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## “Tip of the Month”

### Residential Contractor Construction Defects: Notice and Opportunity to Repair

New Hampshire RSA 359-G, *Notice and Opportunity to Repair*, regulates disputes over residential construction. Under the statute, a homeowner is required to give the contractor 60 days’ notice of intent to file claims against the contractor based on construction defects. Without this notice, the homeowner cannot sue the contractor. Upon receiving notice of the alleged construction defect, the contractor is allowed 30 days in which to respond to the homeowner with: (a) an offer to settle the claim by monetary payment, making repairs, or a combination of both; (b) a proposal to inspect the residence that is the subject of the claim; or (c) wholly reject the claim.

RSA 359-G applies to new construction, repairs of existing construction, and renovations to construction, but only of residential property and condominium complexes. The law does not apply to commercial property of any kind.

Under the statute, for any project in which the contract amount exceeds \$5,000, the contractor is required at time of contracting to provide written notice to the homeowner of the contractor's right to resolve construction claims before the homeowner can commence litigation. The contract notice must be conspicuous and in substantially the following form:

**New Hampshire Law, RSA 359-G, contains important requirements you must follow before you may file a lawsuit or other action for defective construction against the contractor who constructed, remodeled, or repaired your home. Sixty days before you file your lawsuit or other action, you must serve on the contractor a written notice of any construction conditions you allege are defective. Under the law, a contractor has the opportunity to make an offer to repair and/or pay for the defects. There are strict deadlines and procedures under state law, and failure to follow them may affect your ability to file a lawsuit or other action.**

So what is a construction defect? Unless the written contract limits the scope or warranty of the work, or there is already a standard set by law, the NH law defines a construction defect very broadly. It includes any “matter concerning the design, construction, modification, or repair of a residence, about which a person has a complaint against a contractor.” The law allows a claim for a construction defect to include damage to the residence itself, the land or anything on the property that was caused or contributed to by the construction defect. If the contract includes a more limited warranty, the more limited scope will usually apply instead.

If you have questions about contracting or construction, please do not hesitate to give us a call at 603-668-1971 or contact us by email at [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com).

## Happy Holidays!

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