



1 A bill to be entitled

2 An act relating to construction defects; providing
3 legislative findings and declarations; providing
4 definitions; providing for the dismissal of dwelling
5 actions without prejudice under certain circumstances;
6 requiring a notice of claim and an opportunity to repair
7 certain construction defects under certain circumstances;
8 providing procedures and requirements for claim resolution
9 by homeowners and construction professionals; providing
10 for notice and response; providing for offers to
11 compromise and settle, inspections, or disputation of
12 claims; providing for bringing actions against certain
13 persons under certain circumstances; providing for access
14 to a dwelling to inspect for certain purposes; providing
15 for offers to remedy construction defects at no cost or
16 offers to compromise and settle certain claims; providing
17 for refusal to remedy defects; providing for bringing
18 actions against certain persons under certain
19 circumstances; limiting a claimant's recovery to certain
20 amounts under certain circumstances; providing for access
21 to a dwelling to remedy certain defects; specifying
22 admissibility of certain actions by a claimant as
23 mitigation of certain damages; precluding contractors from
24 making certain assertions of claimant noncompliance under
25 certain circumstances; providing for tolling a time
26 limitation; providing procedures for notice and
27 opportunity to repair for discovery of additional
28 construction defects; requiring the construction
29 professional to provide to dwelling owners at time of sale



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30 certain notice of rights to offer to cure construction
31 defects; specifying notice form and contents; requiring
32 new residential dwelling contractors to provide initial
33 purchasers with certain contractor and subcontractor
34 information; providing requirements, restrictions, and
35 limitations before condominium, cooperative, or
36 homeowners' associations may bring lawsuits relating to
37 construction defects; providing a criminal penalty;
38 requiring use of a contractor to perform destructive
39 testing; requiring a vote by unit owners before an
40 association may undertake certain actions for construction
41 defects; requiring notice; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Legislative findings and declaration.--The
46 Legislature finds, declares, and determines that this state
47 needs an alternative method to resolve legitimate construction
48 disputes that would reduce the need for litigation while
49 adequately protecting the rights of homeowners. The Legislature
50 declares that an effective alternative dispute resolution
51 mechanism in certain construction defect matters should involve
52 the claimant filing a notice of claim with the construction
53 professional that the claimant asserts is responsible for the
54 defect and providing the construction professional with an
55 opportunity to resolve the claim without litigation.

56 Section 2. Definitions.--

57 (1) "Action" means any civil lawsuit or action or
58 arbitration proceeding for damages or indemnity asserting a



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59 claim for injury or loss to a dwelling or personal property
60 caused by an alleged defect arising out of or related to the
61 design, construction, condition, or sale of the dwelling or a
62 remodel of a dwelling.

63 (2) "Association" has the same meaning as set forth in s.
64 718.103(2), s. 719.103(2), or s. 720.301(7), Florida Statutes.

65 (3) "Claimant" means a homeowner, including a subsequent
66 purchaser, or association which asserts a claim against a
67 construction professional concerning a defect in the design,
68 construction, condition, or sale of a dwelling or in the
69 remodeling of a dwelling.

70 (4) "Construction defect" means a deficiency in, or a
71 deficiency arising out of, the design, specifications,
72 surveying, planning, supervision, observation of construction,
73 or construction of residential improvements resulting from:

74 (a) Defective materials, products, or components used in
75 the construction of residential improvements;

76 (b) A violation of the applicable codes in effect at the
77 time of construction of residential improvements;

78 (c) A failure of the design of residential improvements to
79 meet the applicable professional standards of care at the time
80 of governmental approval; or

81 (d) A failure to construct residential improvements in
82 accordance with accepted trade standards for good and
83 workmanlike construction at the time of construction. Compliance
84 with the applicable codes in effect at the time of construction
85 shall conclusively establish construction in accordance with
86 accepted trade standards for good and workmanlike construction,
87 with respect to all matters specified in those codes.



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88 (5) "Contractor" means any person, firm, partnership,
89 corporation, association, or other organization that is engaged
90 in the business of designing, developing, constructing, or
91 selling dwellings.

92 (6) "Design professional" means a person licensed in the
93 state as an architect, interior designer, landscape architect,
94 engineer, or surveyor.

95 (7) " Dwelling" means a single-family house, duplex, or
96 multifamily unit designed for residential use in which title to
97 each individual unit is transferred to the owner under a
98 condominium or cooperative system and shall include common areas
99 and improvements that are owned or maintained by an association
100 or by members of an association. A dwelling includes the
101 systems, other components, and improvements that are part of a
102 single-family or multifamily unit at the time of construction.

