

CHAMBER ACTION

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1 The Justice Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to construction defects; amending ss.  
7 558.001, 558.002, and 558.004, F.S.; revising provisions  
8 to expand application to construction defects in any  
9 property other than public transportation projects;  
10 deleting language limiting application to only residential  
11 property; amending s. 558.005, F.S.; revising provisions  
12 relating to required notices for construction defect  
13 claims under certain construction contracts; applying  
14 provisions of ch. 558, F.S., notwithstanding certain  
15 notice requirements; providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Section 558.001, Florida Statutes, is amended  
20 to read:

21 558.001 Legislative findings and declaration.--The  
22 Legislature finds that it is beneficial to have an alternative  
23 method to resolve construction disputes that would reduce the

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24 | need for litigation as well as protect the rights of property  
 25 | owners ~~homeowners~~. An effective alternative dispute resolution  
 26 | mechanism in certain construction defect matters should involve  
 27 | the claimant filing a notice of claim with the contractor,  
 28 | subcontractor, supplier, or design professional that the  
 29 | claimant asserts is responsible for the defect, and should  
 30 | provide the contractor, subcontractor, supplier, or design  
 31 | professional with an opportunity to resolve the claim without  
 32 | resort to further legal process.

33 | Section 2. Section 558.002, Florida Statutes, is amended  
 34 | to read:

35 | 558.002 Definitions.--As used in this chapter, the term:

36 | (1) "Action" means any civil action or arbitration  
 37 | proceeding for damages or indemnity asserting a claim for damage  
 38 | to or loss of real ~~a dwelling~~ or personal property caused by an  
 39 | alleged construction defect, but does not include any  
 40 | administrative action or any civil action or arbitration  
 41 | proceeding asserting a claim for alleged personal injuries  
 42 | arising out of an alleged construction defect.

43 | (2) "Association" has the same meaning as in s.  
 44 | 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.

45 | (3) "Claimant" means a property owner ~~homeowner~~, including  
 46 | a subsequent purchaser or association, who asserts a claim for  
 47 | damages against a contractor, subcontractor, supplier, or design  
 48 | professional concerning a construction defect or a subsequent  
 49 | owner who asserts a claim for indemnification for such damages.  
 50 | The term does not include a contractor, subcontractor, supplier,  
 51 | or design professional.

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52 (4) "Construction defect" means a deficiency in, or a  
53 deficiency arising out of, the design, specifications,  
54 surveying, planning, supervision, observation of construction,  
55 or construction, repair, alteration, or remodeling of a  
56 ~~dwelling, any appurtenance to the dwelling, or the real property~~  
57 ~~to which the dwelling or appurtenance is affixed~~ resulting from:

58 (a) Defective material, products, or components used in  
59 the construction or remodeling;

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

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

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

69 (5) "Contractor" means any person, as defined in s. 1.01,  
70 that is legally engaged in the business of designing,  
71 developing, constructing, manufacturing, repairing, or  
72 remodeling real property ~~dwellings or attachments thereto~~.

73 (6) "Design professional" means a person, as defined in s.  
74 1.01, licensed in this state as an architect, interior designer,  
75 landscape architect, engineer, or surveyor.

76 (7) "Real property" or "property Dwelling" means land that  
77 is improved and the improvements on such land, including  
78 fixtures, manufactured housing, or mobile homes and excluding  
79 public transportation projects a single-family house,

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80 ~~manufactured or modular home, duplex, triplex, quadruplex, or~~  
 81 ~~other multifamily unit in a multifamily residential building~~  
 82 ~~designed for residential use in which title to each individual~~  
 83 ~~unit is transferred to the owner under a condominium or~~  
 84 ~~cooperative system and includes common areas and improvements~~  
 85 ~~that are owned or maintained by an association or by members of~~  
 86 ~~an association, and also includes the systems, other components,~~  
 87 ~~improvements, and other structures or facilities, including, but~~  
 88 ~~not limited to, recreational structures or facilities, that are~~  
 89 ~~appurtenant to and located on the real property on which the~~  
 90 ~~house, duplex, triplex, quadruplex, or other multifamily unit is~~  
 91 ~~located, but are not necessarily part of the structure at the~~  
 92 ~~time of completion of construction.~~

