



LEGISLATIVE ISSUES

BUILDER ALERT

AFFECTING YOU

To: HBA Builder Members
From: Bryce Johnson, Executive Vice President
Date: August 3, 2005

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Notice & Opportunity to Repair Law effective Aug. 1

Builders must provide language to customers at closing to comply with statute

Your North Dakota Association of Builders (NDAB) was instrumental in ensuring that North Dakota was the 25th state to pass the "Notice and Opportunity to Repair" legislation. The National Association of Home Builders (NAHB) encourages this legislation to protect builders and contractors.

It states that the homeowner must contact the original contractor in regard to repairs prior to hiring another contractor and/or taking any legal action.

Any project exceeding \$2,000 is covered by this legislation, *provided the contractor notifies the homeowner at the time the new home or home improvement is completed.* Because the statute requires the notice to be presented at the closing (walk-through), or at the time an improvement is completed, the notice should be provided as a separate document, and not inserted into the builder's contract. A construction contract is often signed

prior to closing (which is the transfer of title), and certainly prior to completion of an improvement. So under those circumstances insertion in the contract would not comply with the statute.

Contractors should provide one copy of the notice to the purchaser, and a second copy should be retained for the contractor's records. The notice should include the address of the property, be signed and dated by the purchaser, and the contractor should include his mailing address for any repair

Builders!
For this law to work,
you must have customers sign a
warranty repair notice
at closing.

notices.

The sample language is included in this special issue of the Builder Alert. It is also available electronically; contact NDAB at the number below or e-mail Doreen Riedman at doreen@ndbuild.com. It is also available on the Members Only section of www.hbafm.com.

NOTICE AND OPPORTUNITY TO REPAIR LAW

North Dakota Century Code – Law Effective August 1, 2005

Warranty repairs - Required notice. Before undertaking any repair, other than emergency repair, or instituting any action for breach of warranty in the construction of a one-family or two-family dwelling, or an improvement with a value exceeding two thousand dollars to a dwelling, the purchaser or owner shall give the contractor written notice by mail, within six months after knowledge of the defect, advising the contractor of any defect and giving the contractor a reasonable time to comply with this section. Within a reasonable time after receiving the notice, the contractor shall inspect the defect and provide a response to the purchaser or owner, and, if appropriate, remedy the defect within a reasonable time thereafter. The contractor shall provide the purchaser or owner written notice of the requirements of this section at the time of closing for the property or, in the case of an improvement, at the time of completion of the improvement. For the purposes of this section, "reasonable time" means within thirty business days after the notice is mailed or any shorter period of time as may be appropriate under the circumstances.

This information is provided as a service to you as a member of the National Association of Home Builders, the North Dakota Association of Builders and HBA of F-M. This represents legal research only and in no way constitutes an opinion of law. The materials provided herein are intended to familiarize you with the law in this area, and should not be regarded as an exhaustive presentation of information on this particular subject. An attorney must review this information to determine how it applies to a particular situation.

SAMPLE: REQUIRED NOTICE

Warranty repair procedures for one or two family dwellings, for for improvements to a dwelling exceeding \$2,000.

Prior to undertaking a warranty repair (except in the case of emergency repairs), North Dakota law (NDCC 43-07) requires the home owner to give written notice to the contractor by mail describing the defect, and requesting a repair. This notice must be mailed within six (6) months of discovery by the home owner to the contractor at this address:

Within a reasonable time, not exceeding thirty (30) business days from receipt, the contractor shall inspect the reported condition, and respond to the home owner's notice. If the condition is a defect under warranty, and warranty repair is appropriate, the contractor shall make the repair within a reasonable time from inspection, not exceeding thirty (30) business days.

No action for breach of warranty may be filed in a court of law, or filed for resolution by arbitration, unless and until the above-described procedures have been followed.

I acknowledge receipt of this Warranty Repair Notice.

PURCHASER/HOME OWNER

DATE

ADDRESS OF PROPERTY: _____

North Dakota law requires this notice to be provided by the contractor to the purchaser/home owner at the time of closing, or in the case of improvements, at the time of completion of the improvement.

**An attorney must review this information to determine
how it applies to a particular situation.**