

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 3746

By COMMITTEE ON HOUSING AND DEVELOPMENT

June 4

1 On page 1 of the printed A-engrossed bill, line 3, delete “and 100.680” and insert “, 100.680,
2 701.570, 701.575, 701.580 and 701.585”.

3 On page 3, delete lines 17 and 18 and insert:

4 “**SECTION 2. The amendments to ORS 12.135 by section 1 of this 2025 Act apply only to**
5 **the construction, alteration or repair of a structure for which the declaration, as defined in**
6 **ORS 94.550 or 100.005, has first been recorded on or after the effective date of this 2025**
7 **Act.”.**

8 On page 6, delete line 2 and insert:

9 “**SECTION 5. Section 6 of this 2025 Act is added to and made a part of ORS chapter 100.**

10 “**SECTION 6. ORS 12.135 (4), 100.210 (5)(r) and 100.417 (8) do not apply to a condominium**
11 **for which each unit owner is responsible for the interior and exterior of the owner’s unit.”.**

12 On page 9, after line 28, insert:

13 “**SECTION 9a. The amendments to ORS 100.417 by section 9 of this 2025 Act apply only**
14 **to condominiums for which the declaration has first been recorded on or after the effective**
15 **date of this 2025 Act.”.**

16 On page 11, after line 30, insert:

17 “**SECTION 11. Section 12 of this 2025 Act is added to and made a part of ORS 701.560 to**
18 **701.595.**

19 “**SECTION 12. If a homeowners association or association of unit owners sends a notice**
20 **of defect under ORS 701.565:**

21 “(1) The periods during which a contractor, subcontractor or supplier may send a written
22 request to conduct a visual examination or request to inspect the residence under ORS
23 701.570 (2) or (3) are each extended from 14 days to 30 days.

24 “(2) The contractor, subcontractor or supplier may have a technical or construction ex-
25 pert attend an inspection requested under ORS 701.570 (3).

26 “(3) The contractor, subcontractor or supplier shall send the owner a written response,
27 as required under ORS 701.570 (5), no later than:

28 “(a) Fourteen days after conducting an inspection of the residence under ORS 701.575 (3);
29 or

30 “(b) If no inspection is conducted, 90 days after receiving a notice of defect or secondary
31 notice.

32 “(4) An offer to pay an amount under ORS 701.570 (5)(c)(B):

33 “(a) Must be based on the amount equal to the cost of remediation.

34 “(b) May allow the owner a choice between accepting the payment or allowing the con-
35 tractor, subcontractor or supplier to perform remediation.

1 “(5) And if the contractor, subcontractor or supplier does not send a response that is
2 timely under subsection (3) of this section or that conforms to the requirements in sub-
3 section (4) of this section, the owner is excused from further compliance with this section.

4 “(6) And if an offer is made under subsection (4)(a) of this section to pay an amount equal
5 to the cost of remediation, the contractor, subcontractor or supplier has 30 days after
6 sending the response to offer a firm payment amount. If the owner wishes to accept an offer
7 of payment, but disputes the amount, the parties may select a mediator to attempt resol-
8 ution. If the parties cannot agree on a mediator after 45 days, the parties may request that
9 the administrator of the Construction Contractors Board inform a professional mediation
10 association or service that the parties wish to have a mediator selected by the association
11 or service.

12 “(7) And if an owner accepts payment of an amount equal to the cost of remediation, the
13 owner shall make a good faith effort to have a construction contractor complete remedi-
14 ation.

15 “(8) And if the owner accepts an offer to perform remediation or to pay monetary com-
16 pensation, completion of the remediation or payment satisfies the claims by the owner for
17 those defects included in the offer for which remediation was performed or compensation
18 paid, but not for any other defect.

19 “(9) And if the owner accepts an offer by a contractor, subcontractor or supplier that
20 received a secondary notice:

21 “(a) Completion of the remediation or payment satisfies claims for those defects included
22 in the offer for which remediation was performed or compensation paid, including claims by
23 the owner and claims for contribution or indemnity against the contractor, subcontractor
24 or supplier by the sender of the secondary notice, but not for any other defect.

25 “(b) And the contractor, subcontractor or supplier fails to perform in accordance with
26 the accepted offer, the sender of the secondary notice may perform the remediation or pay
27 the monetary compensation offered by the nonperforming contractor, subcontractor or sup-
28 plier.

29 “**SECTION 13.** ORS 701.570 is amended to read:

30 “701.570. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under
31 ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary no-
32 tice to any other known contractor, subcontractor or supplier that may be responsible for some or
33 all of the defects described in the notice of defect. The contractor, subcontractor or supplier must
34 send the secondary notice by registered or certified mail, return receipt requested, to an address
35 described in ORS 701.565 (2). The secondary notice must be accompanied by a statement describing
36 the basis for contending that the other contractor, subcontractor or supplier may be responsible for
37 some or all of the defects.