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

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

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

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

105 558.004 Notice and opportunity to repair.--

106 (1) In actions brought alleging a construction defect, the  
 107 claimant shall, at least 60 days before filing any ~~an~~ action

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108 ~~involving a single family home, an association representing 20~~  
109 ~~or fewer residential parcels, a manufactured or modular home, a~~  
110 ~~duplex, a triplex, or a quadruplex, or at least 120 days before~~  
111 filing an action involving an association representing more than  
112 20 parcels residential parcel owners, serve written notice of  
113 claim on the contractor, subcontractor, supplier, or design  
114 professional, as applicable, which notice shall refer to this  
115 chapter. If the construction defect claim arises from work  
116 performed under a contract, the written notice of claim must be  
117 served on the person with whom the claimant contracted. The  
118 notice of claim must describe the claim in reasonable detail  
119 sufficient to determine the general nature of each alleged  
120 construction defect and a description of the damage or loss  
121 resulting from the defect, if known. The claimant shall endeavor  
122 to serve the notice of claim within 15 days after discovery of  
123 an alleged defect, but the failure to serve notice of claim  
124 within 15 days does not bar the filing of an action, subject to  
125 s. 558.003. This subsection does not preclude a claimant from  
126 filing an action sooner than 60 days, or 120 days as applicable,  
127 after service of written notice as expressly provided in  
128 subsection (6), subsection (7), or subsection (8).

129 (2) Within 30 days after receipt of the notice of claim  
130 ~~involving a single family home, an association representing 20~~  
131 ~~or fewer residential parcels, a manufactured or modular home, a~~  
132 ~~duplex, a triplex, or a quadruplex, or within 50 days after~~  
133 receipt of the notice of claim involving an association  
134 representing more than 20 ~~residential~~ parcels, the person  
135 receiving the notice of claim under subsection (1) is entitled

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136 to perform a reasonable inspection of the property dwelling or  
137 of each unit subject to the claim to assess each alleged  
138 construction defect. An association's right to access property  
139 for either maintenance or repair includes the authority to grant  
140 access for the inspection. The claimant shall provide the person  
141 receiving the notice under subsection (1) and such person's  
142 contractors or agents reasonable access to the property dwelling  
143 during normal working hours to inspect the property dwelling to  
144 determine the nature and cause of each alleged construction  
145 defect and the nature and extent of any repairs or replacements  
146 necessary to remedy each defect. The person receiving notice  
147 under subsection (1) shall reasonably coordinate the timing and  
148 manner of any and all inspections with the claimant to minimize  
149 the number of inspections. The inspection may include  
150 destructive testing by mutual agreement under the following  
151 reasonable terms and conditions:

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

156 (b) The notice shall describe the destructive testing to  
157 be performed, the person selected to do the testing, the  
158 estimated anticipated damage and repairs to the property  
159 ~~dwelling~~ resulting from the testing, the estimated amount of  
160 time necessary for the testing and to complete the repairs, and  
161 the financial responsibility offered for covering the costs of  
162 repairs.

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163 (c) If the claimant promptly objects to the person  
164 selected to perform the destructive testing, the person  
165 receiving notice under subsection (1) shall provide the claimant  
166 with a list of three qualified persons from which the claimant  
167 may select one such person to perform the testing. The person  
168 selected to perform the testing shall operate as an agent or  
169 subcontractor of the person receiving notice under subsection  
170 (1) and shall communicate with, submit any reports to and be  
171 solely responsible to the person receiving notice.

172 (d) The testing shall be done at a mutually agreeable  
173 time.

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

176 (f) The destructive testing shall not render the property  
177 ~~dwelling~~ uninhabitable.

178

179 In the event the claimant fails or refuses to agree to  
180 destructive testing, the claimant shall have no claim for  
181 damages which could have been avoided or mitigated had  
182 destructive testing been allowed when requested and had a  
183 feasible remedy been promptly implemented.

