

Senate Bill 563

By: Senators Hamrick of the 30th, Seabaugh of the 28th, Harbison of the 15th and Mullis of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 2 of Title 8 of the Official Code of Georgia Annotated,
2 relating to buildings and standards of construction, so as to provide legislative findings; to
3 provide for an alternative dispute mechanism to resolve disputes regarding construction
4 defects; to provide definitions relating to construction; to provide for a written notice of
5 claim by the claimant to the contractor; to provide for a written response by the contractor;
6 to provide for access to dwellings for inspections and repairs; to provide for offers of
7 settlement or repair or both; to provide immunity from liability for certain conditions; to
8 provide for notice of a contractor's right to resolve construction defects; to provide for claims
9 by associations; to provide for related matters; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 1 of Chapter 2 of Title 8 of the Official Code of Georgia Annotated, relating to
14 buildings and standards of construction, is amended by adding a new Part 2A to read as
15 follows:

16 style="text-align:center">"Part 2A

17 8-2-35.

18 The legislature finds, declares, and determines that Georgia needs an alternative method
19 to resolve legitimate construction disputes that would reduce the need for litigation while
20 adequately protecting the rights of homeowners. The legislature declares that an effective
21 alternative dispute resolution mechanism in certain construction defect matters should
22 involve the claimant filing a notice of claim with the contractor that the claimant asserts
23 is responsible for the defect and providing the contractor with the opportunity to resolve
24 the claim without litigation.

1 8-2-36.

2 As used in this part, the term:

3 (1) 'Action' means any civil lawsuit, judicial action, or arbitration proceeding asserting
4 a claim in whole or in part for damages or other relief in connection with a dwelling
5 caused by an alleged construction defect.

6 (2) 'Association' means a corporation formed for the purpose of exercising the powers
7 of the members of any common interest community.

8 (3) 'Claimant' means any one who asserts a claim concerning a construction defect.

9 (4) 'Construction defect' has the meaning assigned by a written, express warranty either
10 provided by the contractor or required by applicable statutory law; if no written, express
11 warranty or applicable statutory warranty provides a definition, then construction defect
12 means a matter concerning the design, construction, or repair of a dwelling, of an
13 alteration of or repair or addition to an existing dwelling, or of an appurtenance to a
14 dwelling on which a person has a complaint against a contractor. The term may include
15 any physical damage to the dwelling, any appurtenance, or the real property on which the
16 dwelling or appurtenance is affixed proximately caused by a construction defect.

17 (5) 'Contractor' means any person, firm, partnership, corporation, association, or other
18 organization that is engaged in the business of designing, developing, constructing, or
19 selling dwellings or the alteration of or addition to an existing dwelling, repair of a new
20 or existing dwelling, or construction, sale, alteration, addition, or repair of an
21 appurtenance to a new or existing dwelling. The term includes:

22 (A) An owner, officer, director, shareholder, partner, or employee of the contractor;

23 (B) Subcontractors and suppliers of labor and materials used by a contractor in a
24 dwelling; and

25 (C) A risk retention group registered under applicable law, if any, that insures all or
26 any part of a contractor's liability for the cost to repair a construction defect.

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

34 (7) 'Serve' or 'service' means delivery by certified mail or statutory overnight delivery,
35 return receipt requested, to the last known address of the addressee. For a corporation,
36 limited partnership, limited liability company, or other registered business organization,

1 it means service on the registered agent or other agent for service of process authorized
2 by law.

3 8-2-37.

4 If a claimant files an action without first complying with the requirements of this part, on
5 application by a party to the action, the court or arbitrator shall dismiss the action, without
6 prejudice, and the action may not be refiled or resumed until the claimant has complied
7 with the requirements of this part. To the extent that the action includes a cause of action
8 for damages due to personal injury or death, such cause of action shall not be subject to
9 dismissal pursuant to this Code section.

10 8-2-38.

11 (a) In every action subject to this part, the claimant shall, no later than 90 days before
12 initiating an action against a contractor, provide service of written notice of claim on that
13 contractor. The notice of claim shall state that the claimant asserts a construction defect
14 claim or claims and is providing notice of the claim or claims pursuant to the requirements
15 of this part. The notice of claim shall describe the claim or claims in detail sufficient to
16 explain the nature of the alleged construction defects and the results of the defects. In
17 addition, the claimant shall provide to the contractor any evidence that depicts the nature
18 and cause of the construction defect, including expert reports, photographs, and videotapes,
19 if that evidence would be discoverable under evidentiary rules. If, after proper request, the
20 claimant fails to provide such evidence, then the claimant shall not be permitted to
21 introduce any such evidence not produced into evidence in any action.

