

THE BASICS

What Is the Right to Repair Act?

- ◆ In 2004, the Georgia legislature enacted the Right to Repair Act, which severely restricts the rights of associations to sue any contractor for a construction or design defect related to residential dwellings.
- ◆ Prior to the Act, associations were free to pursue a lawsuit against any builder or contractor relating to a defective design or faulty installation. However, now there are a number of procedural hurdles an association must clear in order to file a lawsuit against a contractor. Additionally, associations may only bring claims for defects to common elements or limited common elements.
- ◆ The term “contractor” under the act is very broad. It encompasses anyone required to be licensed under the contractor licensing law. This would not only include builders, but also developers, architects, real estate agents, renovation contractors and repair contractors, along with their owners, officers, directors, subcontractors, suppliers, or even insurers

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Procedures Under the Act

- ◆ Ninety (90) days before filing suit, the association must provide the contractor with notice of the defect. The notice must include any supporting documentation establishing the defect, including, but not limited to, engineer’s reports, inspection reports or photographs.
- ◆ Thirty (30) days after the notice, the contractor must deliver a written response to the association. The contractor may offer to settle with monetary payment, repairs, or a combination. The contractor may make a request for inspection prior to a settlement offer. During the inspection, the contractor is entitled to thoroughly examine, document and test the alleged defect. The contractor may reject the claim or fail to respond entirely, at which point the association may proceed with its suit, provided the requirements below are also satisfied.
- ◆ Once the contractor has responded, the association may respond. If the association rejects the settlement offer, it must set forth the reasons for its rejection. The contractor is allowed an additional fifteen (15) days to make a supplemental offer after rejection. Once the fifteen (15) day period has elapsed, the association may proceed with suit, provided the requirements below are also satisfied.
- ◆ If the association accepts an offer of settlement that includes repair, it must allow the contractor unfettered access to the structure for the completion of construction. Once an offer is accepted and performed, the association is barred from ever bringing any claim that was described in the original notice of claim.
- ◆ If an association rejects a reasonable offer, the association cannot recover more than the fair market value of the settlement offer or the actual costs of the repairs made, or the amount of the monetary settlement offer. The association is also barred from recovering attorney’s fees or costs. The reasonableness of the offer is determined by the trier of fact.
- ◆ Any suit filed by an association must preceded by a two thirds (2/3) vote of all the members of the Association.
- ◆ At least three (3) days prior to that vote, the association must provide a copy of the notice of claim to each owner, along with an additional written description of the claims and reasons the Board is recommending the litigation.
- ◆ Prior to suit, the full board of directors of the association and the contractor must meet in person and confer in a good faith attempt to resolve the claim.

Failure to Comply

- ◆ If the association does not comply with the Right to Repair Act prior to bringing suit, the Act allows for any litigation to be halted until such time as the association does comply.

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