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1 A bill to be entitled
 2 An act relating to construction defects; amending ss.
 3 558.001, 558.002, 558.004, and 558.005, F.S.; revising
 4 provisions to expand application to construction defects
 5 in any property; deleting language limiting application to
 6 only residential property; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Section 558.001, Florida Statutes, is amended
 11 to read:

12 558.001 Legislative findings and declaration.--The
 13 Legislature finds that it is beneficial to have an alternative
 14 method to resolve construction disputes that would reduce the
 15 need for litigation as well as protect the rights of property
 16 owners ~~homeowners~~. An effective alternative dispute resolution
 17 mechanism in certain construction defect matters should involve
 18 the claimant filing a notice of claim with the contractor,
 19 subcontractor, supplier, or design professional that the
 20 claimant asserts is responsible for the defect, and should
 21 provide the contractor, subcontractor, supplier, or design
 22 professional with an opportunity to resolve the claim without
 23 resort to further legal process.

24 Section 2. Section 558.002, Florida Statutes, is amended
 25 to read:

26 558.002 Definitions.--As used in this chapter, the term:
 27 (1) "Action" means any civil action or arbitration
 28 proceeding for damages or indemnity asserting a claim for damage

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29 to or loss of real ~~a dwelling~~ or personal property caused by an
 30 alleged construction defect, but does not include any
 31 administrative action or any civil action or arbitration
 32 proceeding asserting a claim for alleged personal injuries
 33 arising out of an alleged construction defect.

34 (2) "Association" has the same meaning as in s.
 35 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.

36 (3) "Claimant" means a property owner ~~homeowner~~, including
 37 a subsequent purchaser or association, who asserts a claim for
 38 damages against a contractor, subcontractor, supplier, or design
 39 professional concerning a construction defect or a subsequent
 40 owner who asserts a claim for indemnification for such damages.
 41 The term does not include a contractor, subcontractor, supplier,
 42 or design professional.

43 (4) "Construction defect" means a deficiency in, or a
 44 deficiency arising out of, the design, specifications,
 45 surveying, planning, supervision, observation of construction,
 46 or construction, repair, alteration, or remodeling of a
 47 ~~dwelling, any appurtenance to the dwelling, or the real property~~
 48 ~~to which the dwelling or appurtenance is affixed~~ resulting from:

49 (a) Defective material, products, or components used in
 50 the construction or remodeling;

51 (b) A violation of the applicable codes in effect at the
 52 time of construction or remodeling which gives rise to a cause
 53 of action pursuant to s. 553.84;

54 (c) A failure of the design of real property ~~a dwelling~~ to
 55 meet the applicable professional standards of care at the time
 56 of governmental approval; or

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57 (d) A failure to construct or remodel real property a
58 ~~dwelling~~ in accordance with accepted trade standards for good
59 and workmanlike construction at the time of construction.

60 (5) "Contractor" means any person, as defined in s. 1.01,
61 that is legally engaged in the business of designing,
62 developing, constructing, manufacturing, repairing, or
63 remodeling real property ~~dwelling~~ ~~or attachments thereto~~.

64 (6) "Design professional" means a person, as defined in s.
65 1.01, licensed in this state as an architect, interior designer,
66 landscape architect, engineer, or surveyor.

67 (7) "Real property Dwelling" means land that is improved
68 and the improvements on such land, including fixtures ~~a single-~~
69 ~~family house, manufactured or modular home, duplex, triplex,~~
70 ~~quadruplex, or other multifamily unit in a multifamily~~
71 ~~residential building designed for residential use in which title~~
72 ~~to each individual unit is transferred to the owner under a~~
73 ~~condominium or cooperative system and includes common areas and~~
74 ~~improvements that are owned or maintained by an association or~~
75 ~~by members of an association, and also includes the systems,~~
76 ~~other components, improvements, and other structures or~~
77 ~~facilities, including, but not limited to, recreational~~
78 ~~structures or facilities, that are appurtenant to and located on~~
79 ~~the real property on which the house, duplex, triplex,~~
80 ~~quadruplex, or other multifamily unit is located, but are not~~
81 ~~necessarily part of the structure at the time of completion of~~
82 ~~construction.~~

83 (8) "Service" means delivery by certified mail, return
84 receipt requested, to the last known address of the addressee.

