

Requested by Senator MEEK

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3746**

1 On page 1 of the printed A-engrossed bill, line 3, delete “and 100.680” and
2 insert “, 100.680, 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**
5 **2025 Act apply only to the construction, alteration or repair of a**
6 **structure for which the declaration, as defined in ORS 94.550 or 100.005,**
7 **has first been recorded on or after effective date of this 2025 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**
10 **of ORS chapter 100.**

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

14 On page 9, after line 28, insert:

15 **“SECTION 9a. The amendments to ORS 100.417 by section 9 of this**
16 **2025 Act apply only to condominiums for which the declaration has**
17 **first been recorded on or after effective date of this 2025 Act.”.**

18 On page 11, after line 30, insert:

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

21 **“SECTION 12. If a homeowners association or association of unit**

owners sends a notice of defect under ORS 701.565:

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

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

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

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

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

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

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

“(b) May allow the owner a choice between accepting the payment or allowing the contractor, subcontractor or supplier to perform remediation.

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

“(6) And if an offer is made under subsection (4)(a) of this section to pay an amount equal to the cost of remediation, the contractor, subcontractor or supplier has 30 days after sending the response to offer a firm payment amount. If the owner wishes to accept an offer of payment, but disputes the amount, the parties may select a mediator to attempt resolution. If the parties cannot agree on a mediator after 45 days, the parties may request that the administrator

1 of the Construction Contractors Board inform a professional mediation
2 association or service that the parties wish to have a mediator selected
3 by the association or service.

4 “(7) And if an owner accepts payment of an amount equal to the
5 cost of remediation, the owner shall make a good faith effort to have
6 a construction contractor complete remediation.

7 “(8) And if the owner accepts an offer to perform remediation or
8 to pay monetary compensation, completion of the remediation or
9 payment satisfies the claims by the owner for those defects included
10 in the offer for which remediation was performed or compensation
11 paid, but not for any other defect.

12 “(9) And if the owner accepts an offer by a contractor, subcontrac-
13 tor or supplier that received a secondary notice:

14 “(a) Completion of the remediation or payment satisfies claims for
15 those defects included in the offer for which remediation was per-
16 formed or compensation paid, including claims by the owner and
17 claims for contribution or indemnity against the contractor, subcon-
18 tractor or supplier by the sender of the secondary notice, but not for
19 any other defect.

20 “(b) And the contractor, subcontractor or supplier fails to perform
21 in accordance with the accepted offer, the sender of the secondary
22 notice may perform the remediation or pay the monetary compen-
23 sation offered by the nonperforming contractor, subcontractor or
24 supplier.

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

26 “701.570. (1) A contractor, subcontractor or supplier that receives a notice
27 of defect sent under ORS 701.565 shall, not later than 14 days after receiving
28 the notice of defect, send a secondary notice to any other known contractor,
29 subcontractor or supplier that may be responsible for some or all of the de-
30 fects described in the notice of defect. The contractor, subcontractor or

1 supplier must send the secondary notice by registered or certified mail, re-
2 turn receipt requested, to an address described in ORS 701.565 (2). The sec-
3 ondary notice must be accompanied by a statement describing the basis for
4 contending that the other contractor, subcontractor or supplier may be re-
5 sponsible for some or all of the defects.

6 “(2) A contractor, subcontractor or supplier that receives a notice of de-
7 fect or secondary notice may send the owner a written request to conduct a
8 visual examination of the residence. **Except as provided in section 12 of**
9 **this 2025 Act**, the written request must be sent not later than 14 days after
10 the requesting contractor, subcontractor or supplier receives a notice of de-
11 fect or secondary notice. The written request to conduct a visual examina-
12 tion of the residence must state the estimated time required for the visual
13 examination.

14 “(3) A contractor, subcontractor or supplier that receives a notice of de-
15 fect or secondary notice may send the owner a written request to inspect the
16 residence. **Except as provided in section 12 of this 2025 Act**, the written
17 request must be sent not later than 14 days after the requesting contractor,
18 subcontractor or supplier conducted a visual examination of the residence.
19 The written request to inspect the residence must state the nature and scope
20 of the inspection, whether any testing is to be performed and the estimated
21 time required for the inspection. The recipient of a secondary notice that
22 requests to inspect the residence shall send a copy of the request to the
23 sender of the secondary notice.

