to repair or pay for the defects. You are not obligated to accept any offer made by the contractor. There are strict deadlines and procedures under state law, and failure to follow them may affect your ability to file a lawsuit.

History: L. 2003, ch. 74, § 6; July 1.

60-4707. Notice to purchaser of subcontractors. Each contractor who constructs a new residential dwelling shall, within 30 days after the close of the sale, provide in writing to the initial purchaser of the residence:

(a) The name, license number if applicable, business address and telephone number of each subcontractor who performed any work related to the construction of the dwelling; and

(b) a brief description of the work performed by each subcontractor identified pursuant to this section.

History: L. 2003, ch. 74, § 7; July 1.

60-4708. Association actions; property manager actions; unlawful acts. (a) A person shall not provide or offer to provide anything of monetary value to a property manager of an association or to a member or officer of an executive board of an association to induce the property manager, member or officer to encourage or discourage the association to file a claim for damages arising from a construction defect.

(b) A property manager shall not accept anything of value given in exchange for encouraging or discouraging the association that such property manager manages to file a claim for damages arising from a construction defect.

(c) A member or officer of an executive board of an association shall not accept anything of value given in exchange for encouraging or discouraging the association of which such person is a member or officer of the executive board to file a claim for damages arising from a construction defect.

(d) A person who willfully violates this section shall be guilty of a class C nonperson misdemeanor.

History: L. 2003, ch. 74, § 8; July 1.

60-4709. Association action for construction defects in common-interest community; majority vote. (a) An association may bring an action to recover damages resulting from construction defects in any of the units, common elements or limited common elements of the common-interest community only:

(1) Upon a vote of the units' owners to which at least a majority of the votes of the members of the association are allocated; and

(2) upon a vote of the executive board of the association.

(b) An association or an attorney for an association shall not employ a person to perform destructive tests to determine any damage or injury to a unit, common element or limited common element caused by a construction defect unless:

(1) The person performing the tests is someone in the business of performing such tests and analysis;

(2) the person performing the tests has provided a written schedule for repairs;

(3) the person performing the tests is required to repair all damage resulting from such tests in accordance with state laws and local ordinances and codes relating thereto; and

(4) the association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests.

(c) An association may commence an action only upon a vote or written agreement of the owners of the units to which at least a majority of the votes of the members of the association are allocated. In such a case, the association shall provide written notice to the owner of each unit of the meeting at which the commencement of an action is to be considered or action is to be taken within 21 calendar days before the meeting.

(d) In the absence of a contractual provision to the contrary, the executive board of an association, without giving notice to the units' owner's, may employ a contractor and

such other persons as are necessary to make such repairs to a unit or common element within the common-interest community as are required to protect the health, safety and welfare of the units' owners.

History: L. 2003, ch. 74, § 9; July 1.

60-4710. Severability clause. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: L. 2003, ch. 74, § 10; July 1.