85 (9) "Subcontractor" means a person, as defined in s. 1.01,
 86 who is a contractor who performs labor and supplies material on
 87 behalf of another contractor in the construction or remodeling
 88 of real property ~~a dwelling~~.

89 (10) "Supplier" means a person, as defined in s. 1.01, who
 90 provides only materials, equipment, or other supplies for the
 91 construction or remodeling of real property ~~a dwelling~~.

92 Section 3. Subsections (1), (2), (3), (4), (5), (8), (9),
 93 and (14) of section 558.004, Florida Statutes, are amended to
 94 read:

95 558.004 Notice and opportunity to repair.--

96 (1) In actions brought alleging a construction defect, the
 97 claimant shall, at least 60 days before filing any ~~an~~ action
 98 ~~involving a single family home, an association representing 20~~
 99 ~~or fewer residential parcels, a manufactured or modular home, a~~
 100 ~~duplex, a triplex, or a quadruplex,~~ or at least 120 days before
 101 filing an action involving an association representing more than
 102 20 parcels ~~residential parcel owners~~, serve written notice of
 103 claim on the contractor, subcontractor, supplier, or design
 104 professional, as applicable, which notice shall refer to this
 105 chapter. If the construction defect claim arises from work
 106 performed under a contract, the written notice of claim must be
 107 served on the person with whom the claimant contracted. The
 108 notice of claim must describe the claim in reasonable detail
 109 sufficient to determine the general nature of each alleged
 110 construction defect and a description of the damage or loss
 111 resulting from the defect, if known. The claimant shall endeavor
 112 to serve the notice of claim within 15 days after discovery of

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113 an alleged defect, but the failure to serve notice of claim
114 within 15 days does not bar the filing of an action, subject to
115 s. 558.003. This subsection does not preclude a claimant from
116 filing an action sooner than 60 days, or 120 days as applicable,
117 after service of written notice as expressly provided in
118 subsection (6), subsection (7), or subsection (8).

119 (2) Within 30 days after receipt of the notice of claim
120 ~~involving a single family home, an association representing 20~~
121 ~~or fewer residential parcels, a manufactured or modular home, a~~
122 ~~duplex, a triplex, or a quadruplex,~~ or within 50 days after
123 receipt of the notice of claim involving an association
124 representing more than 20 ~~residential~~ parcels, the person
125 receiving the notice of claim under subsection (1) is entitled
126 to perform a reasonable inspection of the property dwelling or
127 of each unit subject to the claim to assess each alleged
128 construction defect. An association's right to access property
129 for either maintenance or repair includes the authority to grant
130 access for the inspection. The claimant shall provide the person
131 receiving the notice under subsection (1) and such person's
132 contractors or agents reasonable access to the property dwelling
133 during normal working hours to inspect the property dwelling to
134 determine the nature and cause of each alleged construction
135 defect and the nature and extent of any repairs or replacements
136 necessary to remedy each defect. The person receiving notice
137 under subsection (1) shall reasonably coordinate the timing and
138 manner of any and all inspections with the claimant to minimize
139 the number of inspections. The inspection may include
140 destructive testing by mutual agreement under the following

141 reasonable terms and conditions:

142 (a) If the person receiving notice under subsection (1)
 143 determines that destructive testing is necessary to determine
 144 the nature and cause of the alleged defects, such person shall
 145 notify the claimant in writing.

146 (b) The notice shall describe the destructive testing to
 147 be performed, the person selected to do the testing, the
 148 estimated anticipated damage and repairs to the property
 149 ~~dwelling~~ resulting from the testing, the estimated amount of
 150 time necessary for the testing and to complete the repairs, and
 151 the financial responsibility offered for covering the costs of
 152 repairs.