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

105 (9) "Subcontractor" means a contractor who performs work
106 on behalf of another contractor in the construction of a
107 dwelling.

108 (10) "Supplier" means a person who provides materials,
109 equipment, or other supplies for the construction of a dwelling.

110 Section 3. Dwelling action; dismissal without
111 prejudice.--If a claimant files a dwelling action without first
112 complying with the provisions of this act, on motion by a party
113 to the action, the court shall dismiss the action without
114 prejudice and the action may not be refiled until the claimant
115 has complied with the requirements of this act.

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



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117 (1) In every action brought against a contractor arising
118 out of the construction of a dwelling, the claimant shall, no
119 later than 90 days before filing an action, serve a written
120 notice of claim on the contractor. The notice of claim shall
121 state that the claimant asserts a construction defect claim and
122 the notice of claim shall describe the claim or claims in
123 reasonable detail sufficient to determine the general nature of
124 any alleged construction defects and a description of the
125 results of the defects, if known.

126 (2) Within 15 days after the initial service of the notice
127 of claim required in subsection (1), the contractor shall
128 forward a copy of the notice to each subcontractor, supplier,
129 and design professional who the contractor reasonably believes
130 is responsible for a defect specified in the notice and include
131 with the notice the specific defect for which the contractor
132 believes the subcontractor, supplier, or design professional is
133 responsible.

134 (3) On the request of the contractor, subcontractor,
135 supplier, or design professional who has received a notice
136 pursuant to subsection (1) or subsection (2), the claimant shall
137 provide to the contractor, subcontractor, supplier, or design
138 professional any evidence that depicts the nature and cause of
139 the defect and the nature and extent of repairs necessary to
140 remedy the defect, including, but not limited to, expert
141 reports, photographs, and videotapes, if that evidence would be
142 discoverable under the Florida Rules of Civil Procedure.

143 (4) Within 30 days after service of the notice of claim by
144 claimant required in subsection (1) or subsection (2), each
145 contractor, subcontractor, supplier, or design professional that



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146 has received a notice of claim shall serve a written response on
147 the claimant by registered mail or personal service. The written
148 response shall:

149 (a) Offer to compromise and settle the claim by monetary
150 payment without inspection;

151 (b) Propose to inspect the dwelling that is the subject of
152 the claim; or

153 (c) State that the contractor, subcontractor, supplier, or
154 design professional disputes the claim and does not intend to
155 remedy the alleged construction defect or compromise and settle
156 the claim.

157 (5) If the contractor, subcontractor, supplier, or design
158 professional disputes the claim pursuant to paragraph (4)(c) and
159 does not intend to remedy the alleged construction defect or
160 compromise and settle the claim, or does not respond to the
161 claimant's notice of claim within the time stated in subsection
162 (4), the claimant may bring an action against the contractor,
163 subcontractor, supplier, or design professional for the claim
164 described in the notice of claim without further notice.

165 (6) If the claimant rejects the inspection proposal or the
166 settlement offer made by the contractor, subcontractor,
167 supplier, or design professional pursuant to subsection (4), the
168 claimant shall serve written notice of the claimant's rejection
169 on the contractor, subcontractor, supplier, or design
170 professional. The notice shall include the basis for the
171 claimant's rejection of the contractor, subcontractor, supplier,
172 or design professional's proposal or offer.

173 (7) After service of the rejection required by subsection
174 (6), the claimant may bring an action against the contractor,



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175 subcontractor, supplier, or design professional for the claim
176 described in the initial notice of claim required by subsection
177 (1) or subsection (2) without further notice.

178 (8) If the claimant elects to allow the contractor,
179 subcontractor, supplier, or design professional to inspect the
180 dwelling in accordance with the contractor's, subcontractor's,
181 supplier's, or design professional's proposal pursuant to
182 paragraph (4)(b), the claimant shall provide the contractor,
183 subcontractor, supplier, or design professional and its
184 contractors or other agents reasonable access to the claimant's
185 residence during normal working hours to inspect the premises
186 and the claimed defect to determine the nature and cause of the
187 alleged defects and the nature and extent of any repairs or
188 replacements necessary to remedy the alleged defects.

189 (9) Within 14 days after completion of the inspection, the
190 contractor, subcontractor, supplier, or design professional
191 shall serve on the claimant:

192 (a) A written offer to remedy the construction defect at
193 no cost to the claimant, including a report of the scope of the
194 inspection, the findings and results of the inspection, a
195 description of the additional construction necessary to remedy
196 the defect described in the claim, and a timetable for the
197 completion of such construction;

198 (b) A written offer to compromise and settle the claim by
199 monetary payment; or

200 (c) A written statement that the contractor,
201 subcontractor, supplier, or design professional does not intend
202 to proceed further to remedy the defect.

