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4

A Bill

HOUSE BILL 1468

5 By: Representatives Cozart, Hawk
6 By: Senators J. Petty, J. Bryant
7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS LAW CONCERNING CLAIMS
10 AGAINST CONTRACTORS AND SUPPLIERS TO REMEDY
11 CONSTRUCTION DEFECTS; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO AMEND ARKANSAS LAW CONCERNING CLAIMS
16 AGAINST CONTRACTORS AND SUPPLIERS TO
17 REMEDY CONSTRUCTION DEFECTS.
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 4, Chapter 75, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 15 – Claims Against Contractors and Suppliers
24

25 4-75-1501. Definitions.

26 As used in this subchapter:

27 (1) "Action" means:

28 (A) A civil action; or

29 (B) An arbitration proceeding;

30 (2) "Association" means the following:

31 (A) A homeowners association;

32 (B) A condominium association;

33 (C) A unit owners association; or

34 (D) A nonprofit corporation created to own and operate
35 portions of a planned community that may assess unit owners for the costs
36 incurred in the performance of the association's obligation;



1 (3) "Business day" means a Monday, Tuesday, Wednesday, Thursday
 2 or Friday that is not otherwise observed as a holiday under § 1-5-101(1) –
 3 (10);

4 (4) "Claim" means a request or demand to remedy a construction
 5 defect caused by a contractor or supplier related to the construction or
 6 remodeling of a dwelling;

7 (5) "Claimant" means the owner, tenant, or lessee of a dwelling,
 8 or an association, who has standing to sue a contractor or supplier regarding
 9 a construction defect;

10 (6) "Construction defect" means:

11 (A) In those cases where the contractor or supplier has
 12 provided a warranty to a consumer, the definition of "defect" in the warranty
 13 provided to the consumer by the contractor or supplier; or

14 (B) In all other cases, a deficiency in the construction
 15 or remodeling of a dwelling that results from one (1) or more of the
 16 following:

17 (i) Defective material;

18 (ii) Violation of applicable codes; or

19 (iii) Failure to follow accepted trade standards for
 20 workmanlike construction;

21 (7) "Consumer" means a person who enters into a written or oral
 22 contract with a contractor to construct or remodel a dwelling;

23 (8) "Contractor" means the same as defined under § 17-25-101;

24 (9) "Deliver" means:

25 (A) Depositing the document or written notice into the
 26 United States mail or with a commercial delivery service, addressed to the
 27 applicable person; or

28 (B) Giving the document or written notice personally to
 29 the applicable person;

30 (10)(A) "Dwelling" means:

31 (i) Any premises or portion of a premises that is
 32 used as a home or a place of residence; and

33 (ii) That part of the lot or site on which the
 34 dwelling is situated that is devoted to residential use.

35 (B) "Dwelling" includes without limitation other
 36 structures on the immediate residential premises such as:

- 1 (i) Driveways;
- 2 (ii) Sidewalks;
- 3 (iii) Swimming pools;
- 4 (iv) Terraces;
- 5 (v) Patios;
- 6 (vi) Fences;
- 7 (vii) Porches;
- 8 (viii) Garages; and
- 9 (ix) Basements;

10 (11)(A) "Remodel" means to alter or reconstruct a dwelling.

11 (B) "Remodel" does not include maintenance or repair work;

12 (12) "Serve" or "Service" means personal service or delivery by
 13 certified mail, return receipt requested, to the last-known address of the
 14 addressee; and

15 (13) "Supplier" means a person that manufactures or provides
 16 windows or doors for a dwelling.

17

18 4-75-1502. Claims against contractors.

19 (a) Before commencing an action against a contractor or supplier
 20 regarding a construction defect, a claimant shall do all of the following:

21 (1) No later than ninety (90) business days before commencing
 22 the action, deliver written notice to the contractor containing a description
 23 of the:

24 (A) Claim in sufficient detail to explain the nature of
 25 the alleged defect; and

26 (B) Evidence that the claimant knows or possesses,
 27 including without limitation expert reports, that substantiates the nature
 28 and cause of the alleged construction defect; and

29 (2) Provide the contractor or supplier with the opportunity to
 30 repair or to remedy the alleged construction defect.

