

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Passidomo offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove lines 50-182 and insert:

7 Section 3. Subsections (1), (4), (13), and (15) of section
 8 558.004, Florida Statutes, are amended, and subsection (16) is
 9 added to that section, to read:

10 558.004 Notice and opportunity to repair.-

11 (1) (a) In actions brought alleging a construction defect,
 12 the claimant shall, at least 60 days before filing any action,
 13 or at least 120 days before filing an action involving an
 14 association representing more than 20 parcels, serve written
 15 notice of claim on the contractor, subcontractor, supplier, or
 16 design professional, as applicable, which notice shall refer to
 17 this chapter. If the construction defect claim arises from work

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18 performed under a contract, the written notice of claim must be
19 served on the person with whom the claimant contracted.

20 (b) The notice of claim must describe ~~the claim~~ in
21 reasonable detail ~~sufficient to determine the general~~ nature of
22 each alleged construction defect and, if known, a description of
23 the damage or loss resulting from the defect, ~~if known.~~ Based
24 upon at least a visual inspection by the claimant or its agents,
25 the notice of claim must identify the location of each alleged
26 construction defect sufficiently to enable the responding
27 parties to locate the alleged defect without undue burden.

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

36 (4) Within 15 days after service of a copy of the notice
37 of claim pursuant to subsection (3), or within 30 days after
38 service of the copy of the notice of claim involving an
39 association representing more than 20 parcels, the contractor,
40 subcontractor, supplier, or design professional must serve a
41 written response to the person who served a copy of the notice
42 of claim. The written response shall include a report, if any,
43 of the scope of any inspection of the property and, the findings

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44 and results of the inspection~~7~~. The written response shall
45 include one or more of the offers or statements specified in
46 paragraphs (5) (a)-(e), as elected by the responding contractor,
47 subcontractor, supplier, or design professional, with all of the
48 information required therein ~~a statement of whether the~~
49 ~~contractor, subcontractor, supplier, or design professional is~~
50 ~~willing to make repairs to the property or whether such claim is~~
51 ~~disputed, a description of any repairs they are willing to make~~
52 ~~to remedy the alleged construction defect, and a timetable for~~
53 ~~the completion of such repairs. This response may also be served~~
54 ~~on the initial claimant by the contractor.~~

55 (13) This section does not relieve the person who is
56 served a notice of claim under subsection (1) from complying
57 with all contractual provisions of any liability insurance
58 policy as a condition precedent to coverage for any claim under
59 this 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 provided for under the terms
63 of the policy. 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
69 notice pursuant to subsection (1) shall exchange, within 30 days

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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 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 the
79 claimant's maintenance records and other documents related to
80 the discovery, investigation, causation, and extent of the
81 alleged defect identified in the notice of claim and any damages
82 resulting therefrom. In the event of subsequent litigation, any
83 party who failed to provide the requested materials shall be
84 subject to such sanctions as the court may impose for a
85 discovery violation. Expert reports exchanged between the
86 parties may not be used in any subsequent litigation for any
87 purpose, unless the expert, or a person affiliated with the
88 expert, testifies as a witness or the report is used or relied
89 upon by an expert who testifies on behalf of the party for whom
90 the report was prepared.

91 (16) In any action filed by a claimant, if the court grants
92 a motion for sanctions pursuant to s. 57.105(1) against the
93 claimant or its attorney, the court shall award the movant the
94 sanctions provided therein and, if the court finds that the
95 claimant knew or should have known at the time the notice of

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96 claim was served that the corresponding construction defects
97 alleged in the notice were unsupported pursuant to s.
98 57.105(1) (a) or (b), the court shall likewise award the
99 reasonable pre-suit costs incurred by the movant in responding
100 to the unsupported construction defects, including costs of
101 inspection, investigation, testing, attorney's fees, and
102 prejudgment interest.
103

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105 **T I T L E A M E N D M E N T**

106 Remove lines 8-14 and insert:

107 revising requirements for a response; revising provisions
108 relating to production of certain records; providing for
109 sanctions for unsupported claims under certain circumstances;