

Bill No. SB 2036

Barcode 660912

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Haridopolos)  
recommended the following amendment:

**Senate Amendment (with title amendment)**

On page 3, line 11, through  
page 11, line 19, delete those lines

and insert:

(7) "Real property Dwelling" means land that is improved and the improvements on such land, including fixtures, manufactured housing, or mobile homes and excluding public transportation projects a single-family house, manufactured or modular home, duplex, triplex, quadruplex, or other multifamily unit in a multifamily residential building designed for residential use in which title to each individual unit is transferred to the owner under a condominium or cooperative system and includes common areas and improvements that are owned or maintained by an association or by members of an association, and also includes the systems, other components, improvements, and other structures or facilities, including, but not limited to, recreational structures or

Bill No. SB 2036

Barcode 660912

1 ~~facilities, that are appurtenant to and located on the real~~  
 2 ~~property on which the house, duplex, triplex, quadruplex, or~~  
 3 ~~other multifamily unit is located, but are not necessarily~~  
 4 ~~part of the structure at the time of completion of~~  
 5 ~~construction.~~

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

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

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

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

18 558.004 Notice and opportunity to repair.--

19 (1) In actions brought alleging a construction defect,  
 20 the claimant shall, at least 60 days before filing any ~~an~~  
 21 ~~action involving a single-family home, an association~~  
 22 ~~representing 20 or fewer residential parcels, a manufactured~~  
 23 ~~or modular home, a duplex, a triplex, or a quadruplex, or at~~  
 24 ~~least 120 days before filing an action involving an~~  
 25 ~~association representing more than 20 parcels residential~~  
 26 ~~parcel owners~~, serve written notice of claim on the  
 27 contractor, subcontractor, supplier, or design professional,  
 28 as applicable, which notice shall refer to this chapter. If  
 29 the construction defect claim arises from work performed under  
 30 a contract, the written notice of claim must be served on the  
 31 person with whom the claimant contracted. The notice of claim

Bill No. SB 2036

Barcode 660912

1 must describe the claim in reasonable detail sufficient to  
 2 determine the general nature of each alleged construction  
 3 defect and a description of the damage or loss resulting from  
 4 the defect, if known. The claimant shall endeavor to serve the  
 5 notice of claim within 15 days after discovery of an alleged  
 6 defect, but the failure to serve notice of claim within 15  
 7 days does not bar the filing of an action, subject to s.  
 8 558.003. This subsection does not preclude a claimant from  
 9 filing an action sooner than 60 days, or 120 days as  
 10 applicable, after service of written notice as expressly  
 11 provided in subsection (6), subsection (7), or subsection (8).

12 (2) Within 30 days after receipt of the notice of  
 13 claim ~~involving a single-family home, an association~~  
 14 ~~representing 20 or fewer residential parcels, a manufactured~~  
 15 ~~or modular home, a duplex, a triplex, or a quadruplex, or~~  
 16 within 50 days after receipt of the notice of claim involving  
 17 an association representing more than 20 ~~residential~~ parcels,  
 18 the person receiving the notice of claim under subsection (1)  
 19 is entitled to perform a reasonable inspection of the property  
 20 ~~dwelling~~ or of each unit subject to the claim to assess each  
 21 alleged construction defect. An association's right to access  
 22 property for either maintenance or repair includes the  
 23 authority to grant access for the inspection. The claimant  
 24 shall provide the person receiving the notice under subsection  
 25 (1) and such person's contractors or agents reasonable access  
 26 to the property ~~dwelling~~ during normal working hours to  
 27 inspect the property ~~dwelling~~ to determine the nature and  
 28 cause of each alleged construction defect and the nature and  
 29 extent of any repairs or replacements necessary to remedy each  
 30 defect. The person receiving notice under subsection (1) shall  
 31 reasonably coordinate the timing and manner of any and all

Bill No. SB 2036

Barcode 660912

1 inspections with the claimant to minimize the number of  
2 inspections. The inspection may include destructive testing by  
3 mutual agreement under the following reasonable terms and  
4 conditions:

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

9 (b) The notice shall describe the destructive testing  
10 to be performed, the person selected to do the testing, the  
11 estimated anticipated damage and repairs to the property  
12 ~~dwelling~~ resulting from the testing, the estimated amount of  
13 time necessary for the testing and to complete the repairs,  
14 and the financial responsibility offered for covering the  
15 costs of repairs.

