

By Senator Bennett

21-1035A-06

See HB

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled

An act relating to construction defects;
amending ss. 558.001, 558.002, 558.004, and
558.005, F.S.; revising provisions to expand
application to construction defects in any
property; deleting provisions limiting
application to only residential property;
providing an effective date.

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

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

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

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

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

(1) "Action" means any civil action or arbitration
proceeding for damages or indemnity asserting a claim for

1 damage to or loss of real ~~a dwelling~~ or personal property
2 caused by an alleged construction defect, but does not include
3 any administrative action or any civil action or arbitration
4 proceeding asserting a claim for alleged personal injuries
5 arising out of an alleged construction defect.

6 (2) "Association" has the same meaning as in s.
7 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.

8 (3) "Claimant" means a property owner ~~homeowner~~,
9 including a subsequent purchaser or association, who asserts a
10 claim for damages against a contractor, subcontractor,
11 supplier, or design professional concerning a construction
12 defect or a subsequent owner who asserts a claim for
13 indemnification for such damages. The term does not include a
14 contractor, subcontractor, supplier, or design professional.

15 (4) "Construction defect" means a deficiency in, or a
16 deficiency arising out of, the design, specifications,
17 surveying, planning, supervision, observation of construction,
18 or construction, repair, alteration, or remodeling of ~~a~~
19 ~~dwelling, any appurtenance to the dwelling, or the real~~
20 ~~property to which the dwelling or appurtenance is affixed~~
21 resulting from:

22 (a) Defective material, products, or components used
23 in the construction or remodeling;

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

27 (c) A failure of the design of real property ~~a~~
28 ~~dwelling~~ to meet the applicable professional standards of care
29 at the time of governmental approval; or
30
31

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

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

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

11 (7) "Real property Dwelling" means land that is
12 improved and the improvements on such land, including fixtures
13 ~~a single family house, manufactured or modular home, duplex,~~
14 ~~triplex, quadruplex, or other multifamily unit in a~~
15 ~~multifamily residential building designed for residential use~~
16 ~~in which title to each individual unit is transferred to the~~
17 ~~owner under a condominium or cooperative system and includes~~
18 ~~common areas and improvements that are owned or maintained by~~
19 ~~an association or by members of an association, and also~~
20 ~~includes the systems, other components, improvements, and~~
21 ~~other structures or facilities, including, but not limited to,~~
22 ~~recreational structures or facilities, that are appurtenant to~~
23 ~~and located on the real property on which the house, duplex,~~
24 ~~triplex, quadruplex, or other multifamily unit is located, but~~
25 ~~are not necessarily part of the structure at the time of~~
26 ~~completion of construction.~~

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

29 (9) "Subcontractor" means a person, as defined in s.
30 1.01, who is a contractor who performs labor and supplies
31

1 material on behalf of another contractor in the construction
2 or remodeling of real property ~~a dwelling~~.

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

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

9 558.004 Notice and opportunity to repair.--

10 (1) In actions brought alleging a construction defect,
11 the claimant shall, at least 60 days before filing any ~~an~~
12 action ~~involving a single family home, an association~~
13 ~~representing 20 or fewer residential parcels, a manufactured~~
14 ~~or modular home, a duplex, a triplex, or a quadruplex~~, or at
15 least 120 days before filing an action involving an
16 association representing more than 20 parcels ~~residential~~
17 ~~parcel owners~~, serve written notice of claim on the
18 contractor, subcontractor, supplier, or design professional,
19 as applicable, which notice shall refer to this chapter. If
20 the construction defect claim arises from work performed under
21 a contract, the written notice of claim must be served on the
22 person with whom the claimant contracted. The notice of claim
23 must describe the claim in reasonable detail sufficient to
24 determine the general nature of each alleged construction
25 defect and a description of the damage or loss resulting from
26 the defect, if known. The claimant shall endeavor to serve the
27 notice of claim within 15 days after discovery of an alleged
28 defect, but the failure to serve notice of claim within 15
29 days does not bar the filing of an action, subject to s.
30 558.003. This subsection does not preclude a claimant from
31 filing an action sooner than 60 days, or 120 days as

1 applicable, after service of written notice as expressly
2 provided in subsection (6), subsection (7), or subsection (8).

3 (2) Within 30 days after receipt of the notice of
4 claim ~~involving a single family home, an association~~
5 ~~representing 20 or fewer residential parcels, a manufactured~~
6 ~~or modular home, a duplex, a triplex, or a quadruplex, or~~
7 within 50 days after receipt of the notice of claim involving
8 an association representing more than 20 ~~residential~~ parcels,
9 the person receiving the notice of claim under subsection (1)
10 is entitled to perform a reasonable inspection of the property
11 ~~dwelling~~ or of each unit subject to the claim to assess each
12 alleged construction defect. An association's right to access
13 property for either maintenance or repair includes the
14 authority to grant access for the inspection. The claimant
15 shall provide the person receiving the notice under subsection
16 (1) and such person's contractors or agents reasonable access
17 to the property dwelling during normal working hours to
18 inspect the property dwelling to determine the nature and
19 cause of each alleged construction defect and the nature and
20 extent of any repairs or replacements necessary to remedy each
21 defect. The person receiving notice under subsection (1) shall
22 reasonably coordinate the timing and manner of any and all
23 inspections with the claimant to minimize the number of
24 inspections. The inspection may include destructive testing by
25 mutual agreement under the following reasonable terms and
26 conditions:

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

31

1 (b) The notice shall describe the destructive testing
2 to be performed, the person selected to do the testing, the
3 estimated anticipated damage and repairs to the property
4 ~~dwelling~~ resulting from the testing, the estimated amount of
5 time necessary for the testing and to complete the repairs,
6 and the financial responsibility offered for covering the
7 costs of repairs.