31 (b)(1) Each contractor that has received notice of a claim under
 32 subsection (a) of this section shall serve on the claimant one (1) of the
 33 following:

34 (A)(i) A written offer to repair or remedy the
 35 construction defect at no cost to the claimant.

36 (ii) The offer under subdivision (b)(1)(A)(i) of

1 this section shall include a description of any additional construction
2 necessary to remedy the construction defect and a timetable for the
3 completion of the additional construction;

4 (B) A written offer to settle the claim by monetary
5 payment;

6 (C) A written offer including a combination of repairs and
7 monetary payment;

8 (D)(i) A written statement that the contractor rejects the
9 claim.

10 (ii) A contractor shall include in a rejection under
11 subdivision (b)(4)(D)(i) of this section:

12 (a) The reason for rejecting the claim;

13 (b) A comprehensive description of all
14 evidence the contractor knows or possesses, including without limitation
15 expert reports, that substantiate the reason for rejecting the claim; and

16 (c) If applicable, any settlement offer
17 received by the contractor from a supplier; or

18 (E) A proposal for inspection of the dwelling under
19 subsection (c) of this section.

20 (2) The response under subdivision (b)(1) of this section shall
21 be served to the claimant:

22 (A) Within fifteen (15) business days after the claimant
23 serves written notice under subsection (a) of this section; or

24 (B) Within twenty-five (25) business days after the
25 claimant serves written notice under subsection (a) of this section if the
26 contractor makes a claim for contribution from a supplier under § 4-75-1503.

27 (c)(1) If a proposal for inspection is made under subdivision
28 (b)(1)(E) of this section, the claimant shall, within fifteen (15) business
29 days of receipt of the proposal for inspection, provide the contractor and
30 any supplier on whom a contractor claim has been made under § 4-75-1503 and
31 the agents, experts, and consultants of the contractor or supplier reasonable
32 access to the dwelling to:

33 (A) Inspect the dwelling;

34 (B) Document any alleged construction defects; and

35 (C) Perform any testing required to evaluate fully the:

36 (i) Nature, extent, and cause of the claimed

1 construction defects; and

2 (ii) Nature and extent of any repairs or
3 replacements that may be necessary to remedy any claimed construction
4 defects.

5 (2) If destructive testing is required, the contractor shall:

6 (A) Deliver the claimant and all persons on whom a
7 notice of claim under subsection (a) of this section or a contribution claim
8 under § 4-75-1503 has been served advance notice of the testing at least five
9 (5) business days before commencement of the destructive testing; and

10 (B) After completion of the destructive testing,
11 return the dwelling to its pretesting condition within a reasonable time
12 after completion of the testing at the contractor's expense.

13 (3) If an inspection or testing reveals a condition that
14 requires additional testing to allow the contractor to evaluate fully the
15 nature, cause, and extent of the construction defect, the contractor shall
16 deliver notice to the claimant and all persons on whom a notice of claim
17 under subsection (a) of this section or a contribution claim under § 4-75-
18 1503 has been served of the need for the additional testing and the claimant
19 shall provide reasonable access to the dwelling.

20 (4) If a claim is asserted on behalf of the owners of multiple
21 dwellings, the contractor shall be entitled to inspect each of the dwellings
22 subject to the claim.

23 (5) The claimant shall:

24 (A) Provide a specific day for the inspection upon
25 reasonable notice for an inspection; or

26 (B) Require the contractor to request in writing a date
27 for the inspection, which shall be at least three (3) business days following
28 the request.

29 (6) Within ten (10) business days following completion of
30 inspection and testing under this subsection (c), the contractor shall serve
31 on the claimant a notice that includes one (1) of the offers or statements
32 under subdivisions (b)(1)(A)-(D) of this section.

33 (d)(1) If the claimant rejects a settlement offer made by the
34 contractor under subsections (b) or (c) of this section, the claimant shall,
35 within fifteen (15) business days after receiving the offer, serve written
36 notice of the rejection to the contractor.

1 (2) The written notice under subdivision (d)(1) of this section
2 shall include the reasons for the claimant's rejection of the contractor's
3 offer.

4 (3)(A) If the claimant believes that the settlement offer omits
5 reference to any portion of the claim, the claimant's written notice shall
6 include those items that the claimant believes were omitted.

