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1  
2 An act relating to construction defects; amending s.  
3 558.002, F.S.; providing and revising definitions;  
4 amending s. 558.003, F.S.; limiting application of  
5 certain notices; amending s. 558.004, F.S.; revising  
6 requirements and procedures for notice and opportunity  
7 to repair certain defects; specifying that there are  
8 no construction lien rights under certain provisions  
9 of law for certain testing; providing an exception;  
10 revising requirements for parties to exchange certain  
11 materials; providing penalties; amending s. 558.005,  
12 F.S.; revising requirements for application to certain  
13 claims for legal relief; specifying certain notices  
14 required for certain contracts; authorizing parties to  
15 agree to mediation; revising application of notice  
16 requirements to certain earlier contracts; specifying  
17 a required notice for certain contracts; providing  
18 construction of the requirement; providing an  
19 effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Subsections (4) through (10) of section 558.002,  
24 Florida Statutes, are renumbered as subsections (5) through  
25 (11), respectively, a new subsection (4) is added to that  
26 section, and present subsection (8) of that section is amended,  
27 to read:

28 558.002 Definitions.—As used in this chapter, the term:  
29 (4) "Completion of a building or improvement" means

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30 issuance of a certificate of occupancy for the entire building  
31 or improvement, or the equivalent authorization to occupy or use  
32 the improvement, issued by the governmental body having  
33 jurisdiction and, in jurisdictions where no certificate of  
34 occupancy or the equivalent authorization is issued, means  
35 substantial completion of construction, finishing, and equipping  
36 of the building or improvement according to the plans and  
37 specifications.

38 (9)~~(8)~~ "Service" means delivery by certified mail with a  
39 United States Postal Service record of evidence of delivery or  
40 attempted delivery, ~~return receipt requested,~~ to the last known  
41 address of the addressee, by hand delivery, or by delivery by  
42 any courier with written evidence of delivery.

43 Section 2. Section 558.003, Florida Statutes, is amended to  
44 read:

45 558.003 Action; compliance.—A claimant may not file an  
46 action subject to this chapter without first complying with the  
47 requirements of this chapter. If a claimant files an action  
48 alleging a construction defect without first complying with the  
49 requirements of this chapter, on timely motion by a party to the  
50 action the court shall stay ~~abate~~ the action, without prejudice,  
51 and the action may not proceed until the claimant has complied  
52 with such requirements. The notice requirement is not intended  
53 to interfere with an owner's ability to complete a project that  
54 has not been substantially completed. The notice is not required  
55 for a project that has not reached the stage of completion of  
56 the building or improvement.

57 Section 3. Section 558.004, Florida Statutes, is amended to  
58 read:

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59 558.004 Notice and opportunity to repair.—

60 (1) In actions brought alleging a construction defect, the  
61 claimant shall, at least 60 days before filing any action, or at  
62 least 120 days before filing an action involving an association  
63 representing more than 20 parcels, serve written notice of claim  
64 on the contractor, subcontractor, supplier, or design  
65 professional, as applicable, which notice shall refer to this  
66 chapter. If the construction defect claim arises from work  
67 performed under a contract, the written notice of claim must be  
68 served on the person with whom the claimant contracted. The  
69 notice of claim must describe the claim in reasonable detail  
70 sufficient to determine the general nature of each alleged  
71 construction defect and a description of the damage or loss  
72 resulting from the defect, if known. The claimant shall endeavor  
73 to serve the notice of claim within 15 days after discovery of  
74 an alleged defect, but the failure to serve notice of claim  
75 within 15 days does not bar the filing of an action, subject to  
76 s. 558.003. This subsection does not preclude a claimant from  
77 filing an action sooner than 60 days, or 120 days as applicable,  
78 after service of written notice as expressly provided in  
79 subsection (6), subsection (7), or subsection (8).

