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### **New Construction Defect Law Changes**

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The Arizona legislature passed a bill this session aimed at limiting the number of homeowner construction defect lawsuits, but it adds important definitions that likely will affect contractors as well. House Bill 2578, signed by Governor Ducey, takes effect July 3rd. The new law prohibits a residential buyer from suing the seller until after the seller has had an opportunity to repair or replace any alleged construction defects. The buyer must notify the seller in writing of the alleged defects, and the seller must provide the buyer with written notice of the seller's intent to repair or replace the alleged construction defects. The buyer must wait until the seller has completed all intended repairs and replacements before the buyer may file a lawsuit against the seller.

The new law adds definitions for construction codes, construction defect, construction professionals, and material deficiency, while removing the definition of multiunit dwelling action.

"Construction Professionals" have been added to the definition of a seller. Therefore, construction professionals, including architects, contractors, subcontractors, developers, builders, builder vendors, suppliers, engineers or inspectors performing or furnishing the design, supervision, inspection, construction or observation of the construction of any improvement to real property also have the right to repair or replace the alleged construction defects before a buyer may file a lawsuit against them.

"Construction defect" is now statutorily defined as "a material deficiency in the design, construction, manufacture, repair, alteration, remodeling or landscaping of a dwelling that is the result of one of the following:

1. A violation of construction codes applicable to the construction of the dwelling.

2. The use of defective materials, products, components or equipment in the design, construction, manufacture, repair, alteration, remodeling or landscaping of the dwelling.
3. The failure to adhere to generally accepted workmanship standards in the community."

"Material deficiency" is defined as "a deficiency that actually impairs the structural integrity, the functionality or the appearance of the dwelling at the time of the claim, or is reasonably likely to actually impair the structural integrity, the functionality or the appearance of the dwelling in the foreseeable future if not repaired or replaced."

The main issue in any future litigation, however, will likely be whether an alleged defect is a material deficiency. While the term is defined, in many cases, it will remain a subjective determination requiring testimony by experts on both sides.

The law also repealed the attorneys' fees provisions from the Purchaser Dwelling Actions statutes. Attorneys' fees, however, may still be awarded under another statute, A.R.S. § 12-341.01, which permits a court to award attorneys' fees to the prevailing party when the litigation arises out of a contract. Many contracts also specify that, in the event of a lawsuit, the prevailing party is entitled to his or her attorneys' fees and costs.