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Legislature OKs bill making it harder for homeowners to sue

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The Associated Press

PHOENIX - A bill awaiting Gov. Doug Ducey's signature could make it more difficult for homeowners to sue over construction defects in their homes.

When homeowners find cracks in their houses' walls, ceilings or floors, they have an eight-year window after construction to work with homebuilders to fix the problem, or go to court. If the homeowners win, the court awards damages as well as attorney, court and expert-witness fees.

But a proposal by Rep. Darin Mitchell, R-Litchfield Park, would repeal the part of law that allows homeowners who win in court to also recover their attorney and expert-witness fees. That means they have to pay the fees out of their award for the construction defects and may not even have enough to pay for their house.

Mitchell, a former homebuilder, said the intention of the bill is to protect homeowners while shielding builders from excessive litigation from out-of-state law firms specializing in construction defects.

"It does remove the legal carve out that has existed regarding this type of litigation, which is why Arizona has, up until now, been a virtual feeding ground for the out state class-action law firms," Mitchell said in an email.

But a Phoenix-based attorney who specializes in construction-defect cases said the math doesn't add up for homeowners. "This revision will effectively bar the doors to the courthouse for homeowners with legitimate defects," said Stephen Weber of the Kasdan Simonds Weber & Vaughan law firm.

In February, an Arizona appeals court upheld a more than \$13 million judgment for a construction-defects case Weber won against developer Del Webb Communities Inc. on behalf of 460 homeowners in Sun City Grand, a Phoenix suburb, who had cracks in their ceilings, walls and floors. An arbitration panel awarded the homeowners about \$7.5 million in damages and about \$6 million in expert, attorney and arbitration fees, Weber said.

Without the extra award money, the 460 homeowners would have had about \$1.5 million to split between them to pay for the construction defects, he said.

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The Senate approved House Bill 2578 on a 24-5 vote on March 18 and transmitted the bill to the governor the next day. The proposal would also establish a homebuilder's right to repair construction defects before a homeowner can sue.

Kevin O'Malley, an attorney from the Gallagher & Kennedy law firm representing the Home Builders Association of Central Arizona, said the right to repair would allow builders to come out and fix the problem without having to litigate.

Right now, homeowners have to write a notice to the homebuilders detailing the problems at least 90 days before filing a lawsuit against them. The homebuilder can choose to inspect the house, fix the problem, offer to compensate the owners for the value of the defect or go to court.

O'Malley said current law has created an "avalanche of construction-defect litigation," and Mitchell's bill would fix that. "Instead of creating an incentive to settle it created an incentive to litigate, and we want to unwind that," O'Malley said.

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