184 (3) Within 10 days after receipt of the notice of claim  
185 ~~involving a single family home, an association representing 20~~  
186 ~~or fewer residential parcels, a manufactured or modular home, a~~  
187 ~~duplex, a triplex, or a quadruplex,~~ or within 30 days after  
188 receipt of the notice of claim involving an association  
189 representing more than 20 ~~residential~~ parcels, the person  
190 receiving the notice under subsection (1) may forward a copy of

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191 the notice of claim to each contractor, subcontractor, supplier,  
192 or design professional whom it reasonably believes is  
193 responsible for each defect specified in the notice of claim and  
194 shall note the specific defect for which it believes the  
195 particular contractor, subcontractor, supplier, or design  
196 professional is responsible. Each such contractor,  
197 subcontractor, supplier, and design professional may inspect the  
198 property dwelling as provided in subsection (2).

199 (4) Within 15 days after receiving a copy of the notice of  
200 claim pursuant to subsection (3) ~~involving a single family home,~~  
201 ~~an association representing 20 or fewer residential parcels, a~~  
202 ~~manufactured or modular home, a duplex, a triplex, or a~~  
203 ~~quadruplex,~~ or within 30 days after receipt of the copy of the  
204 notice of claim involving an association representing more than  
205 20 residential parcels, the contractor, subcontractor, supplier,  
206 or design professional must serve a written response to the  
207 person who forwarded a copy of the notice of claim. The written  
208 response shall include a report, if any, of the scope of any  
209 inspection of the property dwelling, the findings and results of  
210 the inspection, a statement of whether the contractor,  
211 subcontractor, supplier, or design professional is willing to  
212 make repairs to the property dwelling or whether such claim is  
213 disputed, a description of any repairs they are willing to make  
214 to remedy the alleged construction defect, and a timetable for  
215 the completion of such repairs.

216 (5) Within 45 days after receiving the notice of claim  
217 ~~involving a single family home, an association representing 20~~  
218 ~~or fewer residential parcels, a manufactured or modular home, a~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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219 ~~duplex, a triplex, or a quadruplex~~, or within 75 days after  
220 receipt of a copy of the notice of claim involving an  
221 association representing more than 20 ~~residential~~ parcels, the  
222 person who received notice under subsection (1) must serve a  
223 written response to the claimant. The response shall be served  
224 to the attention of the person who signed the notice of claim,  
225 unless otherwise designated in the notice of claim. The written  
226 response must provide:

227 (a) A written offer to remedy the alleged construction  
228 defect at no cost to the claimant, a detailed description of the  
229 proposed repairs necessary to remedy the defect, and a timetable  
230 for the completion of such repairs;

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

234 (c) A written offer to compromise and settle the claim by  
235 a combination of repairs and monetary payment, that will not  
236 obligate the person's insurer, that includes a detailed  
237 description of the proposed repairs and a timetable for the  
238 completion of such repairs and making payment;

239 (d) A written statement that the person disputes the claim  
240 and will not remedy the defect or compromise and settle the  
241 claim; or

242 (e) A written statement that a monetary payment, including  
243 insurance proceeds, if any, will be determined by the person's  
244 insurer within 30 days after notification to the insurer by  
245 means of forwarding the claim, which notification shall occur at  
246 the same time the claimant is notified of this settlement

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247 option, which the claimant can accept or reject. A written  
248 statement under this paragraph may also include an offer under  
249 paragraph (c), but such offer shall be contingent upon the  
250 claimant also accepting the determination of the insurer whether  
251 to make any monetary payment in addition thereto. If the insurer  
252 for the person receiving the claim makes no response within the  
253 30 days following notification, then the claimant shall be  
254 deemed to have met all conditions precedent to commencing an  
255 action.

