

By Senator Bennett

21-1346A-04

1 A bill to be entitled
2 An act relating to construction defects;
3 amending s. 558.001, F.S.; revising legislative
4 findings and declarations; amending s. 558.002,
5 F.S.; revising definitions; amending s.
6 558.003, F.S.; providing requirements for
7 filing actions alleging construction defects;
8 amending s. 558.004, F.S.; revising
9 requirements, procedures, criteria, and
10 limitations in provisions providing for
11 notification and opportunity to repair
12 constructing defects; providing requirements
13 and procedures for making, accepting, or
14 rejecting settlement offers; providing for
15 consequences of certain actions relating to
16 settlement offers; specifying legal obligation
17 to make certain repairs or monetary payments
18 under certain circumstances; amending s.
19 558.005, F.S.; revising certain contract
20 content provisions; providing a notice form;
21 providing application; providing severability;
22 providing an effective date.

23

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

25

26 Section 1. Section 558.001, Florida Statutes, is
27 amended to read:28 558.001 Legislative findings and declaration.--The
29 Legislature finds that it is beneficial to have an alternative
30 method to resolve construction disputes that would reduce the
31 need for litigation while protecting the rights of homeowners.

1 An effective alternative dispute resolution mechanism in
2 certain construction defect matters should involve the
3 claimant filing a notice of claim with the contractor,
4 subcontractor, supplier, or design professional that the
5 claimant asserts is responsible for the defect, and should
6 provide the contractor, subcontractor, supplier, or design
7 professional with an opportunity to resolve the claim without
8 resort to further legal process.

9 Section 2. Section 558.002, Florida Statutes, is
10 amended to read:

11 558.002 Definitions.--As used in this act, the term:

12 (1) "Action" means any civil action or arbitration
13 proceeding for damages or indemnity asserting a claim for
14 damage to or loss of a dwelling or personal property caused by
15 an alleged construction defect, but does not include any civil
16 action or arbitration proceeding asserting a claim for alleged
17 personal injuries arising out of an alleged construction
18 defect.

19 (2) "Association" has the same meaning as in s.
20 718.103(2), s. 719.103(2), s. 720.301(7), or s. 723.025.

21 (3) "Claimant" means a homeowner, including a
22 subsequent purchaser, ~~tenant~~, or association, who asserts a
23 claim for damages against a contractor, subcontractor,
24 supplier, or design professional concerning a construction
25 defect or who asserts a claim for indemnification for such
26 damages. The term does not include a contractor,
27 subcontractor, supplier, or design professional.

28 (4) "Construction defect" means a deficiency in, or a
29 deficiency arising out of, the design, specifications,
30 surveying, planning, supervision, observation of construction,
31 or construction, repair, alteration, or remodeling of a

1 dwelling, any appurtenances to the dwelling, or the real
2 property to which the dwelling or appurtenance is affixed
3 resulting from:

4 (a) Defective material, products, or components used
5 in the construction or remodeling;

6 (b) A violation of the applicable codes in effect at
7 the time of construction or remodeling which gives rise to a
8 cause of action under s. 553.84;

9 (c) A failure of the design of a dwelling to meet the
10 applicable professional standards of care at the time of
11 governmental approval; or

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

15 (5) "Contractor" means any person as defined in s.
16 1.01 which, ~~firm, partnership, corporation, association, or~~
17 ~~other organization that~~ is legally engaged in the business of
18 designing, developing, constructing, manufacturing, ~~selling,~~
19 or remodeling dwellings or attachments thereto.

20 (6) "Design professional" means a person as defined in
21 s. 1.01 that is licensed in this state as an architect,
22 interior designer, landscape architect, engineer, or surveyor.