8 (c) If the claimant promptly objects to the person
9 selected to perform the destructive testing, the person
10 receiving notice under subsection (1) shall provide the
11 claimant with a list of three qualified persons from which the
12 claimant may select one such person to perform the testing.
13 The person selected to perform the testing shall operate as an
14 agent or subcontractor of the person receiving notice under
15 subsection (1) and shall communicate with, submit any reports
16 to and be solely responsible to the person receiving notice.

17 (d) The testing shall be done at a mutually agreeable
18 time.

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

21 (f) The destructive testing shall not render the
22 property ~~dwelling~~ uninhabitable.

23
24 In the event the claimant fails or refuses to agree to
25 destructive testing, the claimant shall have no claim for
26 damages which could have been avoided or mitigated had
27 destructive testing been allowed when requested and had a
28 feasible remedy been promptly implemented.

29 (3) Within 10 days after receipt of the notice of
30 claim ~~involving a single family home, an association~~
31 ~~representing 20 or fewer residential parcels, a manufactured~~

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

14 (4) Within 15 days after receiving a copy of the
15 notice of claim pursuant to subsection (3) ~~involving a~~
16 ~~single family home, an association representing 20 or fewer~~
17 ~~residential parcels, a manufactured or modular home, a duplex,~~
18 ~~a triplex, or a quadruplex, or within 30 days after receipt of~~
19 the copy of the notice of claim involving an association
20 representing more than 20 ~~residential~~ parcels, the contractor,
21 subcontractor, supplier, or design professional must serve a
22 written response to the person who forwarded a copy of the
23 notice of claim. The written response shall include a report,
24 if any, of the scope of any inspection of the property
25 ~~dwelling~~, the findings and results of the inspection, a
26 statement of whether the contractor, subcontractor, supplier,
27 or design professional is willing to make repairs to the
28 property dwelling or whether such claim is disputed, a
29 description of any repairs they are willing to make to remedy
30 the alleged construction defect, and a timetable for the
31 completion of such repairs.

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

12 (a) A written offer to remedy the alleged construction
13 defect at no cost to the claimant, a detailed description of
14 the proposed repairs necessary to remedy the defect, and a
15 timetable for the completion of such repairs;

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

19 (c) A written offer to compromise and settle the claim
20 by a combination of repairs and monetary payment, that will
21 not obligate the person's insurer, that includes a detailed
22 description of the proposed repairs and a timetable for the
23 completion of such repairs and making payment;

24 (d) A written statement that the person disputes the
25 claim and will not remedy the defect or compromise and settle
26 the claim; or

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

1 settlement option, which the claimant can accept or reject. A
2 written statement under this paragraph may also include an
3 offer under paragraph (c), but such offer shall be contingent
4 upon the claimant also accepting the determination of the
5 insurer whether to make any monetary payment in addition
6 thereto. If the insurer for the person receiving the claim
7 makes no response within the 30 days following notification,
8 then the claimant shall be deemed to have met all conditions
9 precedent to commencing an action.

10 (8) If the claimant timely and properly accepts the
11 offer to repair an alleged construction defect, the claimant
12 shall provide the offeror and the offeror's agents reasonable
13 access to the claimant's property dwelling during normal
14 working hours to perform the repair by the agreed-upon
15 timetable as stated in the offer. If the offeror does not make
16 the payment or repair the defect within the agreed time and in
17 the agreed manner, except for reasonable delays beyond the
18 control of the offeror, including, but not limited to, weather
19 conditions, delivery of materials, claimant's actions, or
20 issuance of any required permits, the claimant may, without
21 further notice, proceed with an action against the offeror
22 based upon the claim in the notice of claim. If the offeror
23 makes payment or repairs the defect within the agreed time and
24 in the agreed manner, the claimant is barred from proceeding
25 with an action for the claim described in the notice of claim
26 or as otherwise provided in the accepted settlement offer.

27 (9) This section does not prohibit or limit the
28 claimant from making any necessary emergency repairs to the
29 property dwelling as are required to protect the health,
30 safety, and welfare of the claimant. In addition, any offer or
31 failure to offer pursuant to subsection (5) to remedy an

1 | alleged construction defect or to compromise and settle the
2 | claim by monetary payment does not constitute an admission of
3 | liability with respect to the defect and is not admissible in
4 | an action brought under this chapter.

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

9 | Section 4. Section 558.005, Florida Statutes, is
10 | amended to read:

11 | 558.005 Contract provisions; application.--

12 | (1) Except as otherwise provided in subsections (3)
13 | and (4), the provisions of this chapter shall control every
14 | contract for the design, construction, or remodeling of real
15 | property ~~a dwelling~~ entered into on or after July 1, 2004,
16 | which contains the notice as set forth in subsection (2) and
17 | is conspicuously set forth in capitalized letters.

18 | (2) The notice required by subsection (1) must be in
19 | substantially the following form:

20 |
21 | CHAPTER 558 NOTICE OF CLAIM

22 |
23 | CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS
24 | YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN
25 | ALLEGED CONSTRUCTION DEFECT ~~IN YOUR HOME~~. SIXTY DAYS BEFORE
26 | YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER
27 | PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER
28 | 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE
29 | AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED
30 | CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR
31 | OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT

1 OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE
2 STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH
3 MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

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

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

20 Section 5. This act shall take effect October 1, 2006.
21
22
23
24
25
26
27
28
29
30
31