7 (B) If the claimant believes that the settlement offer
8 was unreasonable, the claimant's written notice shall set forth the reasons
9 why the claimant believes the settlement offer is unreasonable.

10 (4) The contractor shall deliver the claimant's response to a
11 supplier upon whom a contribution claim has been made under § 4-75-1503.

12 (e) Upon receipt of a claimant's rejection and the reasons for the
13 rejection under subsection (d) of this section, the contractor shall, within
14 five (5) business days after receiving the rejection, serve the claimant:

15 (1) A written supplemental offer to repair or to remedy the
16 construction defect, to settle the claim by monetary payment, or a
17 combination of both; or

18 (2) Written notice that no additional offer will be made.

19 (f)(1)(A) If the claimant rejects a supplemental offer made by the
20 contractor under subdivision (e)(1) of this section, the claimant shall serve
21 written notice of the claimant's rejection on the contractor within fifteen
22 (15) business days after receipt of the supplemental offer.

23 (B) The notice under subdivision (f)(1)(A) of this section
24 shall include the reasons for the claimant's rejection of the contractor's
25 supplemental offer.

26 (C) If the claimant believes the contractor's supplemental
27 settlement offer is unreasonable, the claimant shall set forth the reasons
28 why the claimant believes the supplemental settlement offer is unreasonable.

29 (g) The claimant may bring an action against the contractor for the
30 claim described in the notice of claim under subsection (a) of this section
31 without further notice if the:

32 (1) Contractor does not respond to a notice of a claim under
33 subsection (a) of this section;

34 (2) Contractor rejects a claim under subdivision (b)(1)(D)(i) of
35 this section;

36 (3) Claimant rejects a supplemental offer made by the contractor

1 under subdivision (e)(1) of this section; or

2 (4) Contractor provides written notice that no additional offer
 3 will be made under subdivision (e)(2) of this section.

4 (h) If a claimant accepts an offer made by the contractor under this
 5 section and the contractor or supplier does not proceed to repair or remedy
 6 the construction defect under the terms of the offer or within the agreed-
 7 upon timetable, the claimant may bring an action against the contractor or
 8 supplier for the claim described in the notice of claim without further
 9 notice to the contractor.

10 (i) If a claimant accepts a contractor's offer to repair a
 11 construction defect described in a notice of claim under subsection (a) of
 12 this section, the claimant shall provide the contractor and its agents,
 13 experts, and consultants reasonable access to the dwelling to perform and
 14 complete the construction by the timetable stated in the settlement offer.

15 (j) The claimant and the contractor or supplier are bound by any
 16 contractor or supplier warranty terms pertaining to products or services
 17 supplied for the dwelling.

18

19 4-75-1503. Contribution claim by contractor against supplier.

20 (a)(1) Except as provided in subdivision (a)(1)(B) of this section,
 21 before commencing an action seeking contribution from a supplier for a claim
 22 that a claimant makes against the contractor, the contractor shall serve the
 23 supplier the following within five (5) business days after the contractor's
 24 receipt of a written claims under § 4-75-1502(a):

25 (A) A written notice of the claimant's claim under § 4-75-
 26 1502(a); and

27 (B) A contribution claim.

28 (2) A contractor may make a contribution claim later than five
 29 (5) days after the contractor's receipt of the initial claim if the
 30 contractor has not done any of the following:

31 (A) Taken any action to repair the construction defect
 32 alleged in the written notice under § 4-75-1502(a);

33 (B) Performed destructive testing on the dwelling at issue
 34 in the written notice under § 4-75-1502(a);

35 (C) Authorized the claimant to take any action to repair
 36 the construction defect;

1 (D) Interfered materially with or altered the property
2 that is the subject of the claim; or

3 (E) Materially precluded a supplier's ability to offer to
4 remedy the construction defect by making repairs.

5 (b)(1) Before commencing an action against a supplier, a contractor
6 shall provide the supplier with the opportunity to respond to the
7 contribution claim and repair the alleged construction defect under this
8 subchapter.

9 (2) The notice of contribution claim shall:

10 (A) State that the contractor asserts a construction
11 defect claim;

12 (B) Describe the contribution defect claim in sufficient
13 detail to explain the nature of the alleged construction defect; and

14 (C) Offer the supplier the opportunity to correct the
15 construction defect.