256 (8) If the claimant timely and properly accepts the offer  
257 to repair an alleged construction defect, the claimant shall  
258 provide the offeror and the offeror's agents reasonable access  
259 to the claimant's property ~~dwelling~~ during normal working hours  
260 to perform the repair by the agreed-upon timetable as stated in  
261 the offer. If the offeror does not make the payment or repair  
262 the defect within the agreed time and in the agreed manner,  
263 except for reasonable delays beyond the control of the offeror,  
264 including, but not limited to, weather conditions, delivery of  
265 materials, claimant's actions, or issuance of any required  
266 permits, the claimant may, without further notice, proceed with  
267 an action against the offeror based upon the claim in the notice  
268 of claim. If the offeror makes payment or repairs the defect  
269 within the agreed time and in the agreed manner, the claimant is  
270 barred from proceeding with an action for the claim described in  
271 the notice of claim or as otherwise provided in the accepted  
272 settlement offer.

273 (9) This section does not prohibit or limit the claimant  
274 from making any necessary emergency repairs to the property

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275 ~~dwelling~~ as are required to protect the health, safety, and  
 276 welfare of the claimant. In addition, any offer or failure to  
 277 offer pursuant to subsection (5) to remedy an alleged  
 278 construction defect or to compromise and settle the claim by  
 279 monetary payment does not constitute an admission of liability  
 280 with respect to the defect and is not admissible in an action  
 281 brought under this chapter.

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

286 Section 4. Section 558.005, Florida Statutes, is amended  
 287 to read:

288 558.005 Contract provisions; application.--

289 (1) Except as otherwise provided in subsections (3) and  
 290 (4), the provisions of this chapter shall apply to ~~control~~ every  
 291 contract for the design, construction, or remodeling of real  
 292 property ~~a dwelling~~ entered into:

293 (a) Between ~~on or after~~ July 1, 2004, and September 30,  
 294 2006, which contains the notice as set forth in paragraph (2)(a)  
 295 ~~subsection (2)~~ and is conspicuously set forth in capitalized  
 296 letters.

297 (b) On or after October 1, 2006, which contains the notice  
 298 set forth in paragraph (2)(b) and is conspicuously set forth in  
 299 capitalized letters.

300 (2) (a) The notice required by paragraph (1)(a) ~~subsection~~  
 301 ~~(1)~~ must be in substantially the following form:

302

CHAPTER 558 NOTICE OF CLAIM

303  
304  
305 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS  
306 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN  
307 ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU  
308 BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO  
309 THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY  
310 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE  
311 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION  
312 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE  
313 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT  
314 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND  
315 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED  
316 TO PROTECT YOUR INTERESTS.

317 (b) The notice required by paragraph (1)(b) must expressly  
318 cite this chapter and be in substantially the following form:

CHAPTER 558 NOTICE OF CLAIM

322 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS  
323 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN  
324 ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY  
325 LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS  
326 CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY  
327 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE  
328 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION  
329 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE  
330 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT

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331 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND  
332 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED  
333 TO PROTECT YOUR INTERESTS.

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

338 (4) This chapter applies to all actions accruing on or  
339 after July 1, 2004, and all actions commenced on or after such  
340 date, regardless of the date of sale, issuance of a certificate  
341 of occupancy or its equivalent, or substantial completion of the  
342 construction dwelling. Notwithstanding the notice requirements  
343 of this section for contracts entered into between ~~on or after~~  
344 July 1, 2004, and September 30, 2006, this chapter applies to  
345 all actions accruing before July 1, 2004, but not yet commenced  
346 as of July 1, 2004, and failure to include such ~~the~~ notice  
347 requirements ~~of this section~~ in a contract entered into prior to  
348 July 1, 2004, does not operate to bar the procedures of this  
349 chapter from applying to all such actions. Notwithstanding the  
350 notice requirements of this section for contracts entered into  
351 on or after October 1, 2006, this chapter applies to all actions  
352 accruing before July 1, 2004, but not yet commenced as of July  
353 1, 2004, and failure to include such notice requirements in a  
354 contract entered into before July 1, 2004, does not operate to  
355 bar the procedures of this chapter from applying to all such  
356 actions.

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