



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – This bill extends the alternative dispute resolution mechanism regarding construction defects to any property owner, not just owners of residential property.

Promote Personal Responsibility – This bill provides that in construction disputes, all property owners must file a written notice of claim and provide an opportunity to resolve the claim for contractors, subcontractors, suppliers, or design professionals purported to be responsible for construction defects.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

In order to reduce the need for litigation and to protect the rights of homeowners, ch. 558, F.S., was created in 2003 to provide an alternative dispute resolution process that persons must follow regarding construction defects in residential property. Before a lawsuit can be initiated against a contractor, subcontractor, supplier, or design professional for an alleged construction defect, the claimant must serve written notice of the claim to the defendant and provide an opportunity to resolve that claim.<sup>1</sup> The provisions of this chapter apply to the following types of construction:<sup>2</sup>

- Single family homes
- Manufactured or modular homes
- Duplexes
- Triplexes
- Quadruplexes
- Condominiums
- Cooperative Units

##### Notice<sup>3</sup>

A claimant must serve a written notice of claim within 15 days after discovering the alleged defect, but the failure to do so does not bar the filing of an action. The notice must be served no later than 60 days prior to the filing of an action involving a single family home, an association representing 20 or fewer residential parcels, a manufactured or modular home, a duplex, triplex, or a quadruplex or at least 120 days prior to the filing of an action involving an association representing more than 20 residential parcel owners. The notice must describe the claim in reasonable detail sufficient to determine the nature of each alleged construction defect, and it must include a description of the damage or loss resulting from the defect. Once notice has been properly served, a claimant may file an action.

##### Opportunity to Repair<sup>4</sup>

Within 30 days after receipt of the notice of claim or 50 days with a notice of claim involving an association representing more than 20 residential parcels, the recipient is entitled to perform a reasonable inspection of the dwelling alleged to have a construction defect. A claimant must provide access to the dwelling during normal working hours such that the nature and cause of the defect as well as the extent to which repairs are needed to remedy the defect can be determined. If destructive

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<sup>1</sup> s. 558.004, F.S.

<sup>2</sup> s. 558.002(7), F.S.

<sup>3</sup> s. 558.004(1), F.S.

<sup>4</sup> s. 558.004(2)(a)-(f), F.S.

testing is necessary to determine the nature and cause of the alleged defect, the recipient must notify the claimant in writing, describing specific aspects of the test. If a claimant promptly objects to the testing, the recipient must provide the claimant a list of three qualified persons from which the claimant may select one to perform the testing. If a claimant fails or refuses to agree to destructive testing, the claimant has no claim for damages which could have been avoided or mitigated had the destructive testing been allowed when requested.

#### Forwarding a Copy of the Notice of Claim<sup>5</sup>

Within 10 days after receipt of the notice of claim or 30 days with a notice of claim involving an association representing more than 20 residential parcels, the recipient may forward a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional reasonably believed to be responsible for each defect, noting the specific defect each is believed to be responsible for. Such persons will be entitled to inspect the dwelling as provided for in s. 558.004(2), F.S.

#### Written Response to Copy of Notice of Claim<sup>6</sup>

Within 15 days after receipt of the copy of the notice of claim or 30 days with a copy of the notice of claim involving an association representing more than 20 residential parcels, the recipient must serve a written response to the person who forwarded the copy of the notice of claim. The response should indicate the findings and results of the inspection, a statement as to whether the recipient is willing to make repairs to remedy the alleged defect, and a timetable concerning its completion.

#### Written Response to Claimant After Receipt of Initial Notice of Claim<sup>7</sup>

Within 45 days after receiving notice of claim or 75 days with a notice of claim involving an association representing more than 20 residential parcels, the recipient must serve a written response to the claimant providing for one of the following:

- A written offer to remedy the alleged construction defect at no cost to the claimant, a detailed description of the proposed repairs necessary to remedy the defect, and a timetable regarding completion;
- A written offer to compromise and settle the claim by monetary payment that will not obligate the person's insurer, and a timetable for making payments;
- A written offer to compromise and settle the claim by a combination of repairs and monetary payment in the manners stated above;
- A written statement that the person disputes the claim and will not remedy the defect or compromise and settle the claim; or
- A written statement that a monetary payment will be determined by the person's insurer within 30 days after simultaneous notification to the insurer and the claimant of this settlement option, which the claimant can accept or reject. If the insurer does not respond within the 30 days following notification, the claimant shall be deemed to have met all conditions precedent to commencing an action.

#### Claimant's Acceptance of an Offer<sup>8</sup>

If a claimant accepts an offer to repair the alleged construction defect, the claimant shall provide the offeror and the offeror's agents reasonable access to the dwelling during normal working hours. If the offeror does not repair or make payment within the agreed time and manner, except for reasonable delays beyond the offeror's control, the claimant may proceed with an action against the offeror. If the

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<sup>5</sup> s. 558.004(3), F.S.

<sup>6</sup> s. 558.004(4), F.S.

<sup>7</sup> s. 558.004(5)(a)-(e), F.S.

<sup>8</sup> s. 558.004(8), F.S.

offeror does make payment or repairs within the agreed time and manner, the claimant is barred from proceeding with an action.

Any offer or failure to offer to remedy an alleged defect or to compromise and settle the claim by monetary payment does not constitute an admission of liability and is inadmissible in an action brought under ch. 558, F.S.<sup>9</sup>

After receipt of the first initial notice of claim, a claimant and the recipient may alter the procedure for the notice of claim process by written mutual agreement.<sup>10</sup>

### **Effect of Bill**

This bill amends ss. 558.001, 558.002, 558.004, and 558.005, F.S., to provide that the procedures set forth in ch. 558, F.S., apply to not only residential property owners but to all real property owners. All terms related to residential property are replaced with terms relating to real property.

Also, this bill adds specific references to manufactured or modular homes, which are covered under current law; and this bill creates separate notices to cover the time periods before the effective date and after. Finally, this bill excludes construction contracts for public transportation projects from being subject to the ch. 558, F.S.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 558.001, F.S., to amend legislative findings.

Section 2 amends s. 558.002, F.S., to amend the definitions relating to residential property or homeowners with those relating to real property and property owners, respectively.

Section 3 amends s. 558.004, F.S., to expand the requirements of notice and opportunity to cure to all construction.

Section 4 amends s. 558.005, F.S., by replacing the terms relating to residential property in the notice of claim required for a contract to be subject to this section with terms relating to real property. It also provides that the notice requirements put forth in this section apply to contracts entered into on or after October 1, 2006.

Section 5 provides an effective date of October 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

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<sup>9</sup> s. 558.004(9), F.S.

<sup>10</sup> s. 558.005(3), F.S.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Subsection (1) of s. 558.005, as amended by this bill, refers to time periods prior to October 1, 2006, but then uses the expanded term of "real property" rather than the term "dwelling" that is appropriate to that time period.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment:

- Restores application of the statute to manufactured or modular homes.
- Excludes public transportation projects.
- Clarifies the transition periods and forms applicable to the transition to a broader range of construction activities.

The bill was then reported favorably with a committee substitute.