16 (3) The contractor shall include in the notice of contribution
17 claim a:

18 (A) Description of the alleged construction defect; and

19 (B) Comprehensive description of all evidence that the
20 contractor knows or possesses, including without limitation expert reports,
21 that substantiate the nature and cause of the alleged construction defect.

22 (c)(1) Within fifteen (15) business days after a supplier has received
23 notice that a contractor is making a contribution claim under subsection (a)
24 of this section, the supplier shall serve the contractor with any of the
25 following:

26 (A)(i) A written offer to remedy fully or partially the
27 construction defect at no cost to the claimant.

28 (ii) A written offer under subdivision (c)(1)(A)(i)
29 of this section shall include a description of any additional construction
30 necessary to remedy the construction defect and a timetable for the
31 completion of the construction;

32 (B) A written offer to settle the claim by monetary
33 payment;

34 (C) A written offer including a combination of repairs and
35 monetary payment;

36 (D)(i) A written statement that the supplier rejects the

1 claim.

2 (ii) The supplier shall state in a written statement
 3 rejecting the claim under subdivision (c)(1)(D)(i) of this section the reason
 4 for rejecting the claim and include a comprehensive description of all
 5 evidence the supplier knows or possesses, including without limitation expert
 6 reports, that substantiate the reason for rejecting the claim; or

7 (E) A proposal for the inspection of the dwelling under
 8 subsection (d) of this section.

9 (2)(A) The contractor shall forward the supplier's response
 10 under subdivision (c)(1) of this section to the claimant.

11 (B) The supplier and contractor shall use their best
 12 efforts to coordinate their responses to claims under § 4-75-1502(a) and
 13 contribution claims under this section.

14 (d)(1) If a supplier proposes to inspect the dwelling that is the
 15 subject of the contribution claim under subsection (c) of this section, the
 16 contractor and claimant shall, within fifteen (15) business days after
 17 receiving the supplier's proposal, provide the supplier and its agents,
 18 experts, and consultants reasonable access to the dwelling to:

19 (A) Inspect the dwelling;

20 (B) Document any alleged construction defects; and

21 (C) Perform any testing required to evaluate fully

22 the:

23 (i) Nature, extent, and cause of the claimed
 24 construction defects; and

25 (ii) Nature and extent of any repairs or
 26 replacements that may be necessary to remedy any claimed construction
 27 defects.

28 (2) If destructive testing is required, the
 29 supplier shall:

30 (A) Give the contractor and claimant and all persons on
 31 whom a notice of claim under § 4-75-1502(a) or a contribution claim under
 32 this section has been served advance notice of the testing at least five (5)
 33 business days before commencement of the testing; and

34 (B) After completion of the destructive testing, return
 35 the dwelling to its pretesting condition within a reasonable time after
 36 completion of the testing at the supplier's expense.

1 (3)(A) If any inspection or testing reveals a condition that
2 requires additional testing to allow the supplier to evaluate fully the
3 nature, cause, and extent of the construction defect, the:

4 (i) Supplier shall deliver notice to the contractor
5 and claimant and all persons on whom a notice of claim under § 4-75-1502(a)
6 or contribution claim under this section has been served of the need for the
7 additional testing; and

8 (ii) Contractor and claimant shall provide
9 reasonable access to the dwelling.

10 (B) If a claim is asserted on behalf of the contractor on
11 multiple dwellings, the supplier shall be entitled to inspect each of the
12 dwellings subject to the claim.

13 (C) The contractor and claimant shall:

14 (i) Provide a specific day for the inspection upon
15 reasonable notice for an inspection; or

16 (ii) Require the supplier to request in writing a
17 date for the inspection, at least three (3) working days before the
18 inspection.

19 (e) Within ten (10) business days following completion of the
20 inspection and testing under subsection (d) of this section, the supplier
21 shall serve on the contractor a notice that includes any of the offers or
22 statements under subdivisions (c)(1)(A)-(D) of this section.

23 (f)(1) If the contractor rejects a settlement offer made by the
24 supplier under this section, the contractor shall, within fifteen (15)
25 business days after receiving the settlement offer, send written notice of
26 the rejection to the supplier.

27 (2) The written notice under subdivision (f)(1) of this section
28 shall include the reasons for the contractor's rejection of the supplier's
29 offer.

