

## WISCONSIN RIGHT TO CURE ACT PROCEDURES

Prepared by Robert J. Kay and Robert A. Mich, Jr.  
Kay & Andersen, S.C.  
One Point Place, Suite 201, Madison, WI 53719  
(608) 833-0077

### 1. Notice to Consumer Required at Time of Contracting

- a. Contractor required to deliver notice to residential consumer before entering into a written contract to construct or remodel a dwelling (including other existing structures on the immediate residential premises such as basements, patios, garages, terraces, etc.), or if the parties have an oral contract, before commencing any work. The Act does not apply to residential maintenance or repair work or nonresidential construction of any kind.
- b. The notice shall be conspicuous and in writing and may be included in the contract with the customer.
- c. The notice shall be substantially worded as follows: *“NOTICE CONCERNING CONSTRUCTION DEFECTS. Wisconsin law contains important requirements you must follow before you may file a lawsuit for defective construction against the contractor who constructed your dwelling or completed your remodeling project or against a window or door supplier or manufacturer. Section 895.07(2) and (3) of the Wisconsin statutes requires you to deliver to the contractor a written notice of any construction conditions you allege are defective before you file your lawsuit, and you must provide your contractor or window or door supplier the opportunity to make an offer to repair or remedy the alleged construction defects. You are not obligated to accept any offer made by the contractor or window or door supplier. All parties are bound by applicable warranty provisions.”*
- d. In addition to providing this notice, the contractor is required to deliver the consumer a brochure on the Right to Cure Act prepared by the Wisconsin Department of Commerce. A copy of this brochure may be found at: <http://www.commerce.state.wi.us/sb/docs/SB-UdcRightCureBrochureV4.pdf>.

### 2. Notice and Opportunity to Repair Before Commencement of Suit

- a. A construction defect is anything considered a defect in the warranty given to the consumer, or in cases where no warranty is given, any deficiency in the construction or remodeling resulting from defective material, violation of applicable codes, or failure to follow accepted trade standards for workmanlike construction.
- b. No later than 90 working days before commencing an action against a contractor or supplier regarding a construction defect, a claimant must:
  1. Serve written notice on the contractor describing the nature of the claim, including details of the alleged defect, and any evidence which substantiates the nature and cause of the alleged defect.
  2. Provide the contractor or supplier with the opportunity to repair or remedy the alleged defect.
- c. Within 15 working days after the claimant serves a notice of claim, or within 25 working days if the contractor makes a claim for contribution from a supplier, the contractor shall serve one of the following on the claimant.
  1. A written offer to repair or remedy the defect at no cost to the claimant, including a description of any additional construction necessary and a timetable for completion of the construction.
  2. A written offer to settle the claim by monetary payment.
  3. A written offer including a combination of repairs and monetary payment.
  4. A written statement rejecting the claim, including the reason for rejecting the claim and a description of all evidence which substantiates the rejection of the claim. The contractor shall include any settlement offer received from a supplier.
  5. A proposal for inspection of the dwelling, which shall take place within 15 working days of the claimant's receipt of the proposal. If destructive testing is required, the contractor shall give 5 working days advance notice. Within 10 working days following completion of the inspection and testing, the contractor shall serve the claimant with a notice including an offer or statement under subs. (1) to (4).
- d. Defects which are discovered after an initial claim notice has been provided may not be alleged in an action until the claimant has served the contractor with written notice of the new claim, and the contractor has the opportunity to resolve the claim through the process described in this paragraph and ¶ 3.
- e. “Working days” for any notice provision do not include weekends or holidays.

### 3. Claimant/Contractor Responses

- a. Claimant rejecting a contractor's settlement offer is required to serve written notice of the rejection within 15 working days of receiving the offer, including the reasons for rejecting the offer. The contractor shall deliver the claimant's response to a supplier upon whom a contribution claim is made.

- b. Within 5 working days of receipt of a claimant's rejection notice, the contractor shall serve the claimant a supplemental offer to repair or remedy the defect or serve a notice that no additional offer will be made.
- c. Claimant rejecting a contractor's supplemental settlement offer is required to serve written notice of the rejection within 15 working days of receiving the offer, including the reasons for rejecting the offer.

#### **4. Failure to Respond and Alteration of Procedures**

- a. Any person failing to timely respond to an offer in any notice shall be considered to have rejected the offer made in that notice.
- b. After the initial notice of claim has been served, the claimant, contractor, and supplier may by written agreement alter the procedure for the notice of claim process.
- c. A homeowner may make immediate repairs to a dwelling to protect the health or safety of its occupants without giving notice.

#### **5. Circumstances Entitling Claimant to Commence Action**

Claimant may commence an action under the following circumstances without further notice:

- a. Claimant receives contractor's rejection of the claim or the contractor does not respond to the claimant's notice of defect.
- b. Contractor declines to make a supplemental offer or if the claimant rejects the supplemental offer.
- c. Claimant accepts a settlement offer but the contractor or supplier does not proceed to repair or remedy the construction defect under the terms of the offer or within the agreed upon timetable.

#### **6. Effect of Failure to Follow Correct Procedures on Action**

- a. If the claimant received the consumer notice and brochure referenced in ¶ 1 but fails to give the contractor a notice of defect and opportunity to repair prior to filing suit, the court or arbitrator shall dismiss the action with prejudice (which can be refiled following completion of the notice of defect and opportunity to repair process).
- b. If the claimant did not receive the consumer notice and brochure referenced in ¶ 1, the court or arbitrator shall stay the action and order the contractor to provide the consumer notice and brochure and the claimant to give the contractor a notice of defect and opportunity to repair.

#### **7. Contribution Claims/Claims against Window/Door Suppliers**

- a. Before commencing an action seeking contribution from a supplier which manufactured or provided windows or doors for a dwelling, the contractor shall within 5 working days of receipt of the claim serve the supplier with written notice of the claim and a contribution claim, including a description of the alleged defect and an opportunity to repair the alleged defect.
- b. Within 15 working days after the supplier receives notice of the contribution claim, the supplier shall serve the contractor with one of the notices referenced in ¶ 2.c. The contractor shall forward the supplier's response to the claimant.
- c. Contractor rejecting a supplier's settlement offer is required to serve written notice of the rejection within 15 working days of receiving the offer, including the reasons for rejecting the offer.
- d. Within 5 working days of receipt of a contractor's rejection notice, the supplier shall serve the contractor a supplemental offer to repair or remedy the defect or serve a notice that no additional offer will be made.
- e. The contractor may immediately bring an action against the supplier if the supplier rejects the contractor's initial offer or declines to make a supplemental offer, if the contractor rejects the supplemental offer, if the supplier does not respond to the contractor's notice, or if the supplier fails to proceed with the work under an accepted offer. The contractor may file the supplier's offer and contractor's acceptance in the lawsuit, and the offer and acceptance create a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court.

#### **8. Service of Notices**

Delivery of the pre-construction notice by the contractor and Department of Commerce brochure referenced in ¶ 1 shall be made by personal service or by regular U.S. mail or a commercial delivery service. Service of all other notices referenced herein shall be made by personal service or delivery by certified mail, return receipt requested, to the last-known address of the addressee.

**The user of this card is encouraged to consult with his or her own attorney regarding its contents.**