153 (c) If the claimant promptly objects to the person
 154 selected to perform the destructive testing, the person
 155 receiving notice under subsection (1) shall provide the claimant
 156 with a list of three qualified persons from which the claimant
 157 may select one such person to perform the testing. The person
 158 selected to perform the testing shall operate as an agent or
 159 subcontractor of the person receiving notice under subsection
 160 (1) and shall communicate with, submit any reports to and be
 161 solely responsible to the person receiving notice.

162 (d) The testing shall be done at a mutually agreeable
 163 time.

164 (e) The claimant or a representative of the claimant may
 165 be present to observe the destructive testing.

166 (f) The destructive testing shall not render the property
 167 ~~dwelling~~ uninhabitable.

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169 In the event the claimant fails or refuses to agree to
170 destructive testing, the claimant shall have no claim for
171 damages which could have been avoided or mitigated had
172 destructive testing been allowed when requested and had a
173 feasible remedy been promptly implemented.

174 (3) Within 10 days after receipt of the notice of claim
175 ~~involving a single family home, an association representing 20~~
176 ~~or fewer residential parcels, a manufactured or modular home, a~~
177 ~~duplex, a triplex, or a quadruplex,~~ or within 30 days after
178 receipt of the notice of claim involving an association
179 representing more than 20 ~~residential~~ parcels, the person
180 receiving the notice under subsection (1) may forward a copy of
181 the notice of claim to each contractor, subcontractor, supplier,
182 or design professional whom it reasonably believes is
183 responsible for each defect specified in the notice of claim and
184 shall note the specific defect for which it believes the
185 particular contractor, subcontractor, supplier, or design
186 professional is responsible. Each such contractor,
187 subcontractor, supplier, and design professional may inspect the
188 property dwelling as provided in subsection (2).

189 (4) Within 15 days after receiving a copy of the notice of
190 claim pursuant to subsection (3) ~~involving a single family home,~~
191 ~~an association representing 20 or fewer residential parcels, a~~
192 ~~manufactured or modular home, a duplex, a triplex, or a~~
193 ~~quadruplex,~~ or within 30 days after receipt of the copy of the
194 notice of claim involving an association representing more than
195 20 ~~residential~~ parcels, the contractor, subcontractor, supplier,
196 or design professional must serve a written response to the

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197 person who forwarded a copy of the notice of claim. The written
198 response shall include a report, if any, of the scope of any
199 inspection of the property dwelling, the findings and results of
200 the inspection, a statement of whether the contractor,
201 subcontractor, supplier, or design professional is willing to
202 make repairs to the property dwelling or whether such claim is
203 disputed, a description of any repairs they are willing to make
204 to remedy the alleged construction defect, and a timetable for
205 the completion of such repairs.

206 (5) Within 45 days after receiving the notice of claim
207 ~~involving a single family home, an association representing 20~~
208 ~~or fewer residential parcels, a manufactured or modular home, a~~
209 ~~duplex, a triplex, or a quadruplex~~, or within 75 days after
210 receipt of a copy of the notice of claim involving an
211 association representing more than 20 ~~residential~~ parcels, the
212 person who received notice under subsection (1) must serve a
213 written response to the claimant. The response shall be served
214 to the attention of the person who signed the notice of claim,
215 unless otherwise designated in the notice of claim. The written
216 response must provide:

217 (a) A written offer to remedy the alleged construction
218 defect at no cost to the claimant, a detailed description of the
219 proposed repairs necessary to remedy the defect, and a timetable
220 for the completion of such repairs;

221 (b) A written offer to compromise and settle the claim by
222 monetary payment, that will not obligate the person's insurer,
223 and a timetable for making payment;

224 (c) A written offer to compromise and settle the claim by

225 a combination of repairs and monetary payment, that will not
 226 obligate the person's insurer, that includes a detailed
 227 description of the proposed repairs and a timetable for the
 228 completion of such repairs and making payment;