30 (3)(A) If the contractor believes that the settlement offer
31 omits reference to any portion of the claim, the contractor's written notice
32 shall include those items that the contractor believes were omitted.

33 (B) If the contractor believes that the settlement offer
34 was unreasonable, the contractor's written notice shall set forth the reasons
35 why the contractor believes the settlement offer is unreasonable.

36 (4) Upon receipt of a contractor's rejection and the reasons for

1 the rejection, the supplier shall, within five (5) business days of receiving
2 the rejection:

3 (A) Make a supplemental offer of repair, monetary payment,
4 or a combination of both to the contractor; or

5 (B) Serve on the contractor written notice that no
6 additional offer will be made.

7 (5)(A) If the contractor rejects the supplemental offer made by
8 the supplier under subdivision (f)(4)(A) of this section to remedy the
9 construction defect or to settle the claim by monetary payment or a
10 combination of both, the contractor shall serve written notice of the
11 contractor's rejection on the supplier within fifteen (15) working days after
12 receiving the offer.

13 (B) The notice under subdivision (f)(4)(A) of this section
14 shall include the reasons for the contractor's rejection of the supplier's
15 supplemental settlement offer.

16 (C) If the contractor believes the supplier's supplemental
17 settlement offer is unreasonable, the contractor shall set forth the reasons
18 why the contractor believes the supplemental settlement offer is
19 unreasonable.

20 (g) The contractor may bring an action against the supplier for the
21 claim described in the contribution claim under subsection (a) of this
22 section without further notice if:

23 (1) The supplier rejects the claim under subdivision (c)(1)(D)
24 of this section;

25 (2) The supplier does not respond to a contribution claim under
26 subsection (a) of this section;

27 (3) The contractor rejects the supplier's supplemental offer
28 under subdivision (f)(4)(A) of this section; or

29 (4) The supplier declines to make a supplemental offer under
30 subdivision (f)(4)(B) of this section.

31 (h) If a contractor accepts an offer made under this section and the
32 supplier does not proceed to make the monetary payment or remedy the
33 construction defect within the agreed-upon timetable, the
34 contractor may:

35 (1) Bring an action against the supplier for the contribution
36 claim described in the notice of claim under subsection (a) of this section

1 without further notice; and

2 (2)(A) File the supplier's offer and contractor's acceptance in
3 the circuit court action.

4 (B) The offer by the supplier and acceptance by the
5 contractor create a rebuttable presumption that a binding and valid
6 settlement agreement has been created and should be enforced by the court.

7 (i) If a contractor accepts a supplier's offer to repair a
8 construction defect described in a contribution claim under subsection (a) of
9 this section, the contractor, when appropriate, and the claimant shall
10 provide the supplier and its agents, experts, and consultants reasonable
11 access to the dwelling to perform and complete the construction by the
12 timetable stated in the settlement offer.

13 (j) A contractor that is seeking contribution from a supplier and that
14 elects to inspect a dwelling under § 4-75-1502 shall serve the supplier
15 written notice of the inspection date and dwelling address and whether
16 destructive testing is required at least five (5) business days before the
17 inspection.

18 (k)(1) Before commencing an action against a supplier seeking
19 contribution for a claim that a claimant has served on a contractor, the
20 contractor shall serve the supplier with a notice of contribution claim under
21 this section.

22 (2) If a contractor commences an action against a supplier
23 without serving a notice of contribution claim under this section, the
24 circuit court or arbitrator shall stay the action until the contractor has
25 complied with the requirements of this this section.

26
27 § 4-75-1504. Failure to provide notice.

28 (a) If a claimant commences an action against a supplier and the
29 supplier has not been provided notice of the claim by the contractor and an
30 opportunity to repair or remedy the construction defect described in the
31 claim as provided in § 4-75-1503, the court or arbitrator shall dismiss
32 without prejudice or stay the action until the claimant serves the supplier
33 with a copy of the notice of claim and provides the supplier an opportunity
34 to repair or remedy the construction defect in the same manner as provided to
35 a contractor under this section.

36 (b)(1) If the claimant commences an action under this section without

1 complying with the requirements of subsection (a) of this section and the
2 contractor or supplier establishes that the claimant was provided the
3 information required under § 4-75-1508, the circuit court or arbitrator shall
4 dismiss the action without prejudice.