203 (10) If a claimant accepts a contractor's,



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204 subcontractor's, supplier's, or design professional's offer made
205 pursuant to paragraph (9)(a) or paragraph (9)(b) and the
206 contractor, subcontractor, supplier, or design professional does
207 not proceed to make the monetary payment or remedy the
208 construction defect within the agreed timetable, the claimant
209 may bring an action against the contractor, subcontractor,
210 supplier, or design professional for the claim described in the
211 initial notice of claim required by subsection (1) or subsection
212 (2) without further notice.

213 (11) If a claimant receives a written statement that the
214 contractor, subcontractor, supplier, or design professional does
215 not intend to proceed further to remedy the defect, the claimant
216 may bring an action against the contractor, subcontractor,
217 supplier, or design professional for the claim described in the
218 initial notice of claim required by subsection (1) or subsection
219 (2) without further notice.

220 (12) If the claimant rejects the offer made by the
221 contractor, subcontractor, supplier, or design professional to
222 remedy the construction defect or compromise and settle the
223 claim by monetary payment, the claimant shall serve written
224 notice of the claimant's rejection on the contractor,
225 subcontractor, supplier, or design professional no later than 30
226 days after receipt of the offer. The notice shall include the
227 basis for the claimant's rejection of the contractor's,
228 subcontractor's, supplier's, or design professional's offer.
229 After service of the rejection, the claimant may bring an action
230 against the contractor, subcontractor, supplier, or design
231 professional for the claim described in the notice of claim
232 without further notice.



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233 (13) If a claimant unreasonably rejects an offer made as
234 provided by this section or does not permit the contractor,
235 subcontractor, supplier, or design professional a reasonable
236 opportunity to repair the defect pursuant to an accepted offer
237 of settlement, the claimant may not recover an amount in excess
238 of:

239 (a) The reasonable cost of the offered repairs which are
240 necessary to cure the construction defect and which are the
241 responsibility of the contractor, subcontractor, supplier, or
242 design professional; or

243 (b) The amount of the monetary settlement offered by the
244 contractor, subcontractor, supplier, or design professional.

245 (14) Any claimant accepting the offer of the contractor,
246 subcontractor, supplier, or design professional to remedy the
247 construction defects shall do so by serving the contractor,
248 subcontractor, supplier, or design professional with a written
249 notice of acceptance no later than 30 days after receipt of the
250 offer.

251 (15) If a claimant accepts a contractor's,
252 subcontractor's, supplier's, or design professional's offer to
253 repair a defect described in an initial notice of claim, the
254 claimant shall provide the contractor, subcontractor, supplier,
255 or design professional and its contractors or other agents
256 reasonable access to the claimant's residence during normal
257 working hours to perform and complete the construction by the
258 timetable stated in the offer.

259 (16) A claimant's failure to do any of the following is
260 admissible in any dwelling action and creates a rebuttable
261 presumption that the claimant's damages could have been



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262 mitigated:

263 (a) Allow a reasonable inspection requested by the
264 contractor, subcontractor, supplier, or design professional; or

265 (b) Provide a good faith written response to a
266 contractor's, subcontractor's, supplier's, or design
267 professional's offer.

268 (17) Absent good cause, the contractor's, subcontractor's,
269 supplier's, or design professional's failure to respond in good
270 faith to the claimant's notice shall preclude the contractor,
271 subcontractor, supplier, or design professional from asserting
272 that the claimant did not comply with the provisions of this
273 act.

274 (18) A claimant's written notice tolls the applicable
275 statute of limitations until 90 days after the contractor,
276 subcontractor, supplier, or design professional receives the
277 notice. By stipulation of the parties, the 90-day period may be
278 extended and the statute of limitations is tolled during the
279 extension.

280 Section 5. Additional construction defects; additional
281 notice and opportunity to repair required.--A construction
282 defect which is discovered after a claimant has provided a
283 contractor with the claim notice required in section 4 may not
284 be alleged until the claimant has given the contractor,
285 subcontractor, supplier, or design professional who performed
286 the original construction:

287 (1) Written notice of the alleged defect required by
288 section 4.

289 (2) A reasonable opportunity to repair the alleged
290 construction defect in the manner provided in section 4.



