



# Issue Brief

## Key Points:

- A Notice & Opportunity to Repair Act (NOR) generally requires that before a claimant files a construction defect lawsuit, the claimant must notify the construction professional on the project of each alleged construction defect to provide the construction professional an opportunity to repair the defect(s) or offer monetary compensation.
- NOR acts can be found in approximately 30 U.S. jurisdictions.
- ***It is critical that states pass NOR legislation to encourage alternative dispute resolution of justified claims outside the courtroom.***

## Notice & Opportunity to Repair

### AIA Position

The AIA supports governmental policies and reforms to minimize lawsuit abuse and to promote the administration of a fair civil liability legal system. Society is best served by legislative and regulatory reforms that curtail the cost and risks of professional liability for architects and homeowners without jeopardizing the public interest.

### Action Sought

The AIA seeks to pass legislation that will encourage communication and cooperation between design and construction professionals and homeowners prior to the commencement of litigation.

### Explanation and Justification

Over the past two decades, the cost of construction litigation has skyrocketed as the result of increased design and construction defect lawsuits.<sup>1</sup> Insurance carriers have evacuated the market in many areas of the country or raised premiums as the result of increased risks from construction defect litigation.<sup>2</sup> These suits often clog the American civil justice system with actions that are sometimes frivolous, usually complex, and take an excessive amount of time and money to resolve. The AIA supports legislation that requires design and construction professionals and building owners to make a reasonable attempt to settle disputes without litigation.

Legislation passed in approximately 30 states<sup>3</sup> requires the owner to notify the construction professional of a construction defect in writing prior to commencing a lawsuit. The construction professional then has a set amount of time to respond, in writing, and offer to inspect the alleged defect, offer to settle the claim by payment or repair or reject/dispute the claim. In most states, if a lawsuit is filed before these administrative steps are completed, the suit is dismissed without prejudice.

The goal of these acts is to reduce the volume and expense of residential construction defect litigation.

### Legislative Best Practices

To ensure Notice & Opportunity to Repair Legislation works efficiently, the AIA recommends that architects are:

- 1) included in a definition of "construction professional" to ensure that architects receive notice of the alleged defect(s) so that they can be part of the alternative dispute resolution process.

NOR legislation should provide that:

- 1) the architect not be held liable for any percentage of damages caused by the negligence of a person other than the architect including failure of a person to take reasonable action to mitigate the damages or take reasonable action to maintain the residence or other building or normal wear and tear.
- 2) penalties be imposed on claimants who do not provide a reasonable opportunity to inspect, repair, remedy, or settle a defect claim. Including:
  - a. Mandate the plaintiff pay the defendant attorney's fees for unreasonable rejections of reasonable settlement offers or not permitting the architect a reasonable opportunity to inspect or be involved with the decisions to repair the defect.

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<sup>1</sup> Kelly Zito, *Insurance Nightmare: Flood of Lawsuits Alleging Defective Construction Leaves Builders Scrambling to Find Coverage for New Projects*, San Fran. Chron., July 11, 2002, at B1.

<sup>2</sup> Alice Noble-Allgire, Notice and Opportunity to Repair Construction Defects: An Imperfect Response to the Perfect Storm, 43 Real Prop. Tr. & Est. L.J. 729 (2009)

<sup>3</sup> Alaska; Arizona; California; Colorado; Florida; Georgia; Hawaii; Idaho; Indiana; Kansas; Kentucky; Louisiana; Minnesota; Mississippi; Missouri; Montana; Nevada; New Hampshire; North Dakota; Ohio; Oklahoma; Oregon; South Carolina; Tennessee; Texas; Virginia; Washington; West Virginia; Wisconsin.