

## CONSTRUCTION

### AMENDMENTS TO ARIZONA'S PURCHASER DWELLING ACT IMPACT RESIDENTIAL CONSTRUCTION CLAIMS

by Denise H. Troy

House Bill 2578, which amends the Purchaser Dwelling Act ("Act") was signed into law by Governor Ducey on Monday, March 23, 2015. The Purchaser Dwelling Act sets forth a procedure for bringing claims for construction defects against the sellers of residential construction. The amended Act contains the following changes:

- Gives the seller the right (but not the responsibility) to repair or replace alleged construction defects at the home. Previously, the seller could offer repair but the purchaser could reject the offer. The seller need not repair all conditions described in the purchaser's notice to the seller. The seller may also offer monetary compensation in addition to or in lieu of repair. The purchaser is not required to accept a monetary offer.
- The seller is required to make a good faith effort to begin any repairs within thirty-five (35) days of advising the purchaser of the intent to repair or within ten (10) days of the issuance of a permit necessary to make the repairs. The purchaser may ask the seller to have the repairs made by a third party to which both parties agree. The purchaser is not required to sign a release if repairs are made, but a release can be negotiated if a payment is made.
- Defines the term "construction defect" to mean a material deficiency in the design or construction of home that violates construction codes, provides defective materials or equipment and/or fails to comply with workmanship standards. The amendment also defines "material deficiency" to only include deficiencies that "actually impair" the structural integrity, functionality or appearance of the home, or are reasonably like to do so in the foreseeable future.
- Repeals A.R.S. § 12-1364, which allowed for an award of attorneys' fees and expert costs to the prevailing party.
- Precludes the filing of a lawsuit until after the repairs are completed, unless the seller does not respond to the initial notice within the sixty days allowed.
- If the claim is subject to arbitration, and the seller has agreed to make repairs, the purchaser may only make a demand for arbitration after the repair/replacement process has been completed.
- Tolls the statute of repose and/or limitations until thirty (30) days after substantial completion of the repairs. Tolling also applies to other construction professionals who were involved in the original construction.
- Requires a court to dismiss lawsuits filed by purchasers who do

not comply with the Act. If the statute of repose or limitations expires while the dismissed lawsuit is pending, further claims are barred.

- If the claims are raised by a homeowners' association, the association must notify its members of the anticipated cost of litigation and the impact on home values prior to filing the lawsuit.

These amendments are very favorable to homebuilders, because they now have the ability to make necessary repairs; they can no longer be sued for minor issues; and, in many circumstances, are not at risk of an award of attorneys' fees and costs that far exceed the value of the claim.

These amendments will become effective ninety-one (91) days after the legislature adjourns, which is expected to be in early April, making the effective date sometime in July 2015. The amendments are not retroactive.

We will be writing further on the anticipated impact of this new legislation.

FOR MORE INFORMATION CONTACT:



**Denise H. Troy** is a Member in Dickinson Wright's Phoenix office. She can be reached at 602.285.5097 or dtroy@dickinsonwright.com.

*This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field construction law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered here.*