23 (7) "Dwelling" means a single-family house,
24 manufactured or modular home, duplex, triplex, quadruplex, or
25 other multifamily unit in a multifamily residential building
26 designed for residential use in which title to each individual
27 unit is transferred to the owner under a condominium or
28 cooperative system and includes common areas and improvements
29 that are owned or maintained by an association or by members
30 of an association, and also includes the systems, other
31 components, ~~and~~ improvements, and other structures or

1 facilities, including, but not limited to, recreational, which
2 are appurtenant to and located on the real property on which
3 the house, duplex, triplex, quadruplex, or other multifamily
4 unit is located, but ~~that~~ are not necessarily part of the
5 structure at the time of completion of construction.

6 (8) "Service" means ~~personal service or~~ delivery by
7 certified mail, return receipt requested, to the last known
8 address of the addressee.

9 (9) "Subcontractor" means a person as defined in s.
10 1.01 who is a contractor who performs labor and supplies
11 material work on behalf of another contractor in the
12 construction or remodeling of a dwelling.

13 (10) "Supplier" means a person as defined in s. 1.01
14 who provides only materials, equipment, or other supplies for
15 the construction or remodeling of a dwelling.

16 Section 3. Section 558.003, Florida Statutes, is
17 amended to read:

18 558.003 Action; compliance abatement.--~~If~~ A claimant
19 may not file files an action subject to this chapter without
20 first complying with the requirements of this chapter. If a
21 claimant files an action alleging a construction defect
22 without first complying with this chapter act, on motion by a
23 party to the action the court shall abate the action, without
24 prejudice, and the action may not proceed until the claimant
25 has complied with such requirements.

26 Section 4. Section 558.004, Florida Statutes, is
27 amended to read:

28 558.004 Notice and opportunity to repair.--

29 (1) In actions brought alleging a ~~against a~~
30 ~~contractor, subcontractor, supplier, or design professional~~
31 ~~related to an alleged~~ construction defect, the claimant shall,

1 at least no later than 60 days before filing an action
2 involving a single-family residence, manufactured or modular
3 home, duplex, triplex, or quadruplex, or at least 120 days
4 before filing an action involving an association of one or
5 more units in a multifamily residential building, serve
6 written notice of claim on the contractor, subcontractor,
7 supplier, or design professional, as applicable, which notice
8 shall refer to this chapter. If the construction defect claim
9 arises from work performed under a contract, the written
10 notice of claim must be served on the person with whom the
11 claimant contracted.The notice of claim must describe the
12 claim in reasonable detail sufficient to determine the general
13 nature of each alleged construction defect and a description
14 of the damage or loss resulting from the defect, if known. In
15 addition, the claimant shall provide any evidence that depicts
16 the nature and cause of the construction defect, including,
17 but not limited to, expert reports, photographs, and
18 videotapes.The claimant shall endeavor to serve the notice of
19 claim within 15 days after discovery of an alleged defect, but
20 the failure to serve notice of claim within 15 days does not
21 bar the filing of an action, subject to s. 558.003. This
22 subsection does not preclude a claimant from filing an action
23 sooner than 60 days, or 120 days as applicable, after service
24 of written notice as expressly provided in subsection (6),
25 subsection (7), or subsection (8).

26 (2) Within 30 ~~5-business~~ days after receipt ~~service~~ of
27 the notice of claim involving a single-family home,
28 manufactured or modular home, duplex, triplex, or quadruplex,
29 or within 50 days after receipt of the notice of claim
30 involving an association of one or more units in a multifamily
31 building, the person receiving the notice of claim under

1 subsection (1) is entitled to perform a reasonable inspection
2 of, the contractor, subcontractor, supplier, or design
3 professional may inspect the dwelling or of each unit to
4 assess each alleged construction defect. The claimant shall
5 provide the person receiving the notice under subsection (1)
6 and such person's contractor, subcontractor, supplier, or
7 design professional and its contractors or agents reasonable
8 access to the dwelling during normal working hours to inspect
9 the dwelling to determine the nature and cause of each alleged
10 construction defect and the nature and extent of any repairs
11 or replacements necessary to remedy each defect. The
12 inspection may include destructive testing ~~by mutual~~
13 ~~agreement~~. Prior to performing any destructive testing, the
14 person receiving notice under subsection (1) who desires to
15 perform the testing shall notify the claimant in writing of
16 the type of testing to be performed, the anticipated damage to
17 the dwelling which will be caused by the testing, and the
18 anticipated repairs that will be necessary to repair any
19 damage caused by the testing. The person receiving the notice
20 under subsection (1) and such person's contractors or agents
21 performing the testing are ~~is~~ responsible for repairing any
22 damage to the dwelling caused by the testing.

