

## **Construction Defect Claims: Pre-Lawsuit Notice Must Be Given**

As of April 25, 2003, a lawsuit cannot be filed against a Construction Professional unless that construction Professional has received a *Notice of Claim* from the Claimant. The Notice of Claim must be sent 75 days prior to filing an action in a residential setting, and 90 days prior to filing an action in a commercial setting. Failure to deliver a *Notice of Claim* to a Construction Professional, pursuant to Colorado Revised Statute 13-20-803.5, will lead to a stay of the Court action. While the Claimant must give a *Notice of Claim*, there is no obligation to give the Construction Professional the opportunity to cure the defect.

The *Notice of Claim* is a written notice that is sent by a Claimant to the last known address of a Construction Professional against whom a Claimant is asserting a construction defect claim. A Claimant is any person who asserts a claim against a construction professional that alleges a defect in the construction of an improvement to real property. A Construction Professional means an architect, contractor, subcontractor, developer, builder, builder vendor, engineer or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property. The Claimant must describe the claim in reasonable detail sufficient for the Construction Professional to determine the general nature of the defect, including a general description of the type and location of the construction that the Claimant alleges to be defective, and any damages claimed to have been caused by the defect.

After the *Notice of Claim* is sent, the Claimant must provide the Construction Professional and its contractors or other agents, reasonable access to the Claimant's property during normal working hours to inspect the property and the claimed defect. This inspection must be completed within 30 days of the service of the *Notice of Claim*. If the Construction Professional or contractor does not respond to the *Notice of Claim*, the requirements of Colorado's "Notice of Claim Process" are deemed satisfied. If the Construction Professional does respond and performs an inspection, the Construction Professional may thereafter offer to settle the claim by payment of a sum or money, or by agreeing to remedy the claimed defect as described in the *Notice of Claim*. The Construction Professional or contractor has 30 days following the completion of a residential inspection to make such an offer, and 45 days following the completion of a commercial inspection to complete such an offer.

Contrary to popular belief, a Claimant does not have to give a Construction Professional the opportunity to repair a defect prior to filing suit. A Claimant may accept or reject any offer made by a Construction Professional or contractor pursuant to Colorado's Notice of Claim Process. If the Claimant accepts the Construction Professional's offer to remedy or settle, he or she may do so by sending the Construction Professional or contractor a written Notice of Acceptance no later than 15 days after receipt of the offer.

Colorado's Notice of Claim Process also contains certain damage limitations that are tied to any offers that a Construction Professional or contractor may make under the process. Accordingly, Burg Simpson always recommends that you consult with an attorney prior to bringing a claim against a Construction Professional.

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