22 (b) Within 30 days after service of the notice of claim by a claimant required in subsection
23 (a) of this Code section, each contractor that has received the notice of claim may serve on
24 the claimant, and on any other contractor that has received the notice of claim, a written
25 response to the claim or claims, which either:

26 (1) Offers to settle the claim by monetary payment, the making of repairs, or a
27 combination of both, without inspection; or

28 (2) Proposes to inspect the dwelling that is the subject of the claim.

29 (c) If the contractor wholly rejects the claim and will neither remedy the alleged
30 construction defect nor settle the claim or does not respond to the claimant's notice of
31 claim within the time stated in subsection (b) of this Code section, the claimant may bring
32 an action against the contractor for the claims described in the notice of claim without
33 further notice except as otherwise provided under applicable law.

34 (d) If the claimant rejects the settlement offer made by the contractor, the claimant shall
35 provide written notice of the claimant's rejection to the contractor and, if represented by

1 legal counsel, his or her attorney. The notice shall include the specific factual and, if
2 known, legal reasons, for the claimant's rejection of the contractor's proposal or offer. If
3 the claimant believes that the settlement offer:

4 (1) Omits reference to any portion of the claim; or

5 (2) Was unreasonable in any manner,

6 the claimant shall in his or her written notice include those items that claimant believes
7 were omitted and set forth in detail all reasons why the claimant believes the settlement
8 offer is unreasonable. In any subsequent action where claimant asserts that the settlement
9 offer was unreasonable, the claimant shall not be able to raise any reasons that were not
10 included in his or her response to contractor.

11 (e) If a proposal for inspection is made pursuant to paragraph (2) of subsection (b) of this
12 Code section, the claimant shall, within 30 days of receiving the contractor's proposal,
13 provide the contractor and its subcontractors, agents, experts, and consultants prompt and
14 complete access to the dwelling to inspect the dwelling, document any alleged construction
15 defects, and perform any destructive or nondestructive testing required to fully and
16 completely evaluate the nature, extent, and cause of the claimed defects and the nature and
17 extent of any repairs or replacements that may be necessary to remedy the alleged defects.
18 If destructive testing is required, the contractor shall give claimant advance notice of such
19 tests and shall, after completion of the testing, return the dwelling to its pretesting
20 condition. If any inspection or testing reveals a condition that requires additional testing
21 to allow the contractor to fully and completely evaluate the nature, cause, and extent of the
22 construction defect, the contractor shall provide notice to the claimant of the need for such
23 additional testing and the claimant shall provide access as set forth in this Code section. If
24 a claim is asserted on behalf of owners of multiple dwellings or multiple owners of units
25 within a multifamily complex, then contractor shall be entitled to inspect each of the
26 dwellings or units.

27 (f) Within 14 days following completion of the inspection and testing set forth in this Code
28 section, the contractor may serve on the claimant:

29 (1) A written offer to fully or partially remedy the construction defect at no cost to the
30 claimant. Such offer shall include a description of any additional construction necessary
31 to remedy the defect described in the claim and an anticipated timetable for the
32 completion of such construction;

33 (2) A written offer to settle the claim by monetary payment;

34 (3) A written offer including a combination of repairs and monetary payment; or

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

36 (g) If a claimant accepts a contractor's offer made pursuant to paragraph (1), (2), or (3) of
37 subsection (f) of this Code section and the contractor does not proceed to make the

1 monetary payment or remedy the construction defect or both within the agreed timetable,
2 the claimant may bring an action against the contractor for the claim described in the notice
3 of claim without further notice except as otherwise provided by applicable law. In such a
4 situation, the claimant may also file the contractor's offer and claimant's acceptance, and
5 such offer and acceptance will create a rebuttable presumption that a binding and valid
6 settlement agreement has been created and should be enforced by the court or arbitrator.

7 (h) If a claimant receives a written statement that the contractor will not proceed further
8 to remedy the defect, the claimant may bring an action against the contractor for the claim
9 described in the notice of claim without further notice except as otherwise provided by
10 applicable law.

11 (i) If the claimant rejects the offer made by the contractor to remedy the construction
12 defect or to settle the claim by monetary payment or a combination of each, the claimant
13 shall serve written notice of the claimant's rejection on the contractor. The notice shall
14 include the specific factual and, if known, legal reasons for the claimant's rejection of the
15 contractor's offer. If the claimant believes contractor's settlement offer is unreasonable, the
16 claimant shall set forth in detail all reasons why claimant believes the settlement offer is
17 unreasonable. In any subsequent action where claimant asserts that the settlement offer was
18 unreasonable, the claimant shall not be able to raise any reasons that were not included in
19 his or her response to contractor.