24 “(4) A contractor, subcontractor or supplier that sends a secondary notice
25 and intends to hold the recipient of the secondary notice liable for a defect
26 described in a notice of defect shall coordinate the scheduling of any in-
27 spection with the owner and all recipients of a secondary notice from the
28 contractor, subcontractor or supplier. The contractor, subcontractor or sup-
29 plier shall deliver a copy of any written request to inspect the residence to
30 each recipient of the secondary notice in time to provide the recipient with

1 an opportunity to attend the requested inspection and to participate in any
2 remediation. The sender of a secondary notice shall give reasonable advance
3 notice to the owner or the owner's legal representative, if any, of the identity
4 of any contractor, subcontractor or supplier who will attend the inspection.
5 **If the sender of the notice of defect is a homeowners association or**
6 **an association of unit owners, the response to the secondary notice**
7 **must conform with section 12 of this 2025 Act.**

8 “(5) Unless otherwise agreed to by the owner, a contractor, subcontractor
9 or supplier that receives a notice of defect or secondary notice shall send a
10 written response to the owner not later than 90 days after the contractor,
11 subcontractor or supplier receives a notice of defect or secondary notice. A
12 contractor, subcontractor or supplier that receives a secondary notice also
13 shall send a copy of the written response to the sender of the secondary no-
14 tice. The written response must be sent by registered or certified mail, return
15 receipt requested. The written response must include:

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

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

21 “(B) A statement describing the existence of a defect different in nature
22 or extent from the defect described in the notice of defect or secondary no-
23 tice, without regard to responsibility for the defect.

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

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

26 “(c) One or more of the following:

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

29 “(B) An offer to pay a stated amount of monetary compensation to the
30 owner for some or all of the acknowledged defects and any incidental dam-

age. The offer must specify the date by which payment will be made.

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

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

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

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

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

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

1 inspection.

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

3 “701.580. (1) An owner may accept an offer contained in a written re-
4 sponse under ORS 701.570 by delivering a written acceptance to the offering
5 contractor, subcontractor or supplier within 30 days after receiving the offer.
6 If an owner fails to accept an offer within 30 days after receipt, the offer is
7 deemed rejected.

8 “(2) If the owner accepts a contractor, subcontractor or supplier’s offer
9 to perform remediation or to pay monetary compensation, completion of the
10 remediation or payment satisfies the claims by the owner for those defects
11 included in the offer for which remediation was performed or compensation
12 paid, but not for any other defect. Except as provided in subsection (3) of this
13 section, if the owner accepts an offer by a contractor, subcontractor or sup-
14 plier that received a secondary notice, completion of the remediation or
15 payment satisfies claims for those defects included in the offer for which
16 remediation was performed or compensation paid, including claims by the
17 owner and claims for contribution or indemnity against the contractor, sub-
18 contractor or supplier by the sender of the secondary notice, but not for any
19 other defect.

20 “(3) If the owner accepts an offer by a contractor, subcontractor or sup-
21 plier that received a secondary notice to perform remediation or to pay
22 monetary compensation and the contractor, subcontractor or supplier fails
23 to perform in accordance with the accepted offer, then the sender of the
24 secondary notice may perform the remediation or pay the monetary compen-
25 sation offered by the nonperforming contractor, subcontractor or supplier.

26 “(4) An owner that sends a notice of defect under ORS 701.565 may compel
27 arbitration or commence a court action against a contractor, subcontractor
28 or supplier if:

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

1 ORS 701.570;

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

5 “(c) The owner rejects a written offer, or any part thereof, made by the
6 contractor, subcontractor or supplier **because the offer is deemed insuffi-**
7 **cient to repair the defect;** or

8 “(d) The contractor, subcontractor or supplier fails to perform in accord-
9 ance with an accepted offer.

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

14 “[6] *Except as provided in this subsection, a written response containing*
15 *an offer to perform remediation or pay monetary compensation made under*
16 *ORS 701.570 (5) that is not accepted by the owner, and any reply by an owner,*
17 *unless the reply contains a counteroffer accepted by a contractor, subcontractor*
18 *or supplier, are not admissible during any subsequent arbitration or court*
19 *action. A response or reply described in this subsection is admissible solely for*
20 *the purpose of proving that an owner is qualified to compel arbitration or*
21 *commence a court action under subsection (4)(c) of this section or determining*
22 *the timeliness of an action under ORS 701.585.]*

23 **“SECTION 16.** ORS 701.585 is amended to read:

24 “701.585. (1) If an owner sends a contractor, subcontractor or supplier a
25 notice of defect within the time allowed for the owner to commence a court
26 action against that contractor, subcontractor or supplier for a claim de-
27 scribed in ORS 701.565, the time for the owner to commence the action shall
28 be extended, notwithstanding any statute of limitation or statute of ultimate
29 repose, until the later of:

30 “(a) One hundred and twenty days after the owner receives a written re-

sponse from the contractor, subcontractor or supplier that received the notice of defect if the written response does not contain a written offer to perform remediation or pay monetary compensation for one or more of the defects or incidental damage described in the notice of defect;

“(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 the defects or incidental damage described in the notice of defect; or

“(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 compensation for one or more of the defects and any incidental damage described in the notice of defect.

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

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

“(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, relates back to the earliest date of substantial completion or abandonment of the construction, alteration or repair of the improvement to real property.

SECTION 17. Section 12 of this 2025 Act and the amendments to

1 **ORS 701.570, 701.575, 701.580 and 701.585 by sections 13 to 16 of this 2025**
2 **Act apply only to notices of construction defect that are delivered by**
3 **an owner on or after the effective date of this 2025 Act and to any re-**
4 **sulting secondary notices.”.**

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