80 (2) Within 30 days after service ~~receipt~~ of the notice of  
81 claim, or within 50 days after service ~~receipt~~ of the notice of  
82 claim involving an association representing more than 20  
83 parcels, the person served with ~~receiving~~ the notice of claim  
84 under subsection (1) is entitled to perform a reasonable  
85 inspection of the property or of each unit subject to the claim  
86 to assess each alleged construction defect. An association's  
87 right to access property for either maintenance or repair

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88 includes the authority to grant access for the inspection. The  
89 claimant shall provide the person served with ~~receiving the~~  
90 notice under subsection (1) and such person's contractors or  
91 agents reasonable access to the property during normal working  
92 hours to inspect the property to determine the nature and cause  
93 of each alleged construction defect and the nature and extent of  
94 any repairs or replacements necessary to remedy each defect. The  
95 person served with ~~receiving~~ notice under subsection (1) shall  
96 reasonably coordinate the timing and manner of any and all  
97 inspections with the claimant to minimize the number of  
98 inspections. The inspection may include destructive testing by  
99 mutual agreement under the following reasonable terms and  
100 conditions:

101 (a) If the person served with ~~receiving~~ notice under  
102 subsection (1) determines that destructive testing is necessary  
103 to determine the nature and cause of the alleged defects, such  
104 person shall notify the claimant in writing.

105 (b) The notice shall describe the destructive testing to be  
106 performed, the person selected to do the testing, the estimated  
107 anticipated damage and repairs to or restoration of the property  
108 resulting from the testing, the estimated amount of time  
109 necessary for the testing and to complete the repairs or  
110 restoration, and the financial responsibility offered for  
111 covering the costs of repairs or restoration.

112 (c) If the claimant promptly objects to the person selected  
113 to perform the destructive testing, the person served with  
114 ~~receiving~~ notice under subsection (1) shall provide the claimant  
115 with a list of three qualified persons from which the claimant  
116 may select one such person to perform the testing. The person

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117 selected to perform the testing shall operate as an agent or  
118 subcontractor of the person served with ~~receiving~~ notice under  
119 subsection (1) and shall communicate with, submit any reports  
120 to, and be solely responsible to the person served with  
121 ~~receiving~~ notice.

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

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

125 (f) The destructive testing shall not render the property  
126 uninhabitable.

127 (g) There shall be no construction lien rights under part I  
128 of chapter 713 for the destructive testing caused by a person  
129 served with notice under subsection (1) or for restoring the  
130 area destructively tested to the condition existing prior to  
131 testing, except to the extent the owner contracts for the  
132 destructive testing or restoration.

133  
134 If ~~In the event~~ the claimant ~~fails or~~ refuses to agree and  
135 thereafter permit reasonable ~~to~~ destructive testing, the  
136 claimant shall have no claim for damages which could have been  
137 avoided or mitigated had destructive testing been allowed when  
138 requested and had a feasible remedy been promptly implemented.

139 (3) Within 10 days after service ~~receipt~~ of the notice of  
140 claim, or within 30 days after service ~~receipt~~ of the notice of  
141 claim involving an association representing more than 20  
142 parcels, the person served with ~~receiving the~~ notice under  
143 subsection (1) may serve ~~forward~~ a copy of the notice of claim  
144 to each contractor, subcontractor, supplier, or design  
145 professional whom it reasonably believes is responsible for each

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146 defect specified in the notice of claim and shall note the  
147 specific defect for which it believes the particular contractor,  
148 subcontractor, supplier, or design professional is responsible.  
149 The notice described in this subsection may not be construed as  
150 an admission of any kind. Each such contractor, subcontractor,  
151 supplier, and design professional may inspect the property as  
152 provided in subsection (2).

153 (4) Within 15 days after service of ~~receiving~~ a copy of the  
154 notice of claim pursuant to subsection (3), or within 30 days  
155 after service ~~receipt~~ of the copy of the notice of claim  
156 involving an association representing more than 20 parcels, the  
157 contractor, subcontractor, supplier, or design professional must  
158 serve a written response to the person who served ~~forwarded~~ a  
159 copy of the notice of claim. The written response shall include  
160 a report, if any, of the scope of any inspection of the  
161 property, the findings and results of the inspection, a  
162 statement of whether the contractor, subcontractor, supplier, or  
163 design professional is willing to make repairs to the property  
164 or whether such claim is disputed, a description of any repairs  
165 they are willing to make to remedy the alleged construction  
166 defect, and a timetable for the completion of such repairs. This  
167 response may also be served on the initial claimant by the  
168 contractor.

