

D R A F T

SUMMARY

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

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

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

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

A BILL FOR AN ACT

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

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

SECTION 1. ORS 701.565 is amended to read:

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

(2)(a) An owner must send a notice of defect by registered or certified mail, return receipt requested. If a notice of defect is sent to a contractor

or subcontractor, the owner must send the notice to the last known address for the contractor or subcontractor as shown in the records of the Construction Contractors Board. If a notice of defect is sent to a supplier, the owner must send the notice to the Oregon business address of the supplier or, if none, to the registered agent of the supplier.

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

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

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

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

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

(d) A description of:

(A) Each defect;

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

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

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

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

(b) A notice of defect is not valid for purposes of ORS 701.560 to 701.595 with regard to any matter that is within the scope of an earlier

notice of defect sent to the same recipient.

SECTION 2. ORS 701.570 is amended to read:

701.570. (1)(a) A contractor, subcontractor or supplier that receives a notice of defect sent under ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary notice to any other known contractor, subcontractor or supplier that may be responsible for some or all of the defects described in the notice of defect. The contractor, subcontractor or supplier must send the secondary notice by registered or certified mail, return receipt requested, to an address described in ORS 701.565 (2)(a). The secondary notice must be accompanied by a statement describing the basis for contending that the other contractor, subcontractor or supplier may be responsible for some or all of the defects.

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

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

(3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice may send the owner a written request to inspect the residence. The written request must be sent not later than 14 days after the requesting contractor, subcontractor or supplier conducted a visual exam-

ination of the residence. The written request to inspect the residence must state the nature and scope of the inspection, whether any testing is to be performed and the estimated time required for the inspection. The recipient of a secondary notice that requests to inspect the residence shall send a copy of the request to the sender of the secondary notice.

(4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold the recipient of the secondary notice liable for a defect described in a notice of defect shall coordinate the scheduling of any inspection with the owner and all recipients of a secondary notice from the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a copy of any written request to inspect the residence to each recipient of the secondary notice in time to provide the recipient with an opportunity to attend the requested inspection and to participate in any remediation. The sender of a secondary notice shall give reasonable advance notice to the owner or the owner's legal representative, if any, of the identity of any contractor, subcontractor or supplier who will attend the inspection.

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

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

(A) An acknowledgment of the existence, nature and extent of the defect without regard to responsibility for the defect.

(B) A statement describing the existence of a defect different in nature or extent from the defect described in the notice of defect or secondary no-

tice, without regard to responsibility for the defect.

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

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

(c) One or more of the following:

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

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

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

SECTION 3. ORS 701.585 is amended to read:

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

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

(b) One hundred twenty days after:

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

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

[(b)] **(C)** [*One hundred and twenty days after*] The owner rejects a written offer by any contractor, subcontractor or supplier to perform remediation or

1 pay monetary compensation for one or more of the defects or incidental
2 damage described in the notice of defect; [or]

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

4 **(A) The end of an unsuccessful joint attempt by the parties to re-**
5 **solve the claim through mediation; or**

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

8 [(c)] **(d)** Thirty days after the date specified in an accepted written offer
9 by which the offering contractor, subcontractor or supplier is to complete the
10 remediation or complete payment of monetary compensation for one or more
11 of the defects and any incidental damage described in the notice of defect.

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

15 **(2) If the sender of a secondary notice complies with ORS 701.570 (1)**
16 **and (5), notwithstanding any statute of limitation or statute of ulti-**
17 **mate repose, the time for the sender to commence an action against**
18 **the recipient of the secondary notice is the later of:**

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

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

23 (3) Delivery of a secondary notice sent by a contractor, subcontractor or
24 supplier under ORS 701.570 does not act to toll the expiration of any right
25 of the owner to commence a court action against the recipient of the sec-
26 ondary notice.

27 (4) Any remediation performed pursuant to an accepted offer made under
28 ORS 701.570 does not constitute a new performance and, for purposes of ORS
29 12.135, relates back to the earliest date of substantial completion or aban-
30 donment of the construction, alteration or repair of the improvement to real
31 property.

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

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

(3) The amendments to ORS 701.585 by section 3 of this 2016 Act apply to the commencement of an action:

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

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