

House Engrossed Senate Bill

FILED

**JANICE K. BREWER
SECRETARY OF STATE**

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 275

SENATE BILL 1374

AN ACT

AMENDING SECTION 12-1363, ARIZONA REVISED STATUTES; RELATING TO LIMITATIONS
OF ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1363, Arizona Revised Statutes, is amended to
3 read:

4 12-1363. Notice and opportunity to repair

5 A. At least ninety days before filing a dwelling action, the
6 purchaser shall give written notice by certified mail, return receipt
7 requested, to the seller specifying in reasonable detail the basis of the
8 dwelling action. The notice in a multiunit dwelling action involving alleged
9 defects that are substantially similar in multiple residential units may
10 comply with this section by providing a reasonably detailed description of
11 the alleged defects in a fair and representative sample of the affected
12 residential units. FOR THE PURPOSES OF THIS SUBSECTION, "REASONABLE DETAIL"
13 INCLUDES A DETAILED AND ITEMIZED LIST THAT DESCRIBES EACH ALLEGED DEFECT AND
14 THE LOCATION THAT EACH ALLEGED DEFECT HAS BEEN OBSERVED BY THE PURCHASER IN
15 EACH DWELLING THAT IS THE SUBJECT OF THE NOTICE.

16 B. After receipt of the notice described in subsection A of this
17 section, the seller may inspect the dwelling to determine the nature and
18 cause of the alleged defects and the nature and extent of any repairs or
19 replacements necessary to remedy the alleged defects. The purchaser shall
20 ensure that the dwelling is made available for inspection no later than ten
21 days after the purchaser receives the seller's request for an inspection.
22 The seller shall provide reasonable notice to the purchaser before conducting
23 the inspection. The inspection shall be conducted at a reasonable time. The
24 seller may use reasonable measures, including testing, to determine the
25 nature and cause of the alleged defects and the nature and extent of any
26 repairs or replacements necessary to remedy the alleged defects. If the
27 seller conducts testing pursuant to this subsection, the seller shall restore
28 the dwelling to its condition before the testing.

29 C. Within sixty days after receipt of the notice described in
30 subsection A of this section, the seller shall send to the purchaser a good
31 faith written response to the purchaser's notice by certified mail, return
32 receipt requested. The response may include an offer to repair or replace
33 any alleged defects, to have the alleged defects repaired or replaced at the
34 seller's expense or to provide monetary compensation to the purchaser. The
35 offer shall describe in reasonable detail all repairs or replacements that
36 the seller is offering to make or provide to the dwelling and a reasonable
37 estimate of the date by which the repairs or replacements will be made or
38 monetary compensation will be provided.

39 D. If the seller does not provide a written response to the
40 purchaser's notice within sixty days, the purchaser may file a dwelling
41 action without waiting for the expiration of ninety days as required by
42 subsection A of this section.

43 E. Within twenty days after receipt of the seller's offer made
44 pursuant to subsection C of this section, the purchaser shall provide a good
45 faith written response. A purchaser who accepts the seller's offer made

1 pursuant to subsection C of this section shall do so in writing by certified
2 mail, return receipt requested. A purchaser who rejects the seller's offer
3 made pursuant to subsection C of this section shall respond to the seller in
4 writing by certified mail, return receipt requested. If the seller provides
5 a specific factual basis for the offer, the response shall include the
6 specific factual basis for the purchaser's rejection of the seller's offer
7 and the purchaser's counteroffer, if any. Within ten days after receipt of
8 the purchaser's response, the seller may make a best and final offer to the
9 purchaser in writing by certified mail, return receipt requested.

10 F. The following are not admissible in any dwelling action:

11 1. A purchaser's good faith notice given to the seller pursuant to
12 subsection A of this section.

13 2. A seller's good faith response or offer made pursuant to subsection
14 C of this section.

15 3. A purchaser's good faith response made to a seller's offer pursuant
16 to subsection E of this section.

17 4. A purchaser's good faith counteroffer to a seller's offer made
18 pursuant to subsection E of this section.

19 5. A seller's good faith best and final offer made pursuant to
20 subsection E of this section.

21 G. A purchaser may amend the notice provided pursuant to subsection A
22 of this section to include alleged defects identified in good faith after
23 submission of the original notice during the ninety day notice period. The
24 seller shall have a reasonable period of time to conduct an inspection, if
25 requested, and thereafter the parties shall comply with the requirements of
26 subsections B, C and E of this section for the additional alleged defects
27 IDENTIFIED IN REASONABLE DETAIL IN THE NOTICE.

28 H. A purchaser's written notice made pursuant to subsection A of this
29 section or an amended notice made pursuant to subsection G of this section
30 tolls the applicable statute of limitations, including section 12-552, until
31 ninety days after the seller receives the notice or for a reasonable period
32 agreed to in writing by the purchaser and seller.

33 I. Subject to Arizona rules of court, during the pendency of a
34 dwelling action the purchaser may supplement the list of alleged defects to
35 include additional alleged defects identified in good faith after filing of
36 the original dwelling action THAT HAVE BEEN IDENTIFIED IN REASONABLE DETAIL
37 AS REQUIRED BY THIS SECTION. The court shall provide the seller a reasonable
38 amount of time to inspect the dwelling to determine the nature and cause of
39 the additional alleged defects and the nature and extent of any repairs or
40 replacements necessary to remedy the additional alleged defects. The parties
41 shall comply with the requirements of subsections B, C and E of this section
42 for the additional alleged defects IDENTIFIED IN REASONABLE DETAIL IN THE
43 NOTICE.

1 J. The service of an amended notice of IDENTIFYING IN REASONABLE
2 DETAIL THE alleged defects during the pendency of a dwelling action shall
3 relate back to the original notice of alleged defects for the purpose of
4 tolling applicable statutes of limitations, including section 12-552.

5 K. By written agreement of the seller and purchaser, the time periods
6 provided in this section may be extended.

7 L. For the sale of a dwelling that occurs within the statutory period
8 set forth in section 12-552, the escrow agent, as defined in section 6-801,
9 shall provide notice to the purchaser of the provisions of this section and
10 sections 12-1361 and 12-1362. Nothing in this subsection creates a fiduciary
11 duty or provides any person or entity with a private right or cause of action
12 or administrative action.

APPROVED BY THE GOVERNOR MAY 15, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 15, 2006.

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 9, 20 06

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Klu Bennett
President of the Senate

Charmain Bellinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

9th day of May, 2006

at 2:39 o'clock P. M.

Vanessa Harris
Secretary to the Governor

Approved this 15 day of

May 2006

at 10³⁰ o'clock A. M.

Jon R. Ryznar
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 15th day of May, 20 06

at 3:24 o'clock P. M.

Janice K. Brewer
Secretary of State