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291 Section 6. Contract of sale; provisions.--

292 (1) Upon entering into a contract for sale, construction,
293 or substantial remodeling of a dwelling, the contractor,
294 subcontractor, supplier, or design professional shall provide
295 notice to the owner of the dwelling of the contractor's,
296 subcontractor's, supplier's, or design professional's right to
297 offer to cure construction defects before a claimant may
298 commence litigation against the contractor, subcontractor,
299 supplier, or design professional. Such notice shall be
300 conspicuous and may be included as part of the underlying
301 contract.

302 (2) The notice required by subsection (1) shall be in
303 substantially the following form:

304
305 CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU
306 MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE
307 CONTRACTOR WHO CONSTRUCTED YOUR HOME. NINETY DAYS BEFORE
308 YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR
309 A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE
310 ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY
311 SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE
312 OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE
313 DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY
314 THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN
315 PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES
316 UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT
317 YOUR ABILITY TO FILE A LAWSUIT.

318
319 Section 7. Contractor notification requirements.--Each



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320 contractor who constructs a new residential dwelling shall,
321 within 30 days after the close of the sale, provide in writing
322 to the initial purchaser of the residence:

323 (1) The name, license number, business address, and
324 telephone number of each subcontractor or design professional
325 who performed any work related to the design or construction of
326 the dwelling.

327 (2) A brief description of the work performed by each
328 subcontractor identified pursuant to this section.

329 Section 8. Actions of associations.--

330 (1) A person shall not provide or offer to provide
331 anything of value to a property manager of a condominium
332 association as defined in s. 718.103, Florida Statutes, a
333 cooperative association as defined in s. 719.103, Florida
334 Statutes, a homeowners' association as defined in s. 720.301,
335 Florida Statutes, or to a member or officer of the board of
336 directors of such association to induce the property manager,
337 member, or officer to either encourage or discourage the filing
338 of a claim by the association for damages arising from a
339 construction defect.

340 (2) A property manager of such condominium association,
341 cooperative association, or homeowners' association shall not
342 accept anything of value given to him or her in exchange for
343 encouraging or discouraging the filing of a claim by the
344 association that he or she manages for damages arising from a
345 construction defect.

346 (3) A member or officer of the board of directors of such
347 condominium association, cooperative association, or homeowners'
348 association shall not accept anything of value given to him or



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349 her in exchange for encouraging or discouraging the filing of a
350 claim by the association of which he or she is a member or
351 officer for damages arising from a construction defect.

352 (4) A person who willfully violates subsection (1),
353 subsection (2), or subsection (3) commits a misdemeanor of the
354 second degree, punishable as provided for in s. 775.082 or s.
355 775.083, Florida Statutes.

356 (5) An association or an attorney for an association shall
357 not employ a person to perform destructive tests to determine
358 any damage or injury to a unit, common element, or limited
359 common element caused by a constructional defect unless:

360 (a) The person is licensed as a contractor.

361 (b) The association has obtained the prior written
362 approval of each unit's owner whose unit or interest in the
363 common element or limited common element will be affected by
364 such testing.

365 (c) The person performing the tests has provided a written
366 schedule for repairs.

367 (d) The person performing the tests is required to repair
368 all damage resulting from such tests in accordance with state
369 laws and local ordinances relating thereto.

370 (e) The association or the person so employed obtains all
371 permits required to conduct such tests and to repair any damage
372 resulting from such tests.

373 (6) If an action is brought by an association to recover
374 damages resulting from construction defects in any of the units,
375 common elements, or limited common elements of the common-
376 interest community, the attorney representing the association
377 shall provide to the board of directors of the association and



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378 to each unit's owner a statement that includes, in reasonable
379 detail:

380 (a) The defects and damages or injuries to the units,
381 common elements, or limited common elements.

382 (b) The cause of the defects, if the cause is known.

383 (c) The nature and extent that is known of the damage or
384 injury resulting from the defects.

385 (d) The location of each defect within the units, common
386 elements, or limited common elements, if known.

387 (e) A reasonable estimate of the cost of the action,
388 including reasonable attorney fees.

389 (f) An explanation of the potential benefits of the action
390 and the potential adverse consequences if the association does
391 not commence the action or if the outcome is not favorable to
392 the association.

393 (7) An association may commence an action only upon a vote
394 or written agreement of the owners of the units to which at
395 least a majority of the votes of the members of the association
396 are allocated. In such a case, the association shall provide
397 written notice to the owner of each unit of the meeting at which
398 the commencement of an action is to be considered or action is
399 to be taken within 21 calendar days before the meeting.

400 Section 9. This act shall take effect upon becoming a law.