

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

3 558.002 Definitions.--As used in this chapter, the
4 term:

5 (1) "Action" means any civil action or arbitration
6 proceeding for damages or indemnity asserting a claim for
7 damage to or loss of real ~~a dwelling~~ or personal property
8 caused by an alleged construction defect, but does not include
9 any administrative action or any civil action or arbitration
10 proceeding asserting a claim for alleged personal injuries
11 arising out of an alleged construction defect.

12 (2) "Association" has the same meaning as in s.
13 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.

14 (3) "Claimant" means a property owner ~~homeowner~~,
15 including a subsequent purchaser or association, who asserts a
16 claim for damages against a contractor, subcontractor,
17 supplier, or design professional concerning a construction
18 defect or a subsequent owner who asserts a claim for
19 indemnification for such damages. The term does not include a
20 contractor, subcontractor, supplier, or design professional.

21 (4) "Construction defect" means a deficiency in, or a
22 deficiency arising out of, the design, specifications,
23 surveying, planning, supervision, observation of construction,
24 or construction, repair, alteration, or remodeling of ~~a~~
25 ~~dwelling, any appurtenance to the dwelling, or the real~~
26 ~~property to which the dwelling or appurtenance is affixed~~
27 resulting from:

28 (a) Defective material, products, or components used
29 in the construction or remodeling;

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

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

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

10 (5) "Contractor" means any person, as defined in s.
11 1.01, that is legally engaged in the business of designing,
12 developing, constructing, manufacturing, repairing, or
13 remodeling real property dwellings ~~or attachments thereto~~.

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

17 (7) "Real property Dwelling" means land that is
18 improved and the improvements on such land, including
19 fixtures, manufactured housing, or mobile homes and excluding
20 public transportation projects ~~a single family house,~~
21 ~~manufactured or modular home, duplex, triplex, quadruplex, or~~
22 ~~other multifamily unit in a multifamily residential building~~
23 ~~designed for residential use in which title to each individual~~
24 ~~unit is transferred to the owner under a condominium or~~
25 ~~cooperative system and includes common areas and improvements~~
26 ~~that are owned or maintained by an association or by members~~
27 ~~of an association, and also includes the systems, other~~
28 ~~components, improvements, and other structures or facilities,~~
29 ~~including, but not limited to, recreational structures or~~
30 ~~facilities, that are appurtenant to and located on the real~~
31 ~~property on which the house, duplex, triplex, quadruplex, or~~

1 ~~other multifamily unit is located, but are not necessarily~~
2 ~~part of the structure at the time of completion of~~
3 ~~construction.~~

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

6 (9) "Subcontractor" means a person, as defined in s.
7 1.01, who is a contractor who performs labor and supplies
8 material on behalf of another contractor in the construction
9 or remodeling of real property ~~a dwelling~~.

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

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

16 558.004 Notice and opportunity to repair.--

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

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

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

1 mutual agreement under the following reasonable terms and
2 conditions:

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

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

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

23 (d) The testing shall be done at a mutually agreeable
24 time.

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

27 (f) The destructive testing shall not render the
28 property ~~dwelling~~ uninhabitable.

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30 In the event the claimant fails or refuses to agree to
31 destructive testing, the claimant shall have no claim for

1 damages which could have been avoided or mitigated had
2 destructive testing been allowed when requested and had a
3 feasible remedy been promptly implemented.

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

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

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

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

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

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

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

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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

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 real property a dwelling
24 entered into between on or after July 1, 2004, and September
25 30, 2006, which contains the notice as set forth in paragraph
26 (2)(a) subsection (2) and is conspicuously set forth in
27 capitalized 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

1 in paragraph (2)(b) and is conspicuously set forth in
2 capitalized letters.

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

5
6 CHAPTER 558 NOTICE OF CLAIM

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

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

23
24 CHAPTER 558 NOTICE OF CLAIM

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

1 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED
2 CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR
3 OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT
4 OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE
5 STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH
6 MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

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

11 (4) This chapter applies to all actions accruing on or
12 after July 1, 2004, and all actions commenced on or after such
13 date, regardless of the date of sale, issuance of a
14 certificate of occupancy or its equivalent, or substantial
15 completion of the construction ~~dwelling~~. Notwithstanding the
16 notice requirements of this section for contracts entered into
17 between on or after July 1, 2004, and September 30, 2006, this
18 chapter applies to all actions accruing before July 1, 2004,
19 but not yet commenced as of July 1, 2004, and failure to
20 include ~~such~~ the notice requirements ~~of this section~~ in a
21 contract entered into prior to July 1, 2004, does not operate
22 to bar the procedures of this chapter from applying to all
23 such actions. Notwithstanding the notice requirements of this
24 section for contracts entered into on or after October 1,
25 2006, this chapter applies to all actions accruing before July
26 1, 2004, but not yet commenced as of July 1, 2004, and failure
27 to include such notice requirements in a contract entered into
28 before July 1, 2004, does not operate to bar the procedures of
29 this chapter from applying to all such actions.

30 Section 5. This act shall take effect October 1, 2006.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2036

The committee substitute includes manufactured housing and mobile homes and excludes public transportation projects in the definition of real property.

It clarifies the applicability of the act and conforms the notice provisions in construction contracts to the new timeframes provided by the act.