23 (3) Within 10 days after receipt ~~service~~ of the notice
24 of claim involving a single-family house, manufactured or
25 modular home, duplex, triplex, or quadruplex, or within 30
26 days after receipt of the notice of claim involving an
27 association of one or more units in a multifamily residential
28 building, the person receiving the notice under subsection (1)
29 may ~~contractor, subcontractor, supplier, and design~~
30 ~~professional must~~ forward a copy of the notice of claim to
31 each contractor, subcontractor, supplier, or design

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

9 (4) Within 15 ~~5~~ business days after receiving a copy
10 of the notice of claim pursuant to subsection (3) involving a
11 single-family house, manufactured or modular home, duplex,
12 triplex, or quadruplex, or within 30 days after receipt of the
13 copy of the notice of claim involving an association of one or
14 more units in a multifamily residential building, the
15 contractor, subcontractor, supplier, or design professional
16 must serve a written response to the person ~~contractor,~~
17 ~~subcontractor, supplier, or design professional~~ who forwarded
18 ~~served~~ a copy of the notice of claim. The written response
19 shall include a report, if any, of the scope of any inspection
20 of the dwelling, the findings and results of the inspection, a
21 statement of whether the contractor, subcontractor, supplier,
22 or design professional is willing to make repairs to the
23 dwelling or whether such ~~he or she disputes the claim is~~
24 disputed, a description of any repairs they are ~~he or she is~~
25 willing to make to remedy the alleged construction defect, and
26 a timetable for the completion of such repairs.

27 (5) Within 45 ~~25~~ days after receiving the notice of
28 claim involving a single-family house, manufactured or modular
29 home, duplex, triplex, or quadruplex, or within 75 days after
30 receipt of a copy of the notice of claim involving an
31 association of one or more units in a multifamily residential

1 building, the person who received notice under subsection (1)
2 ~~each contractor, subcontractor, supplier, or design~~
3 ~~professional~~ must serve a written response to the claimant.
4 The response shall be served to the attention of the person
5 who signed the notice of claim, unless otherwise designated in
6 the notice of claim.The written response must provide:
7 (a) A written offer to remedy the alleged construction
8 defect at no cost to the claimant, including a report, if any,
9 of the scope of the inspection, the findings and results of
10 the inspection of the dwelling, a detailed description of the
11 proposed repairs necessary to remedy the defect, and a
12 timetable for the completion of such repairs;
13 (b) A written offer to compromise and settle the claim
14 by monetary payment and a timetable for making payment to be
15 ~~paid within 30 days after the claimant's acceptance of the~~
16 ~~offer; or~~
17 (c) A written offer to compromise and settle the claim
18 by a combination of repairs and monetary payment, including a
19 detailed description of the proposed repairs and a timetable
20 for the completion of such repairs and making payment; or
21 (d)(c) A written statement that the person ~~contractor,~~
22 ~~subcontractor, supplier, or design professional~~ disputes the
23 claim and will not remedy the defect or compromise and settle
24 the claim.
25 ~~(6) If the contractor, subcontractor, supplier, or~~
26 ~~design professional offers to remedy the alleged construction~~
27 ~~defect or compromise and settle the claim by monetary payment,~~
28 ~~the written response must contain a statement that the~~
29 ~~claimant shall be deemed to have accepted the offer if, within~~
30 ~~15 days, or 45 days for an association, after service to the~~
31 ~~written response, the claimant does not serve a written~~

1 ~~rejection of the offer on the contractor, subcontractor,~~
2 ~~supplier, or design professional.~~

3 (6)(7) If the person receiving a notice of claim
4 pursuant to subsection (1)~~contractor, subcontractor,~~
5 ~~supplier, or design professional~~ disputes the claim and will
6 neither remedy the defect nor compromise and settle the claim,
7 or does not respond to the claimant's notice of claim within
8 the time provided in subsection (5), the claimant may, without
9 further notice, proceed with an action against that person the
10 ~~contractor, subcontractor, supplier, or design professional~~
11 for the claim described in the notice of claim. This chapter
12 may not be construed to preclude a partial settlement or
13 compromise of the claim as agreed to by the parties, and, in
14 that event, the claimant may, without further notice, proceed
15 with an action on the unresolved portions of the claim.

