

By the Committees on Judiciary; Regulated Industries; and
Senator Bennett

308-2378A-03

1 A bill to be entitled
2 An act relating to construction defects;
3 providing legislative findings and declaration;
4 providing definitions; providing for the
5 dismissal of dwelling actions under certain
6 circumstances; providing for notice and
7 opportunity to repair; providing prerequisites
8 to bring an action based on alleged
9 construction defects; providing for
10 inspections; providing evidentiary
11 presumptions; providing for tolling a statute
12 of limitations; providing for certain
13 notifications to the purchaser at the time of
14 sale; providing severability; providing an
15 effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Legislative findings and declaration.--The
20 Legislature finds that an effective alternative dispute
21 resolution mechanism in certain construction defect matters
22 should involve the claimant filing a notice of claim with the
23 contractor, subcontractor, supplier, or design professional
24 that the claimant asserts is responsible for the defect, and
25 should provide the contractor, subcontractor, supplier, or
26 design professional with an opportunity to resolve the claim
27 without resort to further legal process.

28 Section 2. Definitions.--As used in this act, the
29 term:

30 (1) "Action" means any civil action or arbitration
31 proceeding for damages or indemnity asserting a claim for

1 damage to or loss of a dwelling or personal property caused by
2 an alleged construction defect, but does not include any civil
3 action or arbitration proceeding asserting a claim for alleged
4 personal injuries arising out of an alleged construction
5 defect.

6 (2) "Association" has the same meaning as in section
7 718.103(2), section 719.103(2), section 720.301(7), or section
8 723.025, Florida Statutes.

9 (3) "Claimant" means a homeowner, including a
10 subsequent purchaser, tenant, or association, who asserts a
11 claim against a contractor, subcontractor, supplier, or design
12 professional concerning a defect in the design, construction,
13 condition, or sale of a dwelling or in the remodel of a
14 dwelling, but does not include a contractor, subcontractor,
15 supplier, or design professional.

16 (4) "Construction defect" means a deficiency in, or a
17 deficiency arising out of, the design, specifications,
18 surveying, planning, supervision, observation of construction,
19 or construction or remodeling of a dwelling resulting from:

20 (a) Defective material, products, or components used
21 in the construction or remodeling;

22 (b) A violation of the applicable codes in effect at
23 the time of construction or remodeling;

24 (c) A failure of the design of a dwelling to meet the
25 applicable professional standards of care at the time of
26 governmental approval; or

27 (d) A failure to construct or remodel a dwelling in
28 accordance with accepted trade standards for good and
29 workmanlike construction at the time of construction.

30 (5) "Contractor" means any person, firm, partnership,
31 corporation, association, or other organization that is

1 legally engaged in the business of designing, developing,
2 constructing, manufacturing, selling, or remodeling dwellings
3 or attachments thereto.

4 (6) "Design professionals" means a person licensed in
5 this state as an architect, interior designer, landscape
6 architect, engineer, or surveyor.

7 (7) "Dwelling" means a single-family house,
8 manufactured or modular home, duplex, or multifamily unit
9 building designed for residential use and includes common
10 areas and improvements that are owned or maintained by an
11 association or by members of an association, and includes the
12 systems, other components, and improvements that are part of
13 the structure at the time of completion of construction.

14 (8) "Service" means personal service or delivery by
15 certified mail to the last known address of the addressee.

16 (9) "Subcontractor" means a contractor who performs
17 work on behalf of another contractor in the construction or
18 remodeling of a dwelling.

19 (10) "Supplier" means a person who provides materials,
20 equipment, or other supplies for the construction or
21 remodeling of a dwelling.

22 Section 3. Action; abatement.--If a claimant files an
23 action without first complying with the requirements of this
24 act, on motion by a party to the action the court shall abate
25 the action, without prejudice, and the action may not proceed
26 until the claimant has complied with such requirements.

27 Section 4. Notice and opportunity to repair.--

28 (1) In actions brought against a contractor,
29 subcontractor, supplier, or design professional related to an
30 alleged construction defect, the claimant shall, no later than
31 60 days before filing an action, serve written notice of claim

1 on the contractor. The notice of claim must describe the claim
2 in reasonable detail sufficient to determine the general
3 nature of each alleged defect and a description of the damage
4 or loss resulting from the defect, if known. The claimant
5 shall endeavor to serve the notice of claim within 15 days
6 after discovery of an alleged defect, but the failure to serve
7 notice of claim within 15 days does not bar the filing of an
8 action, subject to section 3.

