

GEORGIA'S RIGHT TO REPAIR ACT
A GUIDE FOR HOMEOWNERS

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Building, renovating or even repairing a home can be at once exciting, expensive, and stressful. When things don't go as planned, the associated expense and stress is often magnified. Left unresolved, the disputes that arise between homeowners and contractors can ultimately wind up in unfamiliar and undesirable territory for both parties—the courtroom.

Construction defect disputes between contractors and homeowners have long choked Georgia's courts with time-consuming and expensive litigation. In an effort to more efficiently and inexpensively resolve these disputes, in 2004, the Georgia Legislature passed what is known as the Right to Repair Act.

The stated purpose of the Act is to protect the rights of homeowners and reduce the need for construction-related litigation. In reality, the Act imposes significant hurdles that you, the homeowner, must clear before you can turn to the courts for assistance.

Very basically, the Act requires homeowners to, first, tell their contractors in writing about any concerns they have with the workmanship of their home and then give the contractors an opportunity to correct the issue. A series of required communications governed by a very specific timeline must take place over a 3 month period before the homeowner can file a lawsuit.

Step 1 – Notice to Homeowners

At the outset of a relationship between a contractor and homeowner, the Act imposes an affirmative duty on the contractor to alert homeowners of their rights under the Act by providing a notice that contains the following language:

GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

Despite the clarity of this obligation, many contractors fail to provide homeowners with the requisite notice. Whether this failure relieves the homeowner of further compliance with the Act is a question that neither the Act nor Georgia's courts have yet answered. Given the presumption that ignorance of the law is no excuse, homeowners will do well to familiarize themselves with the Act regardless of whether their contractor brings it to their attention.

Step 2 – Notice to Contractor

If you, as a homeowner, have concerns about the work performed by your contractor, you must send the contractor written notice of your complaints by certified or overnight mail and give the contractor a chance to correct the problem. The notice must advise the contractor that you are asserting a construction defect claim pursuant to the Act, and you must describe the alleged construction defects in detail. Along with the notice, you are required to provide any evidence that depicts the nature and cause of the defective work, including photographs and inspection reports.

Step 3 – Response from Contractor

Upon receipt of the notice, the contractor has thirty days to respond in writing with one of the following proposals: (1) an offer of payment; (2) an offer to repair the defect; (3) a combination of payment and repair; (4) request for the opportunity to inspect the property; or (5) deny that there is any defective work and decline to take any further action. Note that if the contractor declines, he must explain in detail all reasons why he believes the work not to be defective. If the contractor either fails to respond to your notice within the thirty day window or affirmatively declines to remediate, repair, or inspect, you are then free to pursue your legal remedies without further delay.

Step 4 – Property Inspection

If the contractor elects to inspect the property, you must provide "prompt and reasonable access" within thirty days so that your contractor can inspect your property, document the alleged defects, and perform reasonable testing. In most instances, a contractor will elect to inspect the property before simply agreeing to write a check or to make repairs. Within fourteen days of the completion of the inspection and testing, the contractor must repeat Step 3 above (sans the opportunity for additional inspections and testing).

Step 5 – Accept or Reject by Homeowner

If the contractor responds with a written offer to compensate you monetarily or to perform repairs, you then have thirty days to accept or reject the contractor's proposal.

Acceptance – Actual and Implied

If you accept a contractor's offer to repair defective work or to accept payment, then a settlement agreement is created to which both you and your contractor will be bound. If repair work is involved as part of the agreement, you must provide the contractor with "prompt and unfettered" access to your home to perform and complete the construction by the timetable set forth in the proposal.

Be aware that, in addition to affirmatively accepting a proposal from a contractor, a contractor's proposal will be **deemed accepted** by you if you do not affirmatively reject the proposal in writing within the thirty day window. Given that your silence will be interpreted as acceptance, pay attention to the deadline to respond so that you are not bound to an unfavorable proposal. Finally, you should also keep in mind that by accepting an offer, actually or by implication, you will be prevented from being able to assert any further claims against the contractor.

Rejection

If you reject the contractor's offer, you must do so in writing and must explain the reasons for the rejection. If you believe that the contractor's offer is unreasonable, you must set forth in detail all of the reasons on which that conclusion is based. Similarly, if you believe that the contractor's offer failed to address some portion of your concerns, the notice must state as much.

Within fifteen days of the contractor's receipt of your rejection, the contractor may make a supplemental offer to repair or for monetary payment or both. Once again, if you reject the supplemental offer, you must do so in writing to the contractor. That notice must also include all known reasons for claimant's rejection of the supplemental offer.

The Act places great weight on the "reasonableness" of the homeowner's decision to accept or reject a contractor's proposal. In an effort to foster agreements and compromise, the Act provides that if you reject a contractor's "reasonable" offer or supplemental offer, you will be precluded from recovering at trial any amount in excess of: (1) the fair market value of the offer of settlement or the actual costs of repairs made; or (2) the amount of a monetary offer of settlement. Similarly, if you reject a "reasonable" offer from your contractor, you will also be barred from recovering costs or attorneys' fees associated with any subsequent litigation or arbitration. It is left to the judge, jury, or arbitrator to determine the reasonableness of the offers exchanged pursuant to the Act.

Step 6 – Filing Suit

If you have followed these steps and are still unable to resolve the issue with your contractor, you can then file a lawsuit or initiate an arbitration proceeding to obtain relief.

Open Questions

For all of the Act's specificity as to procedures and timelines, it leaves several issues unaddressed. For example,

1. How will the Act deal with emergency repairs, such as patching a leaking roof, undertaken by a homeowner to prevent further damage?
2. Does the Act apply to "spec homes"?
3. If the contractor fails to provide the homeowner with written notice of the applicability of the Act at the outset of the relationship, is the homeowner relieved of compliance with the Act?

4. If a contractor's proposal to a homeowner is deemed accepted if not responded to in 30 days, why is there no reciprocal provision for the benefit of homeowners?

In time, the Georgia courts are likely to answer these questions. For now, you will do well to know of the Act's existence and your rights and obligations before undertaking any construction, renovation, or repair of your home.

Final Thoughts

The stated purpose of the Act - to reduce litigation between contractors and homeowners by requiring them to participate in a process that facilitates dialogue and compromise - is a good one. However, in its current form, the Act contains significant pitfalls for unwary homeowners. Given the very specific, and lengthy, procedure established by the Act, if you are involved in an escalating dispute with a builder, renovation contractor, or handyman and you wish to protect your interests, you would do well to consult with an attorney who can walk you through all of the time-sensitive pre-litigation negotiations.

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