16 (7)(8) A claimant who receives ~~rejects~~ a timely
17 settlement offer must accept or reject the offer ~~made~~ by
18 -serving the contractor, subcontractor, supplier, or design
19 ~~professional~~ must serve written notice of such acceptance or
20 rejection on the person making the offer ~~contractor,~~
21 ~~subcontractor, supplier, or design professional~~ within 15
22 days, or 45 days for an association, after receiving ~~service~~
23 ~~of the settlement offer. The claimant's rejection must contain~~
24 ~~the settlement offer with the word "rejected" printed on it.~~
25 ~~After service of the rejection,~~The claimant may proceed with
26 an action ~~against the contractor, subcontractor, supplier, or~~
27 ~~design professional~~ for the claims in the notice of claim only
28 after first timely and properly serving a notice of rejection
29 of the settlement offer ~~without further notice.~~

30 (8)(9) If the claimant timely and properly accepts the
31 offer to repair an alleged construction defect, the claimant

1 shall provide the offeror and the the offeror's agents
2 reasonable access to the claimant's dwelling during normal
3 working hours to perform the repair by the agreed-upon
4 timetable as stated in the offer. If the offeror of a
5 ~~contractor, subcontractor, supplier, or design professional~~
6 ~~and the contractor, subcontractor, supplier, or design~~
7 ~~professional~~ does not make the payment or repair the defect
8 within the agreed time and in the agreed manner, the claimant
9 may, without further notice, proceed with an action against
10 the offeror based upon the offer ~~contractor, subcontractor,~~
11 ~~supplier, or design professional for the claim in the notice~~
12 ~~of claim. If the offeror a claimant accepts a contractor's,~~
13 ~~subcontractor's, supplier's, or design professional's offer~~
14 ~~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 or as otherwise provided in
20 the accepted settlement offer.

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

29 ~~(9)(11) The failure of a claimant or a contractor,~~
30 ~~subcontractor, supplier, or design professional to follow the~~
31 ~~procedures in this section is admissible in an action.~~

1 ~~However,~~This section does not prohibit or limit the claimant
2 from making any necessary emergency repairs to the dwelling.
3 In addition, any ~~the offer of a contractor, subcontractor,~~
4 ~~supplier, or design professional~~ to remedy an alleged
5 construction defect, excluding any inspection reports, or to
6 compromise and settle the claim by monetary payment does not
7 constitute an admission of liability with respect to the
8 defect and shall not be admissible in an action to show the
9 existence of a defect.

10 ~~(10)(12)~~ A claimant's written notice of claim under
11 subsection (1) tolls the applicable statute of limitations
12 relating to any person covered by this chapter and any bond
13 surety until the later of:

14 (a) Sixty days, or 120 days as applicable, after
15 receipt of the contractor, subcontractor, supplier, or design
16 professional receives the notice of claim pursuant to
17 subsection (1); or

18 (b) Thirty days after the end of the repair period or
19 payment period stated in the offer, if the claimant has
20 accepted the offer. By stipulation of the parties, the period
21 may be extended and the statute of limitations is tolled
22 during the extension.

23 ~~(11)(13)~~ The procedures in this chapter ~~section~~ apply
24 to each alleged construction defect. However, a claimant may
25 include multiple defects in one notice of claim. the initial
26 list of construction defects may be amended by the claimant to
27 identify additional construction defects as they become known
28 to the claimant, but in no event may the court allow the
29 action to proceed to trial before all alleged construction
30 defects have been noticed and processed as set forth in this
31 chapter.

