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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

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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:

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- 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~~

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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

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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

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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

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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

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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 ~~quadplex,~~ 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 quadplex,~~ or within 75 days after



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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

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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.

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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.

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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

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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.