



305850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2015	.	
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The Committee on Regulated Industries (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 50 - 181

and insert:

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

558.004 Notice and opportunity to repair.—

(1) (a) In actions brought alleging a construction defect, the claimant shall, at least 60 days before filing any action, or at least 120 days before filing an action involving an



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11 association representing more than 20 parcels, serve written
12 notice of claim on the contractor, subcontractor, supplier, or
13 design professional, as applicable, which notice shall refer to
14 this chapter. If the construction defect claim arises from work
15 performed under a contract, the written notice of claim must be
16 served on the person with whom the claimant contracted.

17 (b) The notice of claim must describe ~~the claim~~ in
18 reasonable detail ~~sufficient to determine the general~~ nature of
19 each alleged construction defect and, ~~if known, a description of~~
20 the damage or loss resulting from the defect, ~~if known~~. Based
21 upon at least a visual inspection by the claimant or its agents,
22 the notice of claim must identify the location of each alleged
23 construction defect sufficiently to enable the responding
24 parties to locate the alleged defect without undue burden. The
25 claimant has no obligation to perform destructive or other
26 testing for purposes of this notice.

27 (c) The claimant shall endeavor to serve the notice of
28 claim within 15 days after discovery of an alleged defect, but
29 the failure to serve notice of claim within 15 days does not bar
30 the filing of an action, subject to s. 558.003. This subsection
31 does not preclude a claimant from filing an action sooner than
32 60 days, or 120 days as applicable, after service of written
33 notice as expressly provided in subsection (6), subsection (7),
34 or subsection (8).

35 (4) Within 15 days after service of a copy of the notice of
36 claim pursuant to subsection (3), or within 30 days after
37 service of the copy of the notice of claim involving an
38 association representing more than 20 parcels, the contractor,
39 subcontractor, supplier, or design professional must serve a



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40 written response to the person who served a copy of the notice
41 of claim. The written response must ~~shall~~ include a report, if
42 any, of the scope of any inspection of the property and, the
43 findings and results of the inspection. The written response
44 must include one or more of the offers or statements specified
45 in paragraphs (5) (a)-(e), as chosen by the responding
46 contractor, subcontractor, supplier, or design professional,
47 with all of the information required for that offer or
48 statement, ~~a statement of whether the contractor, subcontractor,~~
49 ~~supplier, or design professional is willing to make repairs to~~
50 ~~the property or whether such claim is disputed, a description of~~
51 ~~any repairs they are willing to make to remedy the alleged~~
52 ~~construction defect, and a timetable for the completion of such~~
53 ~~repairs. This response may also be served on the initial~~
54 ~~claimant by the contractor.~~

55 (13) This section does not relieve the person who is served
56 a notice of claim under subsection (1) from complying with all
57 contractual provisions of any liability insurance policy as a
58 condition precedent to coverage for any claim under this
59 section. However, notwithstanding the foregoing or any
60 contractual provision, the providing of a copy of such notice to
61 the person's insurer, if applicable, shall not constitute a
62 claim for insurance purposes unless the terms of the policy
63 specify otherwise. Nothing in this section shall be construed to
64 impair technical notice provisions or requirements of the
65 liability policy or alter, amend, or change existing Florida law
66 relating to rights between insureds and insurers except as
67 otherwise specifically provided herein.

68 (15) Upon request, the claimant and any person served with



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69 notice pursuant to subsection (1) shall exchange, within 30 days
70 after service of a written request, which request must cite this
71 subsection and include an offer to pay the reasonable costs of
72 reproduction, any design plans, specifications, and as-built
73 plans; ~~any documents detailing the design drawings or~~
74 ~~specifications;~~ photographs and ~~7~~ videos of the alleged
75 construction defect identified in the notice of claim; ~~and~~
76 expert reports that describe any defect upon which the claim is
77 made; subcontracts; ~~and~~ purchase orders for the work that is
78 claimed defective or any part of such materials; and maintenance
79 records and other documents related to the discovery,
80 investigation, causation, and extent of the alleged defect
81 identified in the notice of claim and any resulting damages. A
82 party may assert any claim of privilege recognized under the
83 laws of this state with respect to any of the disclosure
84 obligations specified in this chapter. In the event of
85 subsequent litigation, any party who failed to provide the
86 requested materials shall be subject to such sanctions as the
87 court may impose for a discovery violation. Expert reports
88 exchanged between the parties may not be used in any subsequent
89 litigation for any purpose, unless the expert, or a person
90 affiliated with the expert, testifies as a witness or the report
91 is used or relied upon by an expert who testifies on behalf of
92 the party for whom the report was prepared.

93
94 ===== T I T L E A M E N D M E N T =====

95 And the title is amended as follows:

96 Delete lines 8 - 14

97 and insert:



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98 revising requirements for a response; revising
99 provisions relating to production of certain records;