38 “(2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
39 may send the owner a written request to conduct a visual examination of the residence. **Except as**
40 **provided in section 12 of this 2025 Act**, the written request must be sent not later than 14 days
41 after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary
42 notice. The written request to conduct a visual examination of the residence must state the esti-
43 mated time required for the visual examination.

44 “(3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice
45 may send the owner a written request to inspect the residence. **Except as provided in section 12**

1 **of this 2025 Act**, the written request must be sent not later than 14 days after the requesting con-
2 tractor, subcontractor or supplier conducted a visual examination of the residence. The written re-
3 quest to inspect the residence must state the nature and scope of the inspection, whether any testing
4 is to be performed and the estimated time required for the inspection. The recipient of a secondary
5 notice that requests to inspect the residence shall send a copy of the request to the sender of the
6 secondary notice.

7 “(4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold
8 the recipient of the secondary notice liable for a defect described in a notice of defect shall coor-
9 dinate the scheduling of any inspection with the owner and all recipients of a secondary notice from
10 the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a
11 copy of any written request to inspect the residence to each recipient of the secondary notice in
12 time to provide the recipient with an opportunity to attend the requested inspection and to partic-
13 ipate in any remediation. The sender of a secondary notice shall give reasonable advance notice to
14 the owner or the owner’s legal representative, if any, of the identity of any contractor, subcontrac-
15 tor or supplier who will attend the inspection. **If the sender of the notice of defect is a home-**
16 **owners association or an association of unit owners, the response to the secondary notice**
17 **must conform with section 12 of this 2025 Act.**

18 “(5) Unless otherwise agreed to by the owner, a contractor, subcontractor or supplier that re-
19 ceives a notice of defect or secondary notice shall send a written response to the owner not later
20 than 90 days after the contractor, subcontractor or supplier receives a notice of defect or secondary
21 notice. A contractor, subcontractor or supplier that receives a secondary notice also shall send a
22 copy of the written response to the sender of the secondary notice. The written response must be
23 sent by registered or certified mail, return receipt requested. The written response must include:

24 “(a) One or more of the following for each defect described in the notice of defect or secondary
25 notice or discovered during the course of any visual examination or inspection:

26 “(A) An acknowledgment of the existence, nature and extent of the defect without regard to
27 responsibility for the defect.

28 “(B) A statement describing the existence of a defect different in nature or extent from the de-
29 fect described in the notice of defect or secondary notice, without regard to responsibility for the
30 defect.

31 “(C) A denial of the existence of the defect.

32 “(b) A copy of the documents described in ORS 701.575 (4).

33 “(c) One or more of the following:

34 “(A) An offer to perform some or all of the remediation. The offer must specify the date by
35 which the offered remediation will be completed.

36 “(B) An offer to pay a stated amount of monetary compensation to the owner for some or all
37 of the acknowledged defects and any incidental damage. The offer must specify the date by which
38 payment will be made.

39 “(C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

40 “**SECTION 14.** ORS 701.575 is amended to read:

41 “701.575. (1) An owner sending a notice of defect under ORS 701.565 shall make the residence
42 available for visual examination pursuant to any written request sent under ORS 701.570 **or section**
43 **12 of this 2025 Act.** The owner shall make the residence available for visual examination, during
44 normal business hours or as otherwise agreed, not later than 20 days after receiving the written
45 request for visual examination.

1 “(2) An owner sending a notice of defect under ORS 701.565 shall make the residence available
2 for an inspection pursuant to any written request sent under ORS 701.570 **or section 12 of this 2025**
3 **Act.** The owner shall make the residence available for inspection during normal business hours or
4 at a time that is mutually agreeable to the owner and the requester.

5 “(3) An inspection by a contractor, subcontractor or supplier may include any reasonable
6 measures, including testing, for determining the nature, cause and extent of the defects described
7 in the notice of defect or incidental damage and the nature and extent of the necessary remediation.
8 Unless the contractor, subcontractor or supplier conducting the inspection and the owner agree
9 otherwise, the contractor, subcontractor or supplier conducting the inspection shall repair any
10 damage caused by the inspection. Any damage caused by the inspection that is not repaired may be
11 sought as incidental damage in any subsequent arbitration or court action by an owner against the
12 contractor, subcontractor or supplier conducting the inspection.

13 “(4) A contractor, subcontractor or supplier that requests to inspect a residence must include
14 as part of the written response of the contractor, subcontractor or supplier under ORS 701.570, a
15 written report or other document evidencing the result of the inspection and the existence or non-
16 existence of the defects described in the notice of defect or discovered during the inspection.

17 “**SECTION 15.** ORS 701.580 is amended to read:

18 “701.580. (1) An owner may accept an offer contained in a written response under ORS 701.570
19 by delivering a written acceptance to the offering contractor, subcontractor or supplier within 30
20 days after receiving the offer. If an owner fails to accept an offer within 30 days after receipt, the
21 offer is deemed rejected.

