

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

339N0533

## SENATE ENGROSSED NO. **HB 1196** - 02/26/2007

Introduced by: Representatives Rounds, Boomgarden, Buckingham, Cutler, Engels, Feinstein, Gilson, Lust, Moore, Noem, Novstrup (Al), Olson (Ryan), Peters, Weems, Wick, and Willadsen and Senators McCracken, Abdallah, Albers, Gray, Hoerth, Jerstad, Koetzle, and Schmidt (Dennis)

1 FOR AN ACT ENTITLED, An Act to provide for notice and opportunity to remedy residential  
2 construction defects.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

- 5 (1) "Action," any civil lawsuit or action in contract or tort for damage or indemnity  
6 brought against a construction professional to assert a claim for damage or the loss  
7 of use of real or personal property caused by a construction defect. The term does not  
8 include a counterclaim, cross-claim, or civil action in tort alleging personal injury or  
9 wrongful death resulting from a construction defect;
- 10 (2) "Construction defect," a deficiency in or arising out of the supervision, construction,  
11 or remodeling of a residence that results from any of the following:
- 12 (a) Defective materials, products, or components used in the construction or  
13 remodeling of a residence;
- 14 (b) Violation of the applicable building, plumbing, or electrical codes in effect at



1 the time of the construction or remodeling of a residence; or

2 (c) Failure to construct or remodel a residence in accordance with contract  
3 specifications or accepted trade standards;

4 (3) "Construction professional," a builder, contractor, or subcontractor performing or  
5 furnishing the supervision of the construction or remodeling of any residence,  
6 whether operating as a sole proprietor, partnership, corporation, or other business  
7 entity;

8 (4) "Home owner," any person, company, firm, partnership, corporation, or association  
9 who contracts with a construction professional for the remodeling, construction, or  
10 construction and sale of a residence. The term includes a subsequent purchaser of a  
11 residence from any home owner;

12 (5) "Residence," a single-family house or a unit in a multi-unit residential structure in  
13 which title to each individual unit is transferred to the owner under a condominium  
14 or cooperative system;

15 (6) "Serve" or "service," personal delivery or delivery by certified mail to the last known  
16 address of the addressee.

17 Section 2. Prior to commencing an action against the construction professional for a  
18 construction defect, a home owner shall:

19 (1) Serve on the construction professional a written notice describing the alleged  
20 construction defect; and

21 (2) Allow the construction professional, within thirty days after service of the notice, to  
22 inspect the alleged construction defect and serve on the home owner a written offer  
23 to repair the construction defect or compensate the owner by monetary payment.

24 The home owner may not commence an action against the construction professional for a

1 construction defect until thirty days after the notice is served on the construction professional  
2 or until the construction professional refuses to remedy the alleged construction defect,  
3 whichever occurs first. Upon service of the notice, the statute of limitations set forth in chapter  
4 15-2A is suspended for the thirty-day period or until the refusal, whichever occurs first. If the  
5 home owner commences an action against the construction professional without complying with  
6 the requirements of this section, the action shall be stayed until the home owner has complied  
7 with such requirements. No home owner is required to serve another written notice for any  
8 additional defects discovered after the home owner has served an initial written notice of a  
9 construction defect pursuant to this section. The provisions of this Act do not apply to the  
10 initiation of a counterclaim or cross-claim in any action that is already properly commenced.