16 (c) If the claimant promptly objects to the person  
17 selected to perform the destructive testing, the person  
18 receiving notice under subsection (1) shall provide the  
19 claimant with a list of three qualified persons from which the  
20 claimant may select one such person to perform the testing.  
21 The person selected to perform the testing shall operate as an  
22 agent or subcontractor of the person receiving notice under  
23 subsection (1) and shall communicate with, submit any reports  
24 to and be solely responsible to the person receiving notice.

25 (d) The testing shall be done at a mutually agreeable  
26 time.

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

29 (f) The destructive testing shall not render the  
30 property ~~dwelling~~ uninhabitable.

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Bill No. SB 2036

Barcode 660912

1 In the event the claimant fails or refuses to agree to  
 2 destructive testing, the claimant shall have no claim for  
 3 damages which could have been avoided or mitigated had  
 4 destructive testing been allowed when requested and had a  
 5 feasible remedy been promptly implemented.

6 (3) Within 10 days after receipt of the notice of  
 7 claim ~~involving a single-family home, an association~~  
 8 ~~representing 20 or fewer residential parcels, a manufactured~~  
 9 ~~or modular home, a duplex, a triplex, or a quadruplex, or~~  
 10 within 30 days after receipt of the notice of claim involving  
 11 an association representing more than 20 ~~residential~~ parcels,  
 12 the person receiving the notice under subsection (1) may  
 13 forward a copy of the notice of claim to each contractor,  
 14 subcontractor, supplier, or design professional whom it  
 15 reasonably believes is responsible for each defect specified  
 16 in the notice of claim and shall note the specific defect for  
 17 which it believes the particular contractor, subcontractor,  
 18 supplier, or design professional is responsible. Each such  
 19 contractor, subcontractor, supplier, and design professional  
 20 may inspect the property ~~dwelling~~ as provided in subsection  
 21 (2).

22 (4) Within 15 days after receiving a copy of the  
 23 notice of claim pursuant to subsection (3) ~~involving a~~  
 24 ~~single-family home, an association representing 20 or fewer~~  
 25 ~~residential parcels, a manufactured or modular home, a duplex,~~  
 26 ~~a triplex, or a quadruplex, or~~ within 30 days after receipt of  
 27 the copy of the notice of claim involving an association  
 28 representing more than 20 ~~residential~~ parcels, the contractor,  
 29 subcontractor, supplier, or design professional must serve a  
 30 written response to the person who forwarded a copy of the  
 31 notice of claim. The written response shall include a report,

Bill No. SB 2036

Barcode 660912

1 if any, of the scope of any inspection of the property  
 2 ~~dwelling~~, the findings and results of the inspection, a  
 3 statement of whether the contractor, subcontractor, supplier,  
 4 or design professional is willing to make repairs to the  
 5 property ~~dwelling~~ or whether such claim is disputed, a  
 6 description of any repairs they are willing to make to remedy  
 7 the alleged construction defect, and a timetable for the  
 8 completion of such repairs.

9 (5) Within 45 days after receiving the notice of claim  
 10 ~~involving a single family home, an association representing 20~~  
 11 ~~or fewer residential parcels, a manufactured or modular home,~~  
 12 ~~a duplex, a triplex, or a quadruplex,~~ or within 75 days after  
 13 receipt of a copy of the notice of claim involving an  
 14 association representing more than 20 ~~residential~~ parcels, the  
 15 person who received notice under subsection (1) must serve a  
 16 written response to the claimant. The response shall be served  
 17 to the attention of the person who signed the notice of claim,  
 18 unless otherwise designated in the notice of claim. The  
 19 written response must provide:

20 (a) A written offer to remedy the alleged construction  
 21 defect at no cost to the claimant, a detailed description of  
 22 the proposed repairs necessary to remedy the defect, and a  
 23 timetable for the completion of such repairs;

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

27 (c) A written offer to compromise and settle the claim  
 28 by a combination of repairs and monetary payment, that will  
 29 not obligate the person's insurer, that includes a detailed  
 30 description of the proposed repairs and a timetable for the  
 31 completion of such repairs and making payment;

Bill No. SB 2036

Barcode 660912

1 (d) A written statement that the person disputes the  
2 claim and will not remedy the defect or compromise and settle  
3 the claim; or

4 (e) A written statement that a monetary payment,  
5 including insurance proceeds, if any, will be determined by  
6 the person's insurer within 30 days after notification to the  
7 insurer by means of forwarding the claim, which notification  
8 shall occur at the same time the claimant is notified of this  
9 settlement option, which the claimant can accept or reject. A  
10 written statement under this paragraph may also include an  
11 offer under paragraph (c), but such offer shall be contingent  
12 upon the claimant also accepting the determination of the  
13 insurer whether to make any monetary payment in addition  
14 thereto. If the insurer for the person receiving the claim  
15 makes no response within the 30 days following notification,  
16 then the claimant shall be deemed to have met all conditions  
17 precedent to commencing an action.

