

Senate Bill 897

Sponsored by Senator WINTERS; Representative SCHAUFLEER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Limits time within which recipient of untimely secondary notice of residential construction defect may request to conduct visual examination or conduct inspection of residence. Limits time for recipient of untimely secondary notice to file written response with property owner.

A BILL FOR AN ACT

1
2 Relating to residential construction defects; creating new provisions; and amending ORS 701.570 and
3 701.580.

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

5 **SECTION 1.** ORS 701.570 is amended to read:

6 701.570. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under
7 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-
8 tice to any other known contractor, subcontractor or supplier that may be responsible for some or
9 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must
10 send the secondary notice by registered mail, return receipt requested, to an address described in
11 ORS 701.565 (2). The secondary notice must be accompanied by a statement describing the basis for
12 contending that the other contractor, subcontractor or supplier may be responsible for some or all
13 of the defects.

14 (2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
15 may send the owner a written request to conduct a visual examination of the residence. **Except as**
16 **provided in subsection (5) of this section**, the written request must be sent not later than 14 days
17 after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary
18 notice. The written request to conduct a visual examination of the residence must state the esti-
19 mated time required for the visual examination.

20 (3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
21 may send the owner a written request to inspect the residence. **Except as provided in subsection**
22 **(5) of this section**, the written request must be sent not later than 14 days after the requesting
23 contractor, subcontractor or supplier conducted a visual examination of the residence. The written
24 request to inspect the residence must state the nature and scope of the inspection, whether any
25 testing is to be performed and the estimated time required for the inspection. The recipient of a
26 secondary notice that requests to inspect the residence shall send a copy of the request to the
27 sender of the secondary notice.

28 (4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold
29 the recipient of the secondary notice liable for a defect described in a notice of defect shall coor-
30 dinate the scheduling of any inspection with the owner and all recipients of a secondary notice from
31 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 copy of any written request to inspect the residence to each recipient of the secondary notice in
 2 time to provide the recipient with an opportunity to attend the requested inspection and to partic-
 3 ipate in any remediation. The sender of a secondary notice shall give reasonable advance notice to
 4 the owner or the owner's legal representative, if any, of the identity of any contractor, subcontractor
 5 or supplier who will attend the inspection.

6 **(5) The recipient of a secondary notice that was not timely sent under subsection (1) of**
 7 **this section:**

8 **(a) May not request to make a visual examination of the residence more than 28 days**
 9 **after any contractor, subcontractor or supplier received the notice of defect sent by the**
 10 **owner; and**

11 **(b) May not request to make an inspection of the residence more than 42 days after any**
 12 **contractor, subcontractor or supplier received the notice of defect sent by the owner.**

13 *[(5)]* **(6) [Unless otherwise agreed to by the owner] Except as provided in subsection (7) of this**
 14 **section**, a contractor, subcontractor or supplier that receives a notice of defect or secondary notice
 15 shall send a written response to the owner not later than 90 days after the contractor, subcontractor
 16 or supplier receives a notice of defect or secondary notice. A contractor, subcontractor or supplier
 17 that receives a secondary notice also shall send a copy of the written response to the sender of the
 18 secondary notice. The written response must be sent by registered mail, return receipt requested.
 19 The written response must include:

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

22 (A) An acknowledgment of the existence, nature and extent of the defect without regard to re-
 23 sponsibility for the defect.

24 (B) A statement describing the existence of a defect different in nature or extent from the defect
 25 described in the notice of defect or secondary notice, without regard to responsibility for the defect.

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

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

28 (c) One or more of the following:

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

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

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

35 **(7) An owner may extend the time for a contractor, subcontractor or supplier to send a**
 36 **written response to the owner if the contractor, subcontractor or supplier was the recipient**
 37 **of a secondary notice that was not timely sent under subsection (1) of this section. An ex-**
 38 **ension under this subsection may not exceed 14 days.**

39 **SECTION 2.** ORS 701.580 is amended to read:

40 701.580. (1) An owner may accept an offer contained in a written response under ORS 701.570
 41 by delivering a written acceptance to the offering contractor, subcontractor or supplier within 30
 42 days after receiving the offer. If an owner fails to accept an offer within 30 days after receipt, the
 43 offer is deemed rejected.

44 (2) If the owner accepts a contractor, subcontractor or supplier's offer to perform remediation
 45 or to pay monetary compensation, completion of the remediation or payment satisfies the claims by

1 the owner for those defects included in the offer for which remediation was performed or compen-
2 sation paid, but not for any other defect. Except as provided in subsection (3) of this section, if the
3 owner accepts an offer by a contractor, subcontractor or supplier that received a secondary notice,
4 completion of the remediation or payment satisfies claims for those defects included in the offer for
5 which remediation was performed or compensation paid, including claims by the owner and claims
6 for contribution or indemnity against the contractor, subcontractor or supplier by the sender of the
7 secondary notice, but not for any other defect.

8 (3) If the owner accepts an offer by a contractor, subcontractor or supplier that received a
9 secondary notice to perform remediation or to pay monetary compensation and the contractor, sub-
10 contractor or supplier fails to perform in accordance with the accepted offer, then the sender of the
11 secondary notice may perform the remediation or pay the monetary compensation offered by the
12 nonperforming contractor, subcontractor or supplier.

13 (4) An owner that sends a notice of defect under ORS 701.565 may compel arbitration or com-
14 mence a court action against a contractor, subcontractor or supplier if:

15 (a) The contractor, subcontractor or supplier that receives the notice of defect sent under ORS
16 701.565 does not send a timely written response under ORS 701.570;

17 (b) The written response of the contractor, subcontractor or supplier that received the notice
18 of defect or a secondary notice does not offer remediation or monetary compensation;

19 (c) The owner rejects a written offer, or any part thereof, made by the contractor, subcontractor
20 or supplier; or

21 (d) The contractor, subcontractor or supplier fails to perform in accordance with an accepted
22 offer.

23 (5) A notice of defect and the documents described in ORS 701.575 (4) are admissible in any ar-
24 bitration or court action between or among an owner, contractor, subcontractor or supplier arising
25 out of or related to the construction, alteration or repair of the residence.

26 (6) Except as provided in this subsection, a written response containing an offer to perform re-
27 mediatio n or pay monetary compensation made under ORS 701.570 [(5)] (6) that is not accepted by
28 the owner, and any reply by an owner, unless the reply contains a counteroffer accepted by a con-
29 tractor, subcontractor or supplier, are not admissible during any subsequent arbitration or court
30 action. A response or reply described in this subsection is admissible solely for the purpose of
31 proving that an owner is qualified to compel arbitration or commence a court action under sub-
32 section (4)(c) of this section or determining the timeliness of an action under ORS 701.585.

33 **SECTION 3. The amendments to ORS 701.570 and 701.580 by sections 1 and 2 of this 2007**
34 **Act apply to construction defects for which an owner first sends a notice of defect to a**
35 **contractor, subcontractor or supplier on or after the effective date of this 2007 Act.**

36