

1 CAUSE OF ACTION FOR DEFECTIVE
2 CONSTRUCTION

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Curtis S. Bramble

6 House Sponsor: Stephen H. Urquhart

8 LONG TITLE

9 General Description:

10 This bill creates limitations on a cause of action for defective construction.

11 Highlighted Provisions:

12 This bill:

13 ▶ limits a cause of action for defective construction to a breach of contract action,
14 unless there is certain other property damage, personal injury, or an intentional or
15 willful breach of a legal duty; and

16 ▶ addresses who may bring an action for defective construction.

17 Monies Appropriated in this Bill:

18 None

19 Other Special Clauses:

20 None

21 Utah Code Sections Affected:

22 ENACTS:

23 78B-4-512, Utah Code Annotated 1953

25 *Be it enacted by the Legislature of the state of Utah:*

26 Section 1. Section 78B-4-512 is enacted to read:

27 **78B-4-512. Cause of action for defective construction.**

28 (1) Except as provided in Subsection (2), an action for defective design or construction
29 is limited to breach of the contract, whether written or otherwise, including both express and

30 implied warranties.

31 (2) An action for defective design or construction may include damage to other
32 property or physical personal injury if the damage or injury is caused by the defective design or
33 construction.

34 (3) For purposes of Subsection (2), property damage does not include:

35 (a) the failure of construction to function as designed; or

36 (b) diminution of the value of the constructed property because of the defective design
37 or construction.

38 (4) Except as provided in Subsections (2) and (6), an action for defective design or
39 construction may be brought only by a person in privity of contract with the original contractor,
40 architect, engineer, or the real estate developer.

41 (5) If a person in privity of contract sues for defective design or construction under this
42 section, nothing in this section precludes the person from bringing, in the same suit, another
43 cause of action to which the person is entitled based on an intentional or willful breach of a duty
44 existing in law.

45 (6) Nothing in this section precludes a person from assigning a right under a contract to
46 another person, including to a subsequent owner or a homeowners association.