



April 5, 2019

The Honorable Doug Ducey
Governor, State of Arizona
1700 W Washington St
Phoenix AZ 85007

Re: Please Sign Senate Bill 1271 (purchaser dwelling actions; notice; complaints)

Dear Governor Ducey:

On behalf of the Home Builders Association of Central Arizona (“HBACA”) and the Southern Arizona Home Builders Association (“SAHBA”), we respectfully request your support and signature on Senate Bill 1271 (“SB 1271”), which provides a comprehensive process to fairly and equitably resolve complex construction defect lawsuits.

In Arizona, construction defect lawsuits have become a cottage industry primarily for out-of-state law firms lured by substantial awards of attorney fees. These cases have become increasingly complex and may potentially involve many parties, including a home builder and all its subcontractors. Last year, you signed Senate Bill 1271 which created the Construction Liability Apportionment Study Committee (“Study Committee”) and tasked it with making recommendations on a better approach to these cases. In general, the Study Committee examined:

- The use of indemnification clauses in construction contracts.
- The allocation of liability among builders and the various subcontractors based on degrees of fault.
- The frequency of construction defect lawsuits.

This year’s version of SB 1271 is the result of the many Study Committee hearings and dozens of stakeholder meetings. We believe that the bill provides a comprehensive approach through all stages of the litigation. These reforms further incentivize builders and their subcontractors to make necessary repairs and reduce incentives for lawyers to bring frivolous claims to drive up awards for attorney fees.

SB 1271 addresses these issues in three ways. First, it brings the subcontractors into the “right to repair” process before a lawsuit is filed. Under existing Arizona law, builders have a “right to repair” any alleged defect before a lawsuit is filed. SB 1271 requires that a home builder forward any notice of alleged defect to any subcontractors that it believes was responsible for the defect. This gets the subcontractors involved in the process early and will lead to more repairs for homeowners.

The Honorable Doug Ducey

April 5, 2019

Page 2

Second, once a construction defect lawsuit has been filed, SB 1271 creates a two-phase trial to more fairly and equitably apportion liability. In the first phase of the trial, the trier of fact will determine whether a construction defect exists, and the amount of damages associated with each defect. In the second phase, the trier of fact will apportion liability between the builder and subcontractors based on each party's pro rata share of responsibility for the defect. This process will ensure that each party only pays for the damages caused by their work and is essential to executing the changes to indemnity clauses in residential construction contracts that this bill requires.

Third, once findings are made on liability and damages, SB 1271 allows a court to award attorney fees to the prevailing party on a contested issue by contested issue basis. In addition, SB 1271 also provides for the recovery of expert witness fees in cases involving a single homeowner. Any fees that are awarded must be reasonable based on four factors:

- The repairs, replacements, or offers made by the builder before the lawsuit was filed.
- The homeowner's response to the repairs, replacements, or offers.
- The relation between the fees incurred and the value of the damages awarded.
- The amount of fees incurred responding to unsuccessful motions, claims, and defenses.

We believe this approach will encourage builders to make repairs before a lawsuit is filed, allow homeowners the opportunity to litigate legitimate claims that are not repaired, and reign in the existing incentives to incur excessive fees for minimal defects.

Finally, SB 1271 makes needed reforms to the Purchaser Dwelling Act which governs construction defect lawsuits. These reforms include:

- Limiting the liability of a subcontractor not involved in the original construction that repairs an alleged defect.
- Tolling the applicable statutes of limitations and repose for builders to bring indemnity and contribution claims against subcontractors. This ensures that all parties that worked on a home can be included in a lawsuit.
- Requiring homeowners to affirm that they have read the lawsuit, agree with the allegations and facts asserted, and have not been given or promised anything of value in return for filing the lawsuit. This addresses testimony during the Study Committee of instances where homeowners sued their builder without knowing they were involved in a lawsuit.

In all, SB 1271 is the product of a lot of hard-work and compromise among many varied stakeholders. It is well thought out and comprehensive. For these reasons, it arrives at your desk having received 29 votes in the Senate (Final Read) and 48 votes in the House.

The Honorable Doug Ducey
April 5, 2019
Page 3

Thank you very much for your consideration of this extremely important bill to the residential construction industry. The HBACA and SAHBA are hopeful that you will once again provide your support for our industry and sign Senate Bill 1271. If you have any questions or if there is anything additional we can provide, please let us know.

Very truly yours,



Connie Wilhelm
Chief Executive Officer
Home Builders Assn of Central AZ



David Godlewski
President
Southern AZ Home Builders Assn.