

Kansas Contractors and Design Professionals: Are You Aware of Your Rights and Obligations?

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Many states, including Kansas and Missouri, have what are commonly referred to as “Notice and Right to Cure Statutes.” These statutes are important tools for contractors and design professionals in defending construction defect claims. In general, the purpose of the statute is to afford contractors an opportunity to repair or settle a perceived defect before the claimant can file suit. This post discusses how these statutes operate in Kansas. See K.S.A. § 60-4701 et seq.

Types of Claims Covered in Kansas:

The statute generally applies to any defect related in the construction or remodeling of a dwelling (both single-family and multi-family). The types of “defects” covered by the statute include:

- (1) Defective materials, products or components;
- (2) Code violations; or
- (3) Failure to construct in a workmanlike manner. Kansas not found or type unknown

Do Not Forget: Upon entering into a contract to construct or remodel a dwelling, the statute requires contractors to give written notice to the customer of the rights set forth in the statute.

Notice Procedure For Claimants:

The “Notice and Right to Cure” statutes in Kansas require claimants to serve written notice of the defect on the potential defendants (contractors, design professionals, or material suppliers) at least 90 days before the claimant files a lawsuit. In the notice, the claimant is required to describe the nature of the alleged defect. If the claimant fails to comply, then the defendants can get the lawsuit dismissed.

Response Procedure For Contractors and Design Professionals:

If the claimant complies with the claim procedure above, then the contractor must serve written notice upon all other contractors who may be responsible within 15 days and must serve a written response to the claimant within 30 days. Contractors have four options in responding:

- (1) Propose an inspection of the property;
- (2) Offer to remedy the defect at no cost with a proposed date of completion;
- (3) Offer to settle for a monetary payment with a proposed date of payment;
- (4) Dispute the claim.

Failure to respond will permit the claimant to file suit without further notice. The statute states that providing any insurer with a copy will constitute the "making of a claim" under an applicable policy, so it is also recommended to give your insurer a copy of any notice received under this statute.

As with many statutes, there are a number of strict timelines, requirements and exceptions that should be followed carefully. Persons violating certain sections of the statute can even face criminal charges.

For more information or assistance, please contact Ross A. Boden at rboden@sandbergphoenix.com, (816) 627-5536 or another member of Sandberg Phoenix & von Gontard, P.C.'s Construction Industry Team.