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New Statutory Protections for New Hampshire Contractors

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Effective January 1, 2006, New Hampshire adopted a mandatory dispute resolution process for contractors and homeowners designed to encourage out-of-court resolution of disputes relative to residential construction defects. The statute, RSA 359-G, applies to both new homes and remodeling work (in excess of \$5,000). The statute offers two primary benefits to contractors.

First, the statute creates a mandatory “cooling off” period. It does so by imposing on the homeowner a written notice requirement, coupled with an automatic 60-day stay period during which the homeowner may not initiate litigation against the contractor. The homeowner’s notice must provide a detailed description of the defect and provide the contractor with any evidence in the homeowner’s possession regarding the defect. The contractor then has 30 days to provide a written response disclosing all of the evidence in its possession concerning the construction defect – for example, photographs, field reports, job minutes, specifications, communications with subcontractors, etc. The contractor’s reply may (a) reject the claim in its entirety; (b) offer to settle the claim by monetary payment, making repairs, or a combination of the two, without inspection; or (c) request an inspection. If the contractor fails to reply within the required 30-day period, the stay is released and the homeowner then may bring an action against the contractor – but only for the claims described in the notice.

Where an inspection occurs, within 15 days of the inspection, the statute requires a substantive response from the contractor concerning payment, repairs and/or rejection of the claim. The contractor must also disclose the inspection results. Oddly, the statute does not prescribe any remedy if the owner fails to permit an inspection to take place but does contemplate full and complete inspections where inspections are allowed and also establishes certain procedures regarding destructive testing.

The statute prescribes certain procedures for the acceptance of a contractor’s settlement offer. In the event that a homeowner rejects an offer and that offer is more generous than any judgment awarded in any ensuing litigation, the statute makes the homeowner pay the contractor’s litigation costs, but not attorneys’ fees. Importantly, the statute allows the contractor and homeowner the freedom to contractually modify the notice procedures.

Second, the statute insulates contractors from any liability for damages resulting from a substantial range of defects, including:

- normal shrinkage due to drying or settlement of construction components within industry tolerances;
- the contractor's reasonable reliance on written information relating to the residence obtained from government records or officials;
- the contractor's reasonable reliance on applicable building codes in effect at the start of the construction (except when the parties agree to exceed the code provisions); and
- defects known or disclosed to the homeowner prior to the homeowner's purchase of the residence.

The statute imposes on contractors the duty to provide homeowners with written notice of the contractor's rights under the statute. The notice (which must be conspicuous) may be included as part of the contract, and, while not required, doing so is certainly encouraged. The statute provides suggested language which, if used, should satisfy the statutory notice requirement. The impact of this new statute on contractual arbitration clauses remains an open question.

In sum, this new statute provides contractors with important new procedural protections which should enable contractors to practically resolve disputes and avoid unnecessary litigation expense while also providing them with immunity from a range of categories of potential damages.

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