

The House Committee on Public Utilities offers the following substitute to SB 563:

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 for subrogation; to provide for notice of a contractor's
8 right to resolve construction defects; to provide for claims by associations; to provide for
9 related matters; to provide for an effective date and applicability; to repeal conflicting laws;
10 and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **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 "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 stay the action until the
6 claimant has complied with the requirements of this part. To the extent that the action
7 includes a cause of action for damages due to personal injury or death, such cause of action
8 shall not be subject to stay pursuant to this Code section.

9 8-2-38.

10 (a) In every action subject to this part, the claimant shall, no later than 90 days before
11 initiating an action against a contractor, provide service of written notice of claim on that
12 contractor. The notice of claim shall state that the claimant asserts a construction defect
13 claim or claims and is providing notice of the claim or claims pursuant to the requirements
14 of this part. The notice of claim shall describe the claim or claims in detail sufficient to
15 explain the nature of the alleged construction defects and the results of the defects. In
16 addition, the claimant shall provide to the contractor any evidence that depicts the nature
17 and cause of the construction defect, including expert reports, photographs, and videotapes,
18 if that evidence would be discoverable under evidentiary rules.

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

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

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

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

31 (d) If the claimant rejects the settlement offer made by the contractor, the claimant shall
32 provide written notice of the claimant's rejection to the contractor and, if represented by
33 legal counsel, his or her attorney. The notice shall include the reasons for the claimant's
34 rejection of the contractor's proposal or offer. If the claimant believes that the settlement
35 offer:

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

2 (2) Was unreasonable in any manner,

3 the claimant shall in his or her written notice include those items that claimant believes
4 were omitted and set forth in detail all known reasons why the claimant believes the
5 settlement offer is unreasonable.

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

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

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

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

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

30 (4) A written statement that the contractor will not proceed further to remedy the defect,
31 along with the reasons for such rejection.

32 (g) If a claimant accepts a contractor's offer made pursuant to paragraph (1), (2), or (3) of
33 subsection (f) of this Code section and the contractor does not proceed to make the
34 monetary payment or remedy the construction defect or both within the agreed timetable,
35 the claimant may bring an action against the contractor for the claim described in the notice
36 of claim without further notice except as otherwise provided by applicable law. In such a
37 situation, the claimant may also file the contractor's offer and claimant's acceptance, and

1 such offer and acceptance will create a rebuttable presumption that a binding and valid
2 settlement agreement has been created and should be enforced by the court or arbitrator.

3 (h) If a claimant receives a written statement that the contractor will not proceed further
4 to remedy the defect, the claimant may bring an action against the contractor for the claim
5 described in the notice of claim without further notice except as otherwise provided by
6 applicable law. The contractor's written statement shall include all known reasons for the
7 rejection of the claim.

8 (i) If the claimant rejects the offer made by the contractor to remedy the construction
9 defect or to settle the claim by monetary payment or a combination of each, the claimant
10 shall serve written notice of the claimant's rejection on the contractor. The notice shall
11 include all known reasons for the claimant's rejection of the contractor's offer.

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

15 (k) If the claimant rejects the supplemental offer made by the contractor to repair the
16 construction defect or to settle the claim by monetary payment or a combination of each,
17 the claimant shall serve written notice of the claimant's rejection on the contractor. The
18 notice shall include all known reasons for the claimant's rejection of the contractor's
19 supplemental settlement offer.

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

24 (1) The fair market value of the offer of settlement or the actual cost of the repairs made;
25 or

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

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

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

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

(o) 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 stayed until completion of the notice of claim process described in this part. This subsection shall not be construed to:

(1) 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

(2) Extend any applicable statute of repose.

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

8-2-39.

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

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

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

8-2-40.

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

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

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

(b) An insurer paying a claim under this part shall be subrogated to the rights of the claimant to whom the amounts were paid against the person causing the construction defect, damages, or other reason for payment to the extent that claim payments were made,

except that the insurer shall be required to pay any applicable part of costs, expenses, and attorney's fees incurred in connection therewith.

8-2-41.

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

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

GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

8-2-42.

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

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

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

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

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

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

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

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

(f) At least three business days in advance of any vote to commence an action by an association to recover damages resulting from construction defects in any of the common elements or limited common elements of the common interest community, the attorney representing the association shall provide to each unit's owner a written statement that includes, in reasonable detail:

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

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

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

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

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

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

(g) 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 is licensed as a contractor pursuant to law;

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

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

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

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

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

(h) 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 at least 21 calendar days before the meeting.

(i) The board of directors of an association may, without giving notice to the units' owners, employ a contractor and such other persons as are necessary to make such immediate 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.

8-2-43.

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

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

SECTION 2.

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

SECTION 3.

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