22 “(2) If the owner accepts a contractor, subcontractor or supplier’s offer to perform remediation
23 or to pay monetary compensation, completion of the remediation or payment satisfies the claims by
24 the owner for those defects included in the offer for which remediation was performed or compen-
25 sation paid, but not for any other defect. Except as provided in subsection (3) of this section, if the
26 owner accepts an offer by a contractor, subcontractor or supplier that received a secondary notice,
27 completion of the remediation or payment satisfies claims for those defects included in the offer for
28 which remediation was performed or compensation paid, including claims by the owner and claims
29 for contribution or indemnity against the contractor, subcontractor or supplier by the sender of the
30 secondary notice, but not for any other defect.

31 “(3) If the owner accepts an offer by a contractor, subcontractor or supplier that received a
32 secondary notice to perform remediation or to pay monetary compensation and the contractor, sub-
33 contractor or supplier fails to perform in accordance with the accepted offer, then the sender of the
34 secondary notice may perform the remediation or pay the monetary compensation offered by the
35 nonperforming contractor, subcontractor or supplier.

36 “(4) An owner that sends a notice of defect under ORS 701.565 may compel arbitration or com-
37 mence a court action against a contractor, subcontractor or supplier if:

38 “(a) The contractor, subcontractor or supplier that receives the notice of defect sent under ORS
39 701.565 does not send a timely written response under ORS 701.570;

40 “(b) The written response of the contractor, subcontractor or supplier that received the notice
41 of defect or a secondary notice does not offer remediation or monetary compensation;

42 “(c) The owner rejects a written offer, or any part thereof, made by the contractor, subcon-
43 tractor or supplier **because the offer is deemed insufficient to repair the defect;** or

44 “(d) The contractor, subcontractor or supplier fails to perform in accordance with an accepted
45 offer.

1 “(5) A notice of defect and the documents described in ORS 701.575 (4) are admissible in any
2 arbitration or court action between or among an owner, contractor, subcontractor or supplier arising out of or related to the construction, alteration or repair of the residence.

3
4 “[6] *Except as provided in this subsection, a written response containing an offer to perform remediation or pay monetary compensation made under ORS 701.570 (5) that is not accepted by the*
5 *owner, and any reply by an owner, unless the reply contains a counteroffer accepted by a contractor,*
6 *subcontractor or supplier, are not admissible during any subsequent arbitration or court action. A response or reply described in this subsection is admissible solely for the purpose of proving that an*
7 *owner is qualified to compel arbitration or commence a court action under subsection (4)(c) of this*
8 *section or determining the timeliness of an action under ORS 701.585.]*
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11 **“SECTION 16.** ORS 701.585 is amended to read:

12 “701.585. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within
13 the time allowed for the owner to commence a court action against that contractor, subcontractor
14 or supplier for a claim described in ORS 701.565, the time for the owner to commence the action
15 shall be extended, notwithstanding any statute of limitation or statute of ultimate repose, until the
16 later of:

17 “(a) One hundred and twenty days after the owner receives a written response from the contractor, subcontractor or supplier that received the notice of defect if the written response does not
18 contain a written offer to perform remediation or pay monetary compensation for one or more of the
19 defects or incidental damage described in the notice of defect;

20
21 “(b) One hundred and twenty days after the owner rejects a written offer by any contractor, subcontractor or supplier to perform remediation or pay monetary compensation for one or more of
22 the defects or incidental damage described in the notice of defect; or
23

24 “(c) Thirty days after the date specified in an accepted written offer by which the offering contractor, subcontractor or supplier is to complete the remediation or complete payment of monetary
25 compensation for one or more of the defects and any incidental damage described in the notice of
26 defect.
27

28 “(2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim
29 in accordance with applicable statutes of ultimate repose and statutes of limitation.

30 “(3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS
31 701.570 **or section 12 of this 2025 Act** does not act to toll the expiration of any right of the owner
32 to commence a court action against the recipient of the secondary notice. **However, the right of the sender of the secondary notice to commence a court action against the recipient of the**
33 **secondary notice shall be extended, notwithstanding any statute of limitation or statute of**
34 **ultimate repose, until the date that the right of the owner to commence a court action**
35 **against the sender of the secondary notice expires.**
36

37 “(4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 **or section 12 of this 2025 Act** does not constitute a new performance and, for purposes of ORS 12.135,
38 relates back to the earliest date of substantial completion or abandonment of the construction, alteration or repair of the improvement to real property.
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40
41 **“SECTION 17. Section 12 of this 2025 Act and the amendments to ORS 701.570, 701.575,**
42 **701.580 and 701.585 by sections 13 to 16 of this 2025 Act apply only to notices of construction**
43 **defect that are delivered by an owner on or after the effective date of this 2025 Act and to**
44 **any resulting secondary notices.”.**
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