9 (2) Within 5 business days after service of the notice
10 of claim, the contractor, subcontractor, supplier, or design
11 professional may inspect the dwelling to assess each alleged
12 construction defect. The claimant shall provide the
13 contractor, subcontractor, supplier, or design professional
14 and its contractors or agents reasonable access to the
15 dwelling during normal working hours to inspect the dwelling
16 to determine the nature and cause of each alleged construction
17 defect. The nature and extent of any repairs or replacements
18 necessary to remedy each defect. The inspection may include
19 destructive testing by mutual agreement. Prior to performing
20 any destructive testing, the person who desires to perform the
21 testing shall notify the claimant in writing of the type of
22 testing to be performed, the anticipated damage to the
23 dwelling which will be caused by the testing, and the
24 anticipated repairs that will be necessary to repair any
25 damage caused by the testing. The person performing the
26 testing is responsible for repairing any damage to the
27 dwelling caused by the testing.

28 (3) Within 10 days after service of the notice of
29 claim, the contractor, subcontractor, supplier, and design
30 professional must forward a copy of the notice of claim to
31 each subcontractor, supplier, or design professional must

1 forward a copy of the notice of claim to each subcontractor,
2 supplier, and design professional who it reasonably believes
3 is responsible for each defect specified in the notice of
4 claim and shall note the specific defect for which it believes
5 the particular subcontractor, supplier, or design professional
6 is responsible. Each such subcontractor, supplier, and design
7 professional may inspect the dwelling as provided in
8 subsection (2) within 5 business days after receiving a copy
9 of the notice.

10 (4) Within 5 business day after receiving a copy of
11 the notice of claim, the subcontractor, supplier, or design
12 professional must serve a written response to the contractor,
13 subcontractor, supplier, or design professional who served a
14 copy of the notice of claim. The written response shall
15 include a report of the scope of any inspection of the
16 dwelling the findings and results of the inspection, a
17 statement of whether the subcontractor, supplier, or design
18 professional is willing to make repairs to the dwelling or
19 whether he or she disputes the claim, a description of any
20 repairs he or she is willing to make to remedy the alleged
21 construction defect, and a timetable for the completion of
22 such repairs.

23 (5) Within 25 days after receiving the notice of
24 claim, each contractor, subcontractor, supplier, or design
25 professional must serve a written response to the claimant.
26 The written response must provide:

27 (a) A written offer to remedy the alleged construction
28 defect at no cost to the claimant, including a report of the
29 scope of the inspection, the findings and results of the
30 inspection, a detailed description of the repairs necessary to
31

1 remedy the defect, and a timetable for the completion of such
2 repairs;

3 (b) A written offer to compromise and settle the claim
4 by monetary payment to be paid within 30 days after the
5 claimant's acceptance of the offer; or

6 (c) A written statement that the contractor,
7 subcontractor, supplier, or design professional disputes the
8 claim and will not remedy the defect or compromise and settle
9 the claim.

10 (6) If the contractor, subcontractor, supplier, or
11 design professional offers to remedy the alleged construction
12 defect or compromise and settle the claim by monetary payment,
13 the written response must contain a statement that the
14 claimant shall be deemed to have accepted the offer if, within
15 15 days, or 45 days for an association, after service to the
16 written response, the claimant does not serve a written
17 rejection of the offer on the contractor, subcontractor,
18 supplier, or design professional.

19 (7) If the contractor, subcontractor, supplier, or
20 design professional disputes the claim and will neither remedy
21 the defect nor compromise and settle the claim, or does not
22 respond to the claimant's notice of claim within the time
23 provided in subsection (5), the claimant may, without further
24 notice, proceed with an action against the contractor,
25 subcontractor, supplier or design professional for the claim
26 described in the notice of claim.

27 (8) A claimant who rejects a settlement offer made by
28 the contractor, subcontractor, supplier, or design
29 professional must serve written notice of such rejection on
30 the contractor, subcontractor, supplier, or design
31 professional within 15 days, or 45 days for an association,

1 after service of the settlement offer. The claimant's
2 rejection must contain the settlement offer with the word
3 "rejected" printed on it. After service of the rejection, the
4 claimant may proceed with an action against the contractor,
5 subcontractor, supplier, or design professional for the claims
6 in the notice of claim without further notice.