5 (2) If the claimant commences an action under this section
6 without complying with the requirements of subsection (a) of this section and
7 the contractor or supplier cannot establish that the information was
8 delivered to the claimant under § 4-75-1508, the circuit court or arbitrator
9 shall stay the action and order the parties to comply with the requirements
10 of subsection (a) of this section and § 4-75-1508.

11
12 4-75-1505. Subsequently discovered defect.

13 (a) A construction defect that is discovered after a written claim
14 notice under § 4-75-1502 or contribution claim notice under § 4-75-1503 has
15 been provided shall not be alleged in an action until the claimant or
16 contractor has served the contractor or supplier written notice of the new
17 claim or contribution claim regarding the alleged new construction defect in
18 the manner required by this subchapter.

19 (b) The contractor or supplier shall have an opportunity to resolve
20 the notice of the new claim or contribution claim in the manner provided in
21 this subchapter.

22
23 4-75-1506. Affirmative defense or counterclaim.

24 In an action initiated by a contractor or supplier in which a claimant
25 raises an affirmative defense or counterclaim alleging a construction defect,
26 the claimant is not required to comply with this subchapter.

27
28 4-75-1507. Interpretation and implementation of subchapter – Tolling
29 of limitation period.

30 (a) If a person fails to respond in a timely manner to a notice served
31 in a manner required under this subchapter, then any offer made in the notice
32 is rejected.

33 (b)(1) If, during the pendency of the notice, inspection, offer,
34 acceptance, or repair process under this subchapter, an applicable limitation
35 period would otherwise expire, the limitation period is tolled pending
36 completion of the notice of claim process described in this subchapter.

1 (2) Subdivision (b)(1) of this section does not:

2 (A) Revive a limitation period that has expired before the
 3 date on which a claimant's written notice of claim under § 4-75-1502 is
 4 served; or

5 (B) Extend any applicable statute of repose.

6 (c) After service of the initial notice of claim under § 4-75-1502 and
 7 initial contribution claim under § 4-75-1503, a claimant, a contractor, and a
 8 supplier may, by written mutual agreement, alter the procedure for the notice
 9 of claim process described in this section.

10 (d) This subchapter does not apply to a contractor's or supplier's
 11 right to seek contribution, indemnity, or recovery against any party other
 12 than a supplier for a claim made against a contractor or supplier.

13 (e) Without giving notice under this section, a homeowner may make
 14 immediate repairs to a dwelling to protect the health or safety of the
 15 occupants of the dwelling.

16 (f) The Contractors Licensing Board shall prepare a brochure
 17 explaining the process under this section and shall provide the brochure to
 18 contractors.

19 (g) Nothing in this subchapter shall be construed to prevent or alter
 20 the performance of the duties and responsibilities of the Arkansas
 21 Manufactured Home Commission, including without limitation:

22 (1) The handling of consumer complaints;

23 (2) The reporting of defects, nonconformances, and imminent
 24 safety hazards; and

25 (3) The administration of dispute resolution programs.

26
 27 4-75-1508. Contractor notices.

28 (a) Before entering into a written contract to construct or remodel a
 29 dwelling, or, if the parties enter into an oral contract, as soon as
 30 reasonably possible but before commencing any work to construct or remodel a
 31 dwelling, the contractor shall deliver to the consumer a:

32 (1) A copy of the brochure prepared under § 4-75-1506(f); and

33 (2) Notice worded substantially as follows:

34 "NOTICE CONCERNING CONSTRUCTION DEFECTS

35 Arkansas law contains important requirements you must follow before you
 36 may file a lawsuit for defective construction against the contractor who

1 constructed your dwelling or completed your remodeling project or against a
2 window or door supplier or manufacturer. Arkansas Code § 4-75-1502 requires
3 you to deliver to the contractor a written notice of any construction
4 conditions you allege are defective before you file your lawsuit, and you
5 must provide your contractor or window or door supplier the opportunity to
6 make an offer to repair or remedy the alleged construction defects. You are
7 not obligated to accept any offer made by the contractor or window or door
8 supplier. All parties are bound by applicable warranty provisions."

9 (b) The notice required under subsection (a) of this section:

10 (1) Shall be conspicuous and in writing; and

11 (2) May be included within the contract between the contractor
12 and the consumer.

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