229 (d) A written statement that the person disputes the claim
 230 and will not remedy the defect or compromise and settle the
 231 claim; or

232 (e) A written statement that a monetary payment, including
 233 insurance proceeds, if any, will be determined by the person's
 234 insurer within 30 days after notification to the insurer by
 235 means of forwarding the claim, which notification shall occur at
 236 the same time the claimant is notified of this settlement
 237 option, which the claimant can accept or reject. A written
 238 statement under this paragraph may also include an offer under
 239 paragraph (c), but such offer shall be contingent upon the
 240 claimant also accepting the determination of the insurer whether
 241 to make any monetary payment in addition thereto. If the insurer
 242 for the person receiving the claim makes no response within the
 243 30 days following notification, then the claimant shall be
 244 deemed to have met all conditions precedent to commencing an
 245 action.

246 (8) If the claimant timely and properly accepts the offer
 247 to repair an alleged construction defect, the claimant shall
 248 provide the offeror and the offeror's agents reasonable access
 249 to the claimant's property ~~dwelling~~ during normal working hours
 250 to perform the repair by the agreed-upon timetable as stated in
 251 the offer. If the offeror does not make the payment or repair
 252 the defect within the agreed time and in the agreed manner,

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253 except for reasonable delays beyond the control of the offeror,
254 including, but not limited to, weather conditions, delivery of
255 materials, claimant's actions, or issuance of any required
256 permits, the claimant may, without further notice, proceed with
257 an action against the offeror based upon the claim in the notice
258 of claim. If the offeror makes payment or repairs the defect
259 within the agreed time and in the agreed manner, the claimant is
260 barred from proceeding with an action for the claim described in
261 the notice of claim or as otherwise provided in the accepted
262 settlement offer.

263 (9) This section does not prohibit or limit the claimant
264 from making any necessary emergency repairs to the property
265 ~~dwelling~~ as are required to protect the health, safety, and
266 welfare of the claimant. In addition, any offer or failure to
267 offer pursuant to subsection (5) to remedy an alleged
268 construction defect or to compromise and settle the claim by
269 monetary payment does not constitute an admission of liability
270 with respect to the defect and is not admissible in an action
271 brought under this chapter.

272 (14) To the extent that an arbitration clause in a
273 contract for the sale, design, construction, or remodeling of
274 real property ~~a dwelling~~ conflicts with this section, this
275 section shall control.

276 Section 4. Section 558.005, Florida Statutes, is amended
277 to read:

278 558.005 Contract provisions; application.--

279 (1) Except as otherwise provided in subsections (3) and
280 (4), the provisions of this chapter shall control every contract

281 for the design, construction, or remodeling of real property a
 282 ~~dwelli~~ng entered into on or after July 1, 2004, which contains
 283 the notice as set forth in subsection (2) and is conspicuously
 284 set forth in capitalized letters.

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

287
 288 CHAPTER 558 NOTICE OF CLAIM

289
 290 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS
 291 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN
 292 ALLEGED CONSTRUCTION DEFECT ~~IN YOUR HOME~~. SIXTY DAYS BEFORE YOU
 293 BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO
 294 THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY
 295 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE
 296 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION
 297 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE
 298 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
 299 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND
 300 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED
 301 TO PROTECT YOUR INTERESTS.

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

306 (4) This chapter applies to all actions accruing on or
 307 after July 1, 2004, and all actions commenced on or after such
 308 date, regardless of the date of sale, issuance of a certificate

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309 of occupancy or its equivalent, or substantial completion of the
310 construction ~~dwelling~~. Notwithstanding the notice requirements
311 of this section for contracts entered into on or after October
312 ~~July 1, 2006~~ 2004, this chapter applies to all actions accruing
313 before July 1, 2004, but not yet commenced as of July 1, 2004,
314 and failure to include the notice requirements of this section
315 in a contract entered into prior to July 1, 2004, does not
316 operate to bar the procedures of this chapter from applying to
317 all such actions.

318 Section 5. This act shall take effect October 1, 2006.