169 (5) Within 45 days after service of ~~receiving~~ the notice of  
170 claim, or within 75 days after service ~~receipt~~ of a copy of the  
171 notice of claim involving an association representing more than  
172 20 parcels, the person who was served the ~~received~~ notice under  
173 subsection (1) must serve a written response to the claimant.  
174 The response shall be served to the attention of the person who

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175 signed the notice of claim, unless otherwise designated in the  
176 notice of claim. The written response must provide:

177 (a) A written offer to remedy the alleged construction  
178 defect at no cost to the claimant, a detailed description of the  
179 proposed repairs necessary to remedy the defect, and a timetable  
180 for the completion of such repairs;

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

184 (c) A written offer to compromise and settle the claim by a  
185 combination of repairs and monetary payment, that will not  
186 obligate the person's insurer, that includes a detailed  
187 description of the proposed repairs and a timetable for the  
188 completion of such repairs and making payment;

189 (d) A written statement that the person disputes the claim  
190 and will not remedy the defect or compromise and settle the  
191 claim; or

192 (e) A written statement that a monetary payment, including  
193 insurance proceeds, if any, will be determined by the person's  
194 insurer within 30 days after notification to the insurer by  
195 means of servicing ~~forwarding~~ the claim, which service  
196 ~~notification~~ shall occur at the same time the claimant is  
197 notified of this settlement option, which the claimant may ~~can~~  
198 accept or reject. A written statement under this paragraph may  
199 also include an offer under paragraph (c), but such offer shall  
200 be contingent upon the claimant also accepting the determination  
201 of the insurer whether to make any monetary payment in addition  
202 thereto. If the insurer for the person served with ~~receiving~~ the  
203 claim makes no response within the 30 days following service

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204 ~~notification~~, then the claimant shall be deemed to have met all  
205 conditions precedent to commencing an action.

206 (6) If the person served with ~~receiving~~ a notice of claim  
207 pursuant to subsection (1) disputes the claim and will neither  
208 remedy the defect nor compromise and settle the claim, or does  
209 not respond to the claimant's notice of claim within the time  
210 provided in subsection (5), the claimant may, without further  
211 notice, proceed with an action against that person for the claim  
212 described in the notice of claim. Nothing in this chapter shall  
213 be construed to preclude a partial settlement or compromise of  
214 the claim as agreed to by the parties and, in that event, the  
215 claimant may, without further notice, proceed with an action on  
216 the unresolved portions of the claim.

217 (7) A claimant who receives a timely settlement offer must  
218 accept or reject the offer by serving written notice of such  
219 acceptance or rejection on the person making the offer within 45  
220 days after receiving the settlement offer. If a claimant  
221 initiates an action without first accepting or rejecting the  
222 offer, the court shall stay ~~abate~~ the action upon timely motion  
223 until the claimant complies with this subsection.

224 (8) If the claimant timely and properly accepts the offer  
225 to repair an alleged construction defect, the claimant shall  
226 provide the offeror and the offeror's agents reasonable access  
227 to the claimant's property during normal working hours to  
228 perform the repair by the agreed-upon timetable as stated in the  
229 offer. If the offeror does not make the payment or repair the  
230 defect within the agreed time and in the agreed manner, except  
231 for reasonable delays beyond the control of the offeror,  
232 including, but not limited to, weather conditions, delivery of



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233 materials, claimant's actions, or issuance of any required  
234 permits, the claimant may, without further notice, proceed with  
235 an action against the offeror based upon the claim in the notice  
236 of claim. If the offeror makes payment or repairs the defect  
237 within the agreed time and in the agreed manner, the claimant is  
238 barred from proceeding with an action for the claim described in  
239 the notice of claim or as otherwise provided in the accepted  
240 settlement offer.

241 (9) This section does not prohibit or limit the claimant  
242 from making any necessary emergency repairs to the property as  
243 are required to protect the health, safety, and welfare of the  
244 claimant. In addition, any offer or failure to offer pursuant to  
245 subsection (5) to remedy an alleged construction defect or to  
246 compromise and settle the claim by monetary payment does not  
247 constitute an admission of liability with respect to the defect  
248 and is not admissible in an action brought under this chapter.