20 (j) Upon receipt of a claimant's rejection and the reasons for such rejection, the contractor
21 may, within 15 days of receiving the rejection, make a supplemental offer of repair or
22 monetary payment or both to claimant.

23 (k) If the claimant rejects the supplemental offer made by the contractor to repair the
24 construction defect or to settle the claim by monetary payment or a combination of each,
25 the claimant shall serve written notice of the claimant's rejection on the contractor. The
26 notice shall include the specific factual and, if known, legal reasons for the claimant's
27 rejection of the contractor's supplemental settlement offer. If the claimant believes
28 contractor's supplemental settlement offer is unreasonable, the claimant shall set forth in
29 detail all reasons why claimant believes the supplemental settlement offer is unreasonable.
30 In any subsequent action where claimant asserts that the supplemental settlement offer was
31 unreasonable, the claimant shall not be able to raise any reasons that were not included in
32 his or her response to contractor.

33 (l) If a claimant rejects a reasonable offer, including any reasonable supplemental offer,
34 made as provided by this part or does not permit the contractor to repair the construction
35 defect pursuant to an accepted offer of settlement, the claimant may not recover an amount
36 in excess of:

1 (1) The fair market value of the offer of settlement or the actual cost of the repairs made,
2 whichever is less; or

3 (2) The amount of a monetary offer of settlement.

4 For purposes of this subsection, the trier of fact shall determine the reasonableness of an
5 offer of settlement made pursuant to this part. If the claimant has rejected a reasonable
6 offer, including any reasonable supplemental offer, and any other law allows the claimant
7 to recover costs and attorneys' fees, then claimant may recover no costs or attorneys' fees
8 incurred after the date of his or her rejection.

9 (m) Any claimant accepting the offer of the contractor to remedy a construction defect
10 shall do so by serving the contractor with a written notice of acceptance within a reasonable
11 period of time after receipt of the contractor's settlement offer but no later than 30 days
12 after receipt of the offer. If no response is served upon contractor within the 30 day period,
13 then the offer shall be deemed accepted.

14 (n) If a claimant accepts a contractor's offer to repair a construction defect described in a
15 notice of claim, the claimant shall provide the contractor and its subcontractors, agents,
16 experts and consultants prompt and unfettered access to the dwelling to perform and
17 complete the construction by the timetable stated in the settlement offer.

18 (o) If, during the pendency of the notice, inspection, offer, acceptance, or repair process,
19 an applicable limitations period would otherwise expire, the claimant may file an action
20 against the contractor, but such action shall be immediately abated pending completion of
21 the notice of claim process described in this part. This subsection shall not be construed to:

22 (1) Revive a statute of limitations period that has expired prior to the date on which a
23 claimant's written notice of claim is served; or

24 (2) Extend any applicable statute of repose.

25 (p) After the sending of the initial notice of claim, a claimant and a contractor may, by
26 written mutual agreement, alter the procedure for the notice of claim process described in
27 this part.

28 (q) In an action relating to a dwelling involving a construction defect, a contractor shall
29 not be liable for damages involving or caused by:

30 (1) Normal shrinkage due to drying or settlement of construction components within the
31 tolerance of building standards;

32 (2) The contractor's reliance on written information relating to the dwelling that was
33 obtained from official government records or provided by a government entity;

34 (3) Any construction defect known by or disclosed to a claimant before his or her
35 purchase of the dwelling;

1 (4) If the claimant is not the first owner of the dwelling, any construction defect known
2 by the claimant or that could have been discovered by the claimant through the exercise
3 of reasonable diligence prior the claimant's purchase of the dwelling; or

4 (5) Refusal of anyone to allow the contractor or contractor's agents to perform their
5 warranty service work.

6 8-2-39.

7 A construction defect that is discovered after a claimant has provided a contractor with the
8 initial claim notice may not be alleged in an action until the claimant has given the
9 contractor who performed the original construction:

10 (1) Written notice of claim regarding the alleged defect as required by Code Section
11 8-2-38; and

12 (2) An opportunity to resolve the notice of claim in the manner provided in Code Section
13 8-2-38.

14 8-2-40.

15 If a claimant accepts an offer made in compliance with this part and the contractor fulfills
16 the offer in compliance with this part:

17 (1) The claimant shall thereafter be barred from bringing an action for the claim
18 described in the notice of claim; and

19 (2) The contractor shall be deemed, for insurance purposes, to have been legally
20 obligated to make the repairs or the monetary payment as if the claimant had recovered
21 a judgment against the contractor in the amount of the cost of the repairs or the amount
22 of the monetary payment or both.