1 ~~(12)(14)~~ This chapter does Sections 558.001-558.003 of
2 ~~this act do~~ not:

3 (a) Bar or limit any rights, including the right of
4 specific performance to the extent such right would be
5 available in the absence of this act, any causes of action, or
6 any theories on which liability may be based, except as
7 specifically provided in this chapter act;

8 (b) Bar or limit any defense, or create any new
9 defense, except as specifically provided in this chapter act;
10 or

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

13 (13) The person receiving notice of claim under
14 subsection (1) shall be deemed, for insurance purposes, to
15 have been legally obligated to make the repairs or the
16 monetary payment as if the claimant had recovered a judgment
17 against such person in the amount of the cost of the repairs,
18 and the amount of the monetary payment, if any, if the
19 claimant has accepted the offer.

20 ~~(14)(15)~~ To the extent that an arbitration clause in a
21 contract for the sale, design, construction, or remodeling of
22 a dwelling conflicts with this section, this section shall
23 control.

24 Section 5. Section 558.005, Florida Statutes, is
25 amended to read:

26 558.005 ~~Contract of sale;~~ provisions; application.--

27 (1) Except as otherwise provided in subsections (3)
28 and (4), this chapter shall control every contract for the
29 design, construction, or remodeling of a dwelling entered into
30 on or after July 1, 2004, if notice in substantially the form
31 as set forth in subsection (2) is conspicuously set forth in

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

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

13

14 CHAPTER 558 NOTICE OF CLAIM

15

16 CHAPTER 558, FLORIDA STATUTES, LAW CONTAINS
17 IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE
18 YOU MAY BRING ANY ACTION FILE A LAWSUIT FOR
19 ~~DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR,~~
20 ~~SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL~~
21 FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR
22 HOME. SIXTY DAYS BEFORE YOU BRING ANY SUCH
23 ACTION FILE YOUR LAWSUIT, YOU MUST DELIVER TO
24 THE OTHER PARTY TO THIS CONTRACT ~~CONTRACTOR,~~
25 ~~SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL~~
26 A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF
27 ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE
28 DEFECTIVE AND PROVIDE SUCH PERSON YOUR
29 ~~CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS,~~
30 ~~OR DESIGN PROFESSIONALS~~ THE OPPORTUNITY TO
31 INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO

1 CONSIDER MAKING ~~MAKE~~ AN OFFER TO REPAIR OR PAY
2 FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE
3 NOT OBLIGATED TO ACCEPT ANY OFFER THAT MAY BE
4 ~~MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS,~~
5 ~~SUPPLIERS, OR DESIGN PROFESSIONALS.~~ THERE ARE
6 STRICT DEADLINES AND PROCEDURES UNDER THIS
7 FLORIDA LAW.

8 (3) After receipt of the initial notice of claim, a
9 claimant and the person receiving notice under s. 558.004(1)
10 may, by written mutual agreement, alter the procedure for the
11 notice of claim process described in this chapter.

12 (4) This chapter applies to all actions accruing on or
13 after July 1, 2004, and all actions commenced on or after such
14 date, regardless of the date of sale, issuance of a
15 certificate of occupancy or its equivalent, or substantial
16 completion of the dwelling. Notwithstanding the notice
17 requirements of this section for contracts entered into on or
18 after July 1, 2004, this chapter applies to all actions
19 accruing before July 1, 2004, and failure to include the
20 notice requirements of this section in a contract entered into
21 prior to July 1, 2004, does not operate to bar the procedures
22 of this chapter from applying to all such actions.

23 Section 6. If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 invalidity does not affect other provisions or applications of
26 this act which can be given effect without the invalid
27 provision or application, and to this end the provisions of
28 this act are declared severable.

29 Section 7. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Revises methods by which homeowners may invoke
alternative resolution procedures for disputes involving
alleged construction defects. Prescribes duties and
responsibilities of claimants and of persons responsible
for alleged defects.