249 (10) A claimant's service ~~mailing~~ of the written notice of  
250 claim under subsection (1) tolls the applicable statute of  
251 limitations relating to any person covered by this chapter and  
252 any bond surety until the later of:

253 (a) Ninety days, or 120 days, as applicable, after service  
254 ~~receipt~~ of the notice of claim pursuant to subsection (1); or

255 (b) Thirty days after the end of the repair period or  
256 payment period stated in the offer, if the claimant has accepted  
257 the offer. By stipulation of the parties, the period may be  
258 extended and the statute of limitations is tolled during the  
259 extension.

260 (11) The procedures in this chapter apply to each alleged  
261 construction defect. However, a claimant may include multiple

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262 defects in one notice of claim. The initial list of construction  
263 defects may be amended by the claimant to identify additional or  
264 new construction defects as they become known to the claimant.  
265 The court shall allow the action to proceed to trial only as to  
266 alleged construction defects that were noticed and for which the  
267 claimant has complied with this chapter and as to construction  
268 defects reasonably related to, or caused by, the construction  
269 defects previously noticed. Nothing in this subsection shall  
270 preclude subsequent or further actions.

271 (12) This chapter does not:

272 (a) Bar or limit any rights, including the right of  
273 specific performance to the extent such right would be available  
274 in the absence of this chapter, any causes of action, or any  
275 theories on which liability may be based, except as specifically  
276 provided in this chapter;

277 (b) Bar or limit any defense, or create any new defense,  
278 except as specifically provided in this chapter; or

279 (c) Create any new rights, causes of action, or theories on  
280 which liability may be based.

281 (13) ~~Nothing in~~ This section does not ~~shall~~ relieve the  
282 person who is served a ~~receiving~~ notice of claim under  
283 subsection (1) from complying with all contractual provisions of  
284 any liability insurance policy as a condition precedent to  
285 coverage for any claim under this section. However,  
286 notwithstanding the foregoing or any contractual provision, the  
287 providing of a copy of such notice to the person's insurer, if  
288 applicable, shall not constitute a claim for insurance purposes.  
289 Nothing in this section shall be construed to impair technical  
290 notice provisions or requirements of the liability policy or

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291 alter, amend, or change existing Florida law relating to rights  
292 between insureds and insurers except as otherwise specifically  
293 provided herein.

294 (14) To the extent that an arbitration clause in a contract  
295 for the sale, design, construction, or remodeling of real  
296 property conflicts with this section, this section shall  
297 control.

298 (15) Upon request, the claimant and any ~~the~~ person served  
299 with ~~receiving~~ notice pursuant to subsection (1) shall ~~have a~~  
300 ~~mutual duty to~~ exchange, within 30 days after service of a  
301 written request, which request must cite this subsection and  
302 include an offer to pay the reasonable costs of reproduction,  
303 any design plans, specifications, and as-built plans; any  
304 documents detailing the design drawings or specifications;  
305 photographs, videos, and expert reports that describe any defect  
306 upon which the claim is made; subcontracts; and purchase orders  
307 for the work that is claimed defective or any part of such  
308 materials ~~all available discoverable evidence relating to the~~  
309 ~~construction defects, including, but not limited to, expert~~  
310 ~~reports, photographs, information received pursuant to~~  
311 ~~subsection (4), and videotapes, if any.~~ In the event of  
312 subsequent litigation, any party who failed to provide the  
313 requested materials ~~such evidence~~ shall be subject to such  
314 sanctions as the court may impose for a discovery violation.  
315 Expert reports exchanged between the parties may not be used in  
316 any subsequent litigation for any purpose, unless the expert, or  
317 a person affiliated with the expert, testifies as a witness or  
318 the report is used or relied upon by an expert who testifies on  
319 behalf of the party for whom the report was prepared.

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320 Section 4. Section 558.005, Florida Statutes, is amended to  
321 read:

322 558.005 Contract provisions; application.—

323 (1) Unless a claimant and a potential defendant have agreed  
324 in writing to opt out of the requirements of this section,  
325 ~~Except as otherwise provided in subsections (3) and (4),~~ the  
326 provisions of this chapter shall apply to any claim for legal  
327 relief for which the agreement to make the improvement was made  
328 after October 1, 2009, and for which the basis of the claim is a  
329 construction defect that has arisen after completion of a  
330 building or improvement. every contract for the design,  
331 ~~construction, or remodeling of real property entered into:~~

332 (2) For a claim of a construction defect pursuant to  
333 contracts for improvement entered into as described in this  
334 subsection, the following applicable notices are required:

335 (a) Between July 1, 2004, and September 30, 2006, which  
336 contract contains the notice as set forth in paragraph ~~(3)(2)~~(a)  
337 and is conspicuously set forth in capitalized letters.