18 (8) If the claimant timely and properly accepts the  
19 offer to repair an alleged construction defect, the claimant  
20 shall provide the offeror and the offeror's agents reasonable  
21 access to the claimant's property ~~dwelling~~ during normal  
22 working hours to perform the repair by the agreed-upon  
23 timetable as stated in the offer. If the offeror does not make  
24 the payment or repair the defect within the agreed time and in  
25 the agreed manner, except for reasonable delays beyond the  
26 control of the offeror, including, but not limited to, weather  
27 conditions, delivery of materials, claimant's actions, or  
28 issuance of any required permits, the claimant may, without  
29 further notice, proceed with an action against the offeror  
30 based upon the claim in the notice of claim. If the offeror  
31 makes payment or repairs the defect within the agreed time and

Bill No. SB 2036

Barcode 660912

1 in the agreed manner, the claimant is barred from proceeding  
2 with an action for the claim described in the notice of claim  
3 or as otherwise provided in the accepted settlement offer.

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

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

17 Section 4. Section 558.005, Florida Statutes, is  
18 amended to read:

19 558.005 Contract provisions; application.--

20 (1) Except as otherwise provided in subsections (3)  
21 and (4), the provisions of this chapter shall:

22 (a) Apply to ~~Control~~ every contract for the design,  
23 construction, or remodeling of a dwelling entered into between  
24 ~~on or after~~ July 1, 2004, and September 31, 2006, which  
25 contains the notice as set forth in paragraph (2)(a)  
26 ~~subsection (2)~~ and is conspicuously set forth in capitalized  
27 letters.

28 (b) Apply to every contract for the design,  
29 construction, or remodeling of real property entered into on  
30 or after October 1, 2006, which contains the notice set forth  
31 in paragraph (2)(b) in capitalized letters.

Bill No. SB 2036

Barcode 660912

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

4                                   CHAPTER 558 NOTICE OF CLAIM

5  
6 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS  
7 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN  
8 ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE  
9 YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER  
10 PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER  
11 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE  
12 AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED  
13 CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR  
14 OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT  
15 OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE  
16 STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH  
17 MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

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

21  
22                                   CHAPTER 558 NOTICE OF CLAIM

23  
24 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS  
25 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN  
26 ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY  
27 LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS  
28 CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY  
29 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE  
30 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED  
31 CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR

Bill No. SB 2036

Barcode 660912

1 OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT  
2 OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE  
3 STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH  
4 MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

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

9 (4) This chapter applies to all actions accruing on or  
10 after July 1, 2004, and all actions commenced on or after such  
11 date, regardless of the date of sale, issuance of a  
12 certificate of occupancy or its equivalent, or substantial  
13 completion of the construction dwelling. Notwithstanding the  
14 notice requirements of this section for contracts entered into  
15 between on or after July 1, 2004, and September 31, 2006, this  
16 chapter applies to all actions accruing before July 1, 2004,  
17 but not yet commenced as of July 1, 2004, and failure to  
18 include such the notice requirements of this section in a  
19 contract entered into prior to July 1, 2004, does not operate  
20 to bar the procedures of this chapter from applying to all  
21 such actions. Notwithstanding the notice requirements of this  
22 section for contracts entered into on or after October 1,  
23 2006, this chapter applies to all actions accruing before July  
24 1, 2004, but not yet commenced as of July 1, 2004, and failure  
25 to include such notice requirements in a contract entered into  
26 on or after October 1, 2006, does not operate to bar the  
27 procedures of this chapter from applying to all such actions.

28  
29 (Redesignate subsequent sections.)  
30  
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Bill No. SB 2036

Barcode 660912

1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3            On page 1, lines 6 and 7, delete those lines

4

5 and insert:

6            property, excluding public transportation  
7            projects; deleting provisions limiting  
8            application to only residential property;  
9            revising provisions concerning notice regarding  
10            pursuit of a construction defect claim in  
11            certain contracts for design, construction, or  
12            remodeling; applying ch. 558, F.S.,  
13            notwithstanding the notice provisions;

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