7 (9) If the claimant accepts the offer of a contractor,
8 subcontractor, supplier, or design professional and the
9 contractor, subcontractor, supplier, or design professional
10 does not make the payment or repair the defect within the
11 agreed time and in the agreed manner, the claimant may,
12 without further notice, proceed with an action against the
13 contractor, subcontractor, supplier, or design professional
14 for the claim in the notice of claim. If a claimant accepts a
15 contractor, subcontractor, supplier, or design professional's
16 offer and the contractor, subcontractor, supplier, or design
17 professional makes payment or repairs the defect within the
18 agreed time and in the agreed manner, the claimant is barred
19 from proceeding with an action against the contractor,
20 subcontractor, supplier, or design professional for the claim
21 described in the notice of claim.

22 (10) If the claimant accepts the offer of a
23 contractor, subcontractor, supplier, or design professional to
24 repair an alleged construction defect, the claimant shall
25 provide the contractor, subcontractor, supplier, or design
26 professional and its contractors or other agents reasonable
27 access to the claimant's dwelling during normal working hours
28 to perform the repair by the agreed-upon timetable as stated
29 in the offer.

30 (11) The failure of a claimant or a contractor,
31 subcontractor, supplier, or design professional to follow the

1 procedures in this section is admissible in an action.

2 However, this section does not prohibit or limit the claimant
3 from making any necessary emergency repairs to the dwelling.

4 In addition, the offer of a contractor, subcontractor,
5 supplier, or design professional to remedy an alleged
6 construction defect or to compromise and settle the claim by
7 monetary payment does not constitute an admission of liability
8 with respect to the defect.

9 (12) A claimant's written notice of claim under
10 subsection (1) tolls the applicable statute of limitations
11 until the later of:

12 (a) Sixty days after the contractor, subcontractor,
13 supplier, or design professional receives the notice; or

14 (b) Thirty days after the end of the repair period
15 stated in the offer, if the claimant has accepted the offer.

16 By stipulation of the parties, the period may be extended and
17 the statute of limitations is tolled during the extension.

18 (13) The procedures in this section apply to each
19 alleged construction defect. However, a claimant may include
20 multiple defects in one notice of claim.

21 (14) Sections 1 through 3 of this act do not:

22 (a) Bar or limit any rights, including the right of
23 specific performance to the extent such right would be
24 available in the absence of this act, any causes of action, or
25 any theories on which liability may be based, except as
26 specifically provided in this act;

27 (b) Bar or limit any defense, or create any new
28 defense, except as specifically provided in this act; or

29 (c) Create any new rights, causes of action, or
30 theories on which liability may be based.

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1 (15) To the extend that an arbitration clause in a
2 contract for the sale, design, construction, or remodeling of
3 a dwelling conflicts with this section, this section shall
4 control.

5 Section 5. Contract of sale; provisions.--

6 (1) Upon entering into a contract for the sale,
7 construction, or remodeling of a dwelling, the contractor,
8 subcontractor, supplier, or design professional shall provide
9 notice to the owner of the dwelling of the contractor,
10 subcontractor, supplier, or design professional's right to
11 offer to cure construction defects or pay to settle alleged
12 construction defects before a claimant may commence an action
13 against the contractor, subcontractor, supplier, or design
14 professional. Such notice must be conspicuous and may be
15 included as part of the contract.

16 (2) The notice required by subsection (1) must be in
17 substantially the following form:

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19 FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW
20 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION
21 AGAINST A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN
22 PROFESSIONAL FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME.
23 SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO
24 THE CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN
25 PROFESSIONAL A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS
26 YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY
27 SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE
28 OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND
29 MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION
30 DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE
31 CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN

1 PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER
2 FLORIDA LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR
3 ABILITY TO FILE A LAWSUIT.

4 Section 6. If any provision of this act or the
5 application thereof to any person or circumstance is held
6 invalid, the invalidity does not affect other provisions or
7 applications of this act which can be given effect without the
8 invalid provision or application, and to this end the
9 provisions of this act are declared severable.

10 Section 7. This act shall take effect upon becoming a
11 law and shall apply to all actions accruing on or after the
12 effective date.

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill CS/1286

17 Revises definition of "action" to exclude actions for personal
18 injury alleged to have occurred as a result of a construction
defect.

19 Changes the number of days from 60 to 45.

20 Revises definition for construction defect to exclude
21 provisions relating to standards.

22 Removes provisions relating to actions required by homeowner,
23 condominium, or cooperative associations regarding
24 construction defects under the CS.
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