

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. 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.