

1 A bill to be entitled

2 An act relating to construction defects; amending ss.
3 558.001, 558.002, and 558.004, F.S.; revising provisions
4 to expand application to construction defects in any
5 property other than public transportation projects;
6 deleting language limiting application to only residential
7 property; amending s. 558.005, F.S.; revising provisions
8 relating to required notices for construction defect
9 claims under certain construction contracts; applying
10 provisions of ch. 558, F.S., notwithstanding certain
11 notice requirements; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 558.001, Florida Statutes, is amended
16 to read:

17 558.001 Legislative findings and declaration.--The
18 Legislature finds that it is beneficial to have an alternative
19 method to resolve construction disputes that would reduce the
20 need for litigation as well as protect the rights of property
21 owners ~~homeowners~~. An effective alternative dispute resolution
22 mechanism in certain construction defect matters should involve
23 the claimant filing a notice of claim with the contractor,
24 subcontractor, supplier, or design professional that the
25 claimant asserts is responsible for the defect, and should
26 provide the contractor, subcontractor, supplier, or design

27 professional with an opportunity to resolve the claim without
 28 resort to further legal process.

29 Section 2. Section 558.002, Florida Statutes, is amended
 30 to read:

31 558.002 Definitions.--As used in this chapter, the term:

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

39 (2) "Association" has the same meaning as in s.
 40 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.

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

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

- 54 (a) Defective material, products, or components used in
55 the construction or remodeling;
- 56 (b) A violation of the applicable codes in effect at the
57 time of construction or remodeling which gives rise to a cause
58 of action pursuant to s. 553.84;
- 59 (c) A failure of the design of real property ~~a dwelling~~ to
60 meet the applicable professional standards of care at the time
61 of governmental approval; or
- 62 (d) A failure to construct or remodel real property ~~a~~
63 ~~dwelling~~ in accordance with accepted trade standards for good
64 and workmanlike construction at the time of construction.
- 65 (5) "Contractor" means any person, as defined in s. 1.01,
66 that is legally engaged in the business of designing,
67 developing, constructing, manufacturing, repairing, or
68 remodeling real property ~~dwelling~~ ~~or attachments thereto~~.
- 69 (6) "Design professional" means a person, as defined in s.
70 1.01, licensed in this state as an architect, interior designer,
71 landscape architect, engineer, or surveyor.
- 72 (7) "Real property" or "property Dwelling" means land that
73 is improved and the improvements on such land, including
74 fixtures, manufactured housing, or mobile homes and excluding
75 public transportation projects ~~a single-family house,~~
76 ~~manufactured or modular home, duplex, triplex, quadruplex, or~~
77 ~~other multifamily unit in a multifamily residential building~~
78 ~~designed for residential use in which title to each individual~~
79 ~~unit is transferred to the owner under a condominium or~~
80 ~~cooperative system and includes common areas and improvements~~

81 ~~that are owned or maintained by an association or by members of~~
 82 ~~an association, and also includes the systems, other components,~~
 83 ~~improvements, and other structures or facilities, including, but~~
 84 ~~not limited to, recreational structures or facilities, that are~~
 85 ~~appurtenant to and located on the real property on which the~~
 86 ~~house, duplex, triplex, quadruplex, or other multifamily unit is~~
 87 ~~located, but are not necessarily part of the structure at the~~
 88 ~~time of completion of construction.~~

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

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

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

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

101 558.004 Notice and opportunity to repair.--

102 (1) In actions brought alleging a construction defect, the
 103 claimant shall, at least 60 days before filing any ~~an~~ action
 104 ~~involving a single family home, an association representing 20~~
 105 ~~or fewer residential parcels, a manufactured or modular home, a~~
 106 ~~duplex, a triplex, or a quadruplex, or at least 120 days before~~
 107 filing an action involving an association representing more than

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

125 | (2) Within 30 days after receipt of the notice of claim
126 | ~~involving a single family home, an association representing 20~~
127 | ~~or fewer residential parcels, a manufactured or modular home, a~~
128 | ~~duplex, a triplex, or a quadruplex~~, or within 50 days after
129 | receipt of the notice of claim involving an association
130 | representing more than 20 ~~residential~~ parcels, the person
131 | receiving the notice of claim under subsection (1) is entitled
132 | to perform a reasonable inspection of the property dwelling or
133 | of each unit subject to the claim to assess each alleged
134 | construction defect. An association's right to access property

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

148 | (a) If the person receiving notice under subsection (1)
149 | determines that destructive testing is necessary to determine
150 | the nature and cause of the alleged defects, such person shall
151 | notify the claimant in writing.

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

159 | (c) If the claimant promptly objects to the person
160 | selected to perform the destructive testing, the person
161 | receiving notice under subsection (1) shall provide the claimant

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

168 (d) The testing shall be done at a mutually agreeable
169 time.

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

172 (f) The destructive testing shall not render the property
173 ~~dwelling~~ uninhabitable.

174

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

180 (3) Within 10 days after receipt of the notice of claim
181 ~~involving a single-family home, an association representing 20~~
182 ~~or fewer residential parcels, a manufactured or modular home, a~~
183 ~~duplex, a triplex, or a quadruplex,~~ or within 30 days after
184 receipt of the notice of claim involving an association
185 representing more than 20 ~~residential~~ parcels, the person
186 receiving the notice under subsection (1) may forward a copy of
187 the notice of claim to each contractor, subcontractor, supplier,
188 or design professional whom it reasonably believes is

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

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

212 (5) Within 45 days after receiving the notice of claim
213 ~~involving a single family home, an association representing 20~~
214 ~~or fewer residential parcels, a manufactured or modular home, a~~
215 ~~duplex, a triplex, or a quadruplex,~~ or within 75 days after

216 receipt of a copy of the notice of claim involving an
217 association representing more than 20 ~~residential~~ parcels, the
218 person who received notice under subsection (1) must serve a
219 written response to the claimant. The response shall be served
220 to the attention of the person who signed the notice of claim,
221 unless otherwise designated in the notice of claim. The written
222 response must provide:

223 (a) A written offer to remedy the alleged construction
224 defect at no cost to the claimant, a detailed description of the
225 proposed repairs necessary to remedy the defect, and a timetable
226 for the completion of such repairs;

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

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

235 (d) A written statement that the person disputes the claim
236 and will not remedy the defect or compromise and settle the
237 claim; or

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

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

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

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

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

282 Section 4. Section 558.005, Florida Statutes, is amended
283 to read:

284 558.005 Contract provisions; application.--

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

289 (a) Between ~~on or after~~ July 1, 2004, and September 30,
290 2006, which contains the notice as set forth in paragraph (2)(a)
291 ~~subsection (2)~~ and is conspicuously set forth in capitalized
292 letters.

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

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

298
 299 CHAPTER 558 NOTICE OF CLAIM

300
 301 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS
 302 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN
 303 ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU
 304 BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO
 305 THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY
 306 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE
 307 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION
 308 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE
 309 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
 310 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND
 311 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED
 312 TO PROTECT YOUR INTERESTS.

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

315
 316 CHAPTER 558 NOTICE OF CLAIM

317
 318 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS
 319 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN
 320 ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY
 321 LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS
 322 CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY

323 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE
324 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION
325 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE
326 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT
327 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND
328 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED
329 TO PROTECT YOUR INTERESTS.

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

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

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350 | contract entered into before July 1, 2004, does not operate to
351 | bar the procedures of this chapter from applying to all such
352 | actions.

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