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2003 Legislature CS for CS for SB 1286, 2nd Engrossed (ntc)

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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

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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 construction defect. The term does
13 not include a contractor, subcontractor, supplier, or design
14 professional.

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

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

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

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

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

29 (5) "Contractor" means any person, firm, partnership,
30 corporation, association, or other organization that is
31 legally engaged in the business of designing, developing,

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1 constructing, manufacturing, selling, or remodeling dwellings
2 or attachments thereto.

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

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

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

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

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

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

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

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

1 professional, as applicable. The notice of claim must describe
2 the claim in reasonable detail sufficient to determine the
3 general nature of each alleged defect and a description of the
4 damage or loss resulting from the defect, if known. The
5 claimant shall endeavor to serve the notice of claim within 15
6 days after discovery of an alleged defect, but the failure to
7 serve notice of claim within 15 days does not bar the filing
8 of an 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 and the nature and extent of any repairs or
18 replacements necessary to remedy each defect. The inspection
19 may include destructive testing by mutual agreement. Prior to
20 performing any destructive testing, the person who desires to
21 perform the testing shall notify the claimant in writing of
22 the type of testing to be performed, the anticipated damage to
23 the 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 who it

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

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

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

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

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

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

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

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

25 (8) A claimant who rejects a settlement offer made by
26 the contractor, subcontractor, supplier, or design
27 professional must serve written notice of such rejection on
28 the contractor, subcontractor, supplier, or design
29 professional within 15 days, or 45 days for an association,
30 after service of the settlement offer. The claimant's
31 rejection must contain the settlement offer with the word

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1 "rejected" printed on it. After service of the rejection, the
2 claimant may proceed with an action against the contractor,
3 subcontractor, supplier, or design professional for the claims
4 in the notice of claim without further notice.

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

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

28 (11) The failure of a claimant or a contractor,
29 subcontractor, supplier, or design professional to follow the
30 procedures in this section is admissible in an action.
31 However, this section does not prohibit or limit the claimant

1 from making any necessary emergency repairs to the dwelling.
2 In addition, the offer of a contractor, subcontractor,
3 supplier, or design professional to remedy an alleged
4 construction defect or to compromise and settle the claim by
5 monetary payment does not constitute an admission of liability
6 with respect to the defect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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