338 (b) Between ~~On or after~~ October 1, 2006, and September 30,  
339 2009, which contract contains the notice set forth in paragraph  
340 ~~(3)(2)~~(b) and is conspicuously set forth in capitalized letters.

341 ~~(3)(2)~~(a) The notice required by paragraph ~~(2)(1)~~(a) must  
342 be in substantially the following form:

343  
344 CHAPTER 558 NOTICE OF CLAIM

345  
346 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS  
347 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN  
348 ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU

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349 BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO  
350 THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY  
351 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE  
352 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION  
353 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE  
354 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT  
355 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND  
356 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED  
357 TO PROTECT YOUR INTERESTS.

358 (b) The notice required by paragraph (2) ~~(1)~~ (b) must  
359 expressly cite this chapter and be in substantially the  
360 following form:

361  
362 CHAPTER 558 NOTICE OF CLAIM

363  
364 CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS  
365 YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN  
366 ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY  
367 LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS  
368 CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY  
369 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE  
370 SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION  
371 DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE  
372 ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT  
373 ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND  
374 PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED  
375 TO PROTECT YOUR INTERESTS.

376 (4) ~~(3)~~ At any time After receipt of the initial notice of  
377 claim, a claimant and the person to whom notice is served or

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378 otherwise must be served ~~receiving notice~~ under s. 558.004(1)  
379 may agree in writing to pre-action mediation or otherwise, ~~by~~  
380 ~~written mutual agreement,~~ alter the procedure for the notice of  
381 claim process described in this chapter.

382 (5) ~~(4)~~ Notwithstanding the notice requirements of this  
383 section for contracts entered into on or after October 1, 2006,  
384 this chapter applies to all actions accruing before July 1,  
385 2004, but not yet commenced as of July 1, 2004, and failure to  
386 include such notice requirements in a contract entered into  
387 before July 1, 2004, does not operate to bar the procedures of  
388 this chapter from applying to all such actions. This chapter  
389 ~~applies to all actions accruing on or after July 1, 2004, and~~  
390 ~~all actions commenced on or after such date, regardless of the~~  
391 ~~date of sale, issuance of a certificate of occupancy or its~~  
392 ~~equivalent, or substantial completion of the construction.~~  
393 ~~Notwithstanding the notice requirements of this section for~~  
394 ~~contracts entered into between July 1, 2004, and September 30,~~  
395 ~~2006, this chapter applies to all actions accruing before July~~  
396 ~~1, 2004, but not yet commenced as of July 1, 2004, and failure~~  
397 ~~to include such notice requirements in a contract entered into~~  
398 ~~prior to July 1, 2004, does not operate to bar the procedures of~~  
399 ~~this chapter from applying to all such actions. Notwithstanding~~  
400 ~~the notice requirements of this section for contracts entered~~  
401 ~~into on or after October 1, 2006, this chapter applies to all~~  
402 ~~actions accruing before July 1, 2004, but not yet commenced as~~  
403 ~~of July 1, 2004, and failure to include such notice requirements~~  
404 ~~in a contract entered into before July 1, 2004, does not operate~~  
405 ~~to bar the procedures of this chapter from applying to all such~~  
406 ~~actions.~~

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407           (6) Notwithstanding s. 558.003, unless the parties agree  
408 that this chapter does not apply, after October 1, 2009, any  
409 written contract for improvement of real property entered into  
410 between an owner and a contractor, or between an owner and a  
411 design professional, must contain substantially the following  
412 notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE  
413 NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES."  
414 The failure to include in the contract the notice provided in  
415 this subsection does not subject the contracting owner,  
416 contractor, or design professional to any penalty. The purpose  
417 of the contractual notice is to promote awareness of the  
418 procedure, not to be a penalty.

419           Section 5. This act shall take effect October 1, 2009.