23 8-2-41.

24 (a) Upon entering into a contract for sale, construction, or improvement of a dwelling, the
25 contractor shall provide notice to the owner of the dwelling of the contractor's right to
26 resolve alleged construction defects before a claimant may commence litigation against the
27 contractor. Such notice shall be conspicuous and may be included as part of the contract.

28 (b) The notice required by subsection (a) of this Code section shall be in substantially the
29 following form:

30 GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST
31 FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR
32 DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO
33 CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS
34 BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE

1 ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION
 2 CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A
 3 CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR
 4 PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT
 5 ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES
 6 AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM
 7 MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

8 8-2-42.

9 (a) A person shall not provide or offer to provide anything of value, directly or indirectly,
 10 to a property manager of an association or to a member or officer of an association to
 11 induce the property manager, member, or officer to encourage or discourage the association
 12 to file a claim for damages arising from a construction defect.

13 (b) A property manager retained by a homeowner's association shall not accept anything
 14 of value, directly or indirectly, in exchange for encouraging or discouraging the association
 15 that he or she manages to file a claim for damages arising from a construction defect.

16 (c) A member or officer of an association shall not accept anything of value, directly or
 17 indirectly, in exchange for encouraging or discouraging the association of which he or she
 18 is a member or officer to file a claim for damages arising from a construction defect.

19 (d) A person who knowingly violates subsection (a), (b), or (c) of this Code section shall
 20 be guilty of a misdemeanor.

21 (e) An association may bring an action against a contractor to recover damages resulting
 22 from construction defects in any of the common elements or limited common elements of
 23 the common interest community only. Such action may be maintained only after:

24 (1) The association first obtains the written approval of each unit's owner whose interest
 25 in the common elements or limited common elements will be the subject of the action;

26 (2) A vote of the units' owners to which at least a majority of the votes of the members
 27 of the association are allocated;

28 (3) The full board of directors of the association and the contractor have met in person
 29 and conferred in a good faith attempt to resolve the association's claim or contractor has
 30 definitively declined or ignored the requests to meet with the board of directors of the
 31 association; and

32 (4) The association has otherwise satisfied all of the preaction requirements for a
 33 claimant to commence an action as set forth in this part.

34 (f) At least three business days in advance of any vote to commence an action by an
 35 association to recover damages resulting from construction defects in any of the common
 36 elements or limited common elements of the common interest community, the attorney

1 representing the association shall provide to each unit's owner a written statement that
2 includes, in reasonable detail:

3 (1) The defects and damages or injuries to the common elements or limited common
4 elements;

5 (2) The cause of the defects, if the cause is known;

6 (3) The nature and the extent that is known of the damage or injury resulting from the
7 defects;

8 (4) The location of each defect within the common elements or limited common
9 elements, if known;

10 (5) A reasonable estimate of the cost of the action or mediation, including reasonable
11 attorneys' fees and costs, expert fees, and the costs of testing; and

12 (6) All disclosures that the unit owner is required to make upon the sale of the unit.

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

16 (1) The person is licensed as a contractor pursuant to law;

17 (2) The association has obtained the prior written approval of each unit's owner whose
18 unit or interest in the common element or limited common element will be affected by
19 such testing;

20 (3) The person performing the tests has provided a written schedule for repairs;

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

23 (5) The association or the person so employed obtains all permits required to conduct
24 such tests and to repair any damage resulting from such tests; and

25 (6) Reasonable prior notice and opportunity to observe the tests is given to the contractor
26 against whom an action may be brought as a result of the tests.

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

32 (i) The board of directors of an association may, without giving notice to the units'
33 owners, employ a contractor and such other persons as are necessary to make such
34 immediate repairs to a unit or common element within the common interest community as
35 are required to protect the health, safety, and welfare of the units' owners.

1 8-2-43.

2 (a) Nothing in this part shall create any cause of action on behalf of any claimant or
3 contractor.

4 (b) This part does not apply to a contractor's right to seek contribution, indemnity or
5 recovery against a subcontractor, supplier, or design professional for any claim made
6 against a contractor by a claimant."

7 **SECTION 2.**

8 This Act shall become effective upon its approval by the Governor or upon its becoming law
9 without such approval. This Act shall apply to all actions commenced after said effective
10 date, regardless of the date of sale or substantial completion, improvement, or repair of the
11 dwelling at issue in the action.

12 **SECTION 3.**

13 All laws and parts of laws in conflict with this Act are repealed.