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SENATE FILE 381
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 279)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to an alternative dispute resolution process in a
2 residential construction defect case and including a mediation
3 provision.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 381

1 Section 1. NEW SECTION. 657B.1 PURPOSE -- APPLICABILITY.

2 This chapter establishes a nonadversarial procedure to
3 resolve disputes between builders and claimants which, if the
4 procedure does not resolve a dispute between such parties, may
5 result in the filing of a lawsuit. A builder may elect to
6 resolve a dispute through alternative nonadversarial
7 provisions contained in the sales agreement between the
8 parties, but shall not require adherence to such alternative
9 nonadversarial provisions.

10 Sec. 2. NEW SECTION. 657B.2 DEFINITIONS.

11 For the purposes of this chapter, the following definitions
12 shall apply:

13 1. "Builder" means a builder, developer, or original
14 seller of a new residential unit that is sold on or after July
15 1, 2005.

16 2. "Claimant" includes an individual owner of a single-
17 family home, an individual unit owner of an attached dwelling,
18 and, in the case of a common interest development, an
19 association.

20 3. "Residence" means a single-family house, duplex, or
21 multifamily unit designed for residential use and shall
22 include other structures appurtenant to the house, duplex, or
23 multifamily unit.

24 Sec. 3. NEW SECTION. 657B.3 NOTICE OF CLAIM.

25 1. Prior to filing an action for recovery of damages
26 arising out of, or related to deficiencies in, the residential
27 construction, design, specification, survey, plan,
28 supervision, testing, or observation of construction against a
29 builder, a subcontractor, material supplier, individual
30 product manufacturer, or design professional, the claimant
31 shall provide written notice by certified mail, overnight
32 mail, or personal delivery to the builder that the
33 construction design, specifications, survey, plan,
34 supervision, testing, or observation of construction of the
35 claimant's residence is deficient or violates the applicable

1 housing code or city ordinance. The notice shall state the
2 claimant's name, address, and contact information, and shall
3 describe the nature of the claim in sufficient detail in order
4 to determine the nature and location of the alleged violation.
5 The document shall have the same force and effect as a notice
6 of commencement of a lawsuit.

7 2. The notice requirements of this section do not preclude
8 a claimant from seeking redress through a customer service
9 procedure set forth in a contract, warranty, or other document
10 generated by the builder.

11 Sec. 4. NEW SECTION. 657B.4 RECEIPT OF CLAIM --
12 ACKNOWLEDGEMENT.

13 Within fourteen days of receipt of a claimant's notice of
14 claim, the builder shall provide a written acknowledgement of
15 receipt of the claim.

16 Sec. 5. NEW SECTION. 657B.5 BUILDER RESPONSE TO CLAIMANT
17 REQUEST.

18 1. Within thirty days of receipt of a claimant's notice of
19 claim, the builder shall provide all of the following to the
20 claimant:

21 a. A copy of the relevant plans, including grading plans,
22 specifications, final soil reports, and engineering
23 calculations prepared for the claimant's residence.

24 b. A copy of any maintenance recommendation including a
25 preventative or manufactured product maintenance
26 recommendation, and limited warranty information including the
27 builder's limited contractual warranties in effect at the time
28 of the original sale of the claimant's residence.

29 2. A builder who does not comply with subsection 1 shall
30 not be entitled to the protection of this chapter.

31 Sec. 6. NEW SECTION. 657B.6 BUILDER INSPECTION AND
32 TESTING.

33 1. A builder who elects to inspect a claimed deficiency
34 shall complete the inspection and testing of the claimant's
35 residence within fourteen days after acknowledgement of

1 receipt of the notice of the claim. The costs of the
2 inspection and testing shall be paid by the builder. The
3 builder shall also provide written proof that the builder is
4 adequately covered by liability insurance to cover damages or
5 injuries that may occur during inspection and testing. If
6 destructive testing is required, the builder shall, within
7 forty-eight hours after completion of the testing, restore the
8 residence to its pretesting condition.

9 2. A builder who intends to hold a subcontractor, design
10 professional, product manufacturer, or material supplier
11 responsible for any claimed deficiency shall provide notice to
12 the appropriate person or entity to allow the person to attend
13 the inspection and testing and to allow the person to
14 participate in the repair process.

15 Sec. 7. NEW SECTION. 657B.7 OFFER TO COMPENSATE OR
16 REPAIR.

17 1. Within thirty days of the inspection and testing, the
18 builder may offer in writing to repair a deficiency, which
19 shall include all of the following:

20 a. An offer to compensate the claimant for damages
21 recoverable at law.

22 b. A detailed statement identifying the particular
23 deficiency being repaired, an explanation of the nature,
24 scope, and location of the repair needed, and a reasonable
25 estimate of the completion date.

26 c. The names, addresses, and telephone and license numbers
27 of the contractors or subcontractors who will perform the
28 repairs. Such contractors shall provide proof of insurance
29 and shall be responsible for all damages or injuries that may
30 occur during the repair period.

31 d. A mediation provision subject to the provisions of
32 section 657B.8.

33 Sec. 8. NEW SECTION. 657B.8 MEDIATION -- EFFECT ON OFFER
34 TO REPAIR.

35 1. A mediation conducted pursuant to this section shall

1 occur within fifteen days after the request for mediation is
2 received, shall not exceed four hours in length, and shall be
3 conducted before an impartial mediator selected and paid for
4 by the builder, or jointly selected and paid for by the
5 builder and the claimant.

6 2. If a builder has made an offer to repair pursuant to
7 section 657B.7 and the dispute has been submitted to mediation
8 that failed to resolve the dispute, the claimant shall allow
9 the repair to be performed by the builder or the builder's
10 designee.

11 Sec. 9. NEW SECTION. 657B.9 REPAIRS.

12 1. If a claimant accepts a builder's offer to repair, the
13 builder shall make the appropriate arrangements to effectuate
14 a repair of the claimed deficiencies and compensate the
15 claimant for damages resulting from the repair.

16 2. A repair shall occur within fourteen days of acceptance
17 of the offer to repair, within seven days of the completion of
18 a successful mediation, or within five days after a permit is
19 obtained.

20 Sec. 10. NEW SECTION. 657B.10 BUILDER COMPLIANCE.

21 If a builder fails to comply with the requirements of this
22 chapter, a claimant may file a lawsuit against the builder.

23 EXPLANATION

24 This bill relates to an alternative dispute resolution
25 process in a residential construction defect case and includes
26 a mediation provision.

27 The bill requires a claimant to provide written notice to a
28 builder responsible for a construction defect in or around a
29 claimant's residence before initiating a lawsuit against the
30 builder allowing the builder the opportunity to repair the
31 defect or reach a monetary settlement, or both, with the
32 claimant. After service of the notice and any relevant
33 inspection or testing, a builder may serve on the claimant a
34 written response offering compensation and repair of the
35 defect. If the builder rejects the claim, refuses to remedy

1 the defect within the time periods specified in the bill, or
2 otherwise fails to comply with the requirements of this Act,
3 the claimant may file a lawsuit against the builder.

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