

HOUSE BILL NO. 301

INTRODUCED BY K. SEEKINS-CROWE, A. NICASTRO, M. BERTOGLIO, S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING STATUTES OF LIMITATIONS RELATING TO REAL PROPERTY; PROVIDING FOR WHEN A CLAIM OR CAUSE OF ACTION FOR INJURY TO REAL PROPERTY ARISES; PROVIDING THAT A CLAIM MUST BE BROUGHT WITHIN THE PERIOD OF LIMITATION; REVISING THE DEFINITION OF "CONSTRUCTION DEFECT"; AND AMENDING SECTION SECTIONS 27-2-102 AND 70-19-426, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 27-2-102, MCA, is amended to read:

**"27-2-102. When action commenced.** (1) For the purposes of statutes relating to the time within which an action must be commenced:

(a) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action;

(b) an action is commenced when the complaint is filed.

(2) For the purposes of subsection (1)(a), a claim or cause of action for injury to real property arises when:

(a) the conduct or act that caused the injury is complete, regardless of whether or not injury from that same original conduct or act continues; and

(b) the real property owner knows or has reason to know of injury to the owner's property.

(2)(3) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(3)(4) The period of limitation does not begin on any claim or cause of action for an injury to person or

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1 property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should  
2 have been discovered by the injured party if:

3 (a) the facts constituting the claim are by their nature concealed or self-concealing; or

4 (b) before, during, or after the act causing the injury, the defendant has taken action which  
5 prevents the injured party from discovering the injury or its cause.

6 ~~(4)(5)~~ Subsection ~~(3)~~ (4) does not apply to actions involving the limitations contained in 27-2-205.

7 (6) If a claim or cause of action for injury to real property that has accrued under this section is not  
8 brought within the period of limitation, the claim or cause of action is barred with respect to the real property  
9 owner and all subsequent owners of the real property."

11 **Section 2.** Section 70-19-426, MCA, is amended to read:

12 **"70-19-426. Residential construction disputes -- definitions.** As used in 70-19-427, 70-19-428,  
13 and this section, the following definitions apply:

14 (1) (a) "Action" means any civil lawsuit or action in contract or tort for damage or indemnity brought  
15 against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for  
16 damage or the loss of use of real or personal property caused by a defect in the construction or remodeling of a  
17 residence.

18 (b) The term does not include a civil action in tort alleging personal injury or wrongful death to a  
19 person or persons resulting from a construction defect.

20 (2) "Association" means a unit owners' organization or a nonprofit corporation created to own and  
21 operate portions of a planned community that has the power to require unit owners to pay the costs and  
22 expenses incurred in the performance of the association's obligations.

23 (3) "Claimant" means a home owner or association that asserts a claim against a construction  
24 professional concerning a defect in the construction or remodeling of a residence.

25 (4) "Construction defect" means a deficiency in or arising out of the supervision, construction, or  
26 remodeling of a residence that causes demonstrable physical damage or measurable loss in value and results  
27 from any of the following:

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1 (a) defective materials, products, or components used in the construction or remodeling of a  
2 residence;

3 (b) violation of the applicable building, plumbing, or electrical codes in effect at the time of the  
4 construction or remodeling of a residence, if the violation results in actual harm or material impairment of the  
5 property's intended function;

6 (c) failure to construct or remodel a residence in accordance with contract specifications or  
7 accepted trade standards.

8 (5) "Construction professional" means a builder, builder vendor, contractor, or subcontractor  
9 performing or furnishing the supervision of the construction or remodeling of any improvement to real property,  
10 whether operating as a sole proprietor, partnership, corporation, or other business entity.

11 (6) (a) "Home owner" means:

12 (i) any person, company, firm, partnership, corporation, or association who contracts with a  
13 construction professional for the remodeling, construction, or construction and sale of a residence; or

14 (ii) an association as defined in this section.

15 (b) The term home owner includes but is not limited to a subsequent purchaser of a residence from  
16 any home owner.

17 (7) "Residence" means a single-family house or a unit in a multiunit residential structure in which  
18 title to each individual unit is transferred to the owner under a condominium or cooperative system.

19 (8) "Serve" or "service" means personal service or delivery by certified mail to the last-known  
20 address of the addressee."

21  
22 - END -