WEST VIRGINIA CODE: §21-11A-10

§21-11A-10. Request for voluntary disclosure of additional information.

(a) Upon the filing of a claim, parties may request to review and copy relevant information in the possession or custody or subject to the control of the other party that pertains to the alleged construction defect, including, without limitation:

(1) Reports of outside consultants or experts; or

(2) Photographs and videotapes.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(c) The claimant and the contractor may seek additional information directly from third parties.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under West Virginia law.

Within thirty days after service of the notice of claim by the claimant, each contractor, subcontractor, supplier or design professional that has received a notice of claim shall serve a written response on the claimant, delivered by hand, certified mail, return receipt requested or other verifiable delivery service, directed to the claimant or representative of the claimant who signed the notice of claim of a construction defect. The written response shall:

(1) Offer to compromise and settle the claim by monetary payment without inspection;

(2) Propose to inspect the residential improvement that is the subject of the claim; or

(3) State that the contractor, subcontractor, supplier or design professional disputes the claim and will neither remedy the alleged construction defect nor compromise and settle the claim.

(e) If the contractor, subcontractor, supplier or design professional disputes the claim pursuant to subdivision (3), subsection (d) of this section and will neither remedy the alleged construction defect nor compromise and settle the claim or does not respond to the claimant's notice of claim within the time stated in said subsection, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim without further notice.

(f) If the claimant rejects the inspection proposal or the settlement offer made by the

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contractor, subcontractor, supplier or design professional pursuant to subsection (d) of this section, the claimant shall serve written notice of the claimant's rejection on the contractor, subcontractor, supplier or design professional. The notice shall include the basis for the claimant's rejection of the contractor, subcontractor, supplier or design professional's proposal or offer.

(g) After service of the rejection required by subsection (f) of this section, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(h) If the claimant elects to allow the contractor, subcontractor, supplier or design professional to inspect the residential improvement in accordance with the contractor, subcontractor, supplier or design professional's proposal pursuant to subdivision (2), subsection (d) of this section, the claimant shall provide the contractor, subcontractor, supplier or design professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect to determine the nature and cause of the alleged defects and the nature and extent of any repairs or replacements necessary to remedy the alleged defects.

(i) Within fourteen days following completion of the inspection, the contractor, subcontractor, supplier or design professional shall serve on the claimant:

(1) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional labor and materials necessary to remedy the defect described in the claim and a timetable for the completion of such construction;

(2) A written offer to compromise and settle the claim by monetary payment; or

(3) A written statement that the contractor, subcontractor, supplier or design professional will not proceed further to remedy the defect.

(j) If a claimant accepts a contractor, subcontractor, supplier or design professional's offer made pursuant to subdivision (1) or (2), subsection (i) of this section and the contractor, subcontractor, supplier or design professional does not proceed to make the monetary payment or remedy the construction defect within the agreed timetable, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(k) If a claimant receives a written statement that the contractor, subcontractor, supplier or design professional will not proceed further to remedy the defect, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the initial notice of claim without further notice.

(l) If the claimant rejects the offer made by the contractor, subcontractor, supplier or design

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professional to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the contractor, subcontractor, supplier or design professional. The notice shall include the basis for the claimant's rejection of the contractor, subcontractor, supplier or design professional's offer. After service of the rejection, the claimant may bring an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim without further notice.

(m) Any claimant accepting the offer of the contractor, subcontractor, supplier or design professional to remedy the construction defects shall do so by serving the contractor, subcontractor, supplier or design professional with a written notice of acceptance within a reasonable period of time after receipt of the offer but no later than thirty days after receipt of the offer.

(n) If a claimant accepts a contractor, subcontractor, supplier or design professional's offer to repair a defect described in an initial notice of claim, the claimant shall provide the contractor, subcontractor, supplier or design professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(o) During negotiations under this article, if the running of the applicable statute of limitations would otherwise become a bar to a civil action, service of a claimant's written notice of claim pursuant to this article tolls the applicable statute of limitations until six months after the termination of negotiations under this article.

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