

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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 WITHDRAWN _____ (Y/N)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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Passidomo offered the following:

Amendment (with title amendment)

Remove lines 46-141 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
 association representing more than 20 parcels, serve written
 notice of claim on the contractor, subcontractor, supplier, or
 design professional, as applicable, which notice shall refer to
 this chapter. If the construction defect claim arises from work
 performed under a contract, the written notice of claim must be
 served on the person with whom the claimant contracted.

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

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 must ~~shall~~ include a report, if
43 any, of the scope of any inspection of the property and, the

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

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

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

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

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Remove lines 10-11 and insert:

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amending ss.718.203 and