

1 A bill to be entitled

2 An act relating to construction defect claims;
3 amending s. 558.001, F.S.; revising legislative
4 intent; amending s. 558.002, F.S.; revising the
5 definition of the term "completion of a building or
6 improvement"; amending s. 558.004, F.S.; providing
7 additional requirements for a notice of claim;
8 revising requirements for a response; providing that
9 actions making claims for certain previously resolved
10 claims be deemed frivolous; providing for sanctions
11 for such frivolous claims; revising provisions
12 relating to production of certain records; providing
13 for sanctions for claims that were solely the fault of
14 the claimant or its agents; providing an exception;
15 amending ss. 718.203 and 719.203, F.S.; conforming
16 provisions to changes made by the act; providing an
17 effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Section 558.001, Florida Statutes, is amended
22 to read:

23 558.001 Legislative findings and declaration.—The
24 Legislature finds that it is beneficial to have an alternative
25 method to resolve construction disputes that would reduce the
26 need for litigation as well as protect the rights of property

27 owners. An effective alternative dispute resolution mechanism in
28 certain construction defect matters should involve the claimant
29 filing a notice of claim with the contractor, subcontractor,
30 supplier, or design professional that the claimant asserts is
31 responsible for the defect, and should provide the contractor,
32 subcontractor, supplier, or design professional, and the insurer
33 of the contractor, subcontractor, supplier, or design
34 professional, with an opportunity to resolve the claim through
35 confidential settlement negotiations without resort to further
36 legal process.

37 Section 2. Subsection (4) of section 558.002, Florida
38 Statutes, is amended to read:

39 558.002 Definitions.—As used in this chapter, the term:

40 (4) "Completion of a building or improvement" means
41 issuance of a certificate of occupancy, whether temporary or
42 otherwise, that allows for occupancy or use of ~~for~~ the entire
43 building or improvement, or an ~~the~~ equivalent authorization ~~to~~
44 ~~occupy or use the improvement,~~ issued by the governmental body
45 having jurisdiction. ~~and,~~ In jurisdictions where no certificate
46 of occupancy or ~~the~~ equivalent authorization is issued, the term
47 means substantial completion of construction, finishing, and
48 equipping of the building or improvement according to the plans
49 and specifications.

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

53 558.004 Notice and opportunity to repair.—

54 (1) (a) In actions brought alleging a construction defect,
55 the claimant shall, at least 60 days before filing any action,
56 or at least 120 days before filing an action involving an
57 association representing more than 20 parcels, serve written
58 notice of claim on the contractor, subcontractor, supplier, or
59 design professional, as applicable, which notice shall refer to
60 this chapter. If the construction defect claim arises from work
61 performed under a contract, the written notice of claim must be
62 served on the person with whom the claimant contracted.

63 (b) The notice of claim must describe ~~the claim~~ in
64 reasonable detail ~~sufficient to determine~~ the ~~general~~ nature of
65 each alleged construction defect and, if known, ~~a description of~~
66 the damage or loss resulting from the defect, ~~if known.~~ The
67 notice of claim must sufficiently identify the specific location
68 of each alleged construction defect to enable the responding
69 parties to locate all of the alleged construction defects
70 without undue burden. The notice of claim must also identify the
71 specific provisions of the building code, project plans, project
72 drawings, project specifications, or other documentation,
73 information, or authority that serve as the basis of the claim
74 for each alleged construction defect. Failure to include such
75 information in the notice of claim is prima facie evidence of a
76 defective notice of claim.

77 (c) The claimant shall endeavor to serve the notice of
78 claim within 15 days after discovery of an alleged defect, but

79 | the failure to serve notice of claim within 15 days does not bar
80 | the filing of an action, subject to s. 558.003. This subsection
81 | does not preclude a claimant from filing an action sooner than
82 | 60 days, or 120 days as applicable, after service of written
83 | notice as expressly provided in subsection (6), subsection (7),
84 | or subsection (8).

85 | (4) Within 15 days after service of a copy of the notice
86 | of claim pursuant to subsection (3), or within 30 days after
87 | service of the copy of the notice of claim involving an
88 | association representing more than 20 parcels, the contractor,
89 | subcontractor, supplier, or design professional must serve a
90 | written response to the person who served a copy of the notice
91 | of claim. The written response shall include a report, if any,
92 | of the scope of any inspection of the property, the findings and
93 | results of the inspection, a statement of whether the
94 | contractor, subcontractor, supplier, or design professional
95 | disputes the claim, whether he or she is willing to make repairs
96 | to the property ~~or whether such claim is disputed~~, a detailed
97 | description of any repairs that he or she is ~~they are~~ willing to
98 | make to remedy the alleged construction defect, ~~and~~ a timetable
99 | for the completion of such repairs, and whether he or she is
100 | willing to attempt to settle all or a portion of the claim
101 | through a monetary settlement offer and, if so, the amount of
102 | the monetary offer and a timetable for payment. This response
103 | may also be served on the initial claimant by the contractor.

104 | (8) If the claimant timely and properly accepts the offer

105 to repair an alleged construction defect, the claimant shall
 106 provide the offeror and the offeror's agents reasonable access
 107 to the claimant's property during normal working hours to
 108 perform the repair by the agreed-upon timetable as stated in the
 109 offer. If the offeror does not make the payment or repair the
 110 defect within the agreed time and in the agreed manner, except
 111 for reasonable delays beyond the control of the offeror,
 112 including, but not limited to, weather conditions, delivery of
 113 materials, claimant's actions, or issuance of any required
 114 permits, the claimant may, without further notice, proceed with
 115 an action against the offeror based upon the claim in the notice
 116 of claim. If the offeror makes payment or repairs the defect
 117 within the agreed time and in the agreed manner, the claimant is
 118 barred from proceeding with an action for the claim described in
 119 the notice of claim or as otherwise provided in the accepted
 120 settlement offer. If the claimant proceeds with an action that
 121 includes any claim previously resolved by the payment of money,
 122 by making repairs, or by a combination thereof in accordance
 123 with this chapter, the associated portion of such action shall
 124 be deemed frivolous, the associated portion of such action shall
 125 be stricken, and, upon motion filed by the person served with
 126 the action, the court shall award monetary sanctions against the
 127 claimant for costs incurred by the person served with the action
 128 relating to the claim, including attorney fees, in conjunction
 129 with defending against the frivolous claim.

130 (13) This section does not relieve the person who is

131 served a notice of claim under subsection (1) from complying
132 with all contractual provisions of any liability insurance
133 policy as a condition precedent to coverage for any claim under
134 this section. However, notwithstanding the foregoing or any
135 contractual provision, the providing of a copy of such notice to
136 the person's insurer, if applicable, shall not constitute a
137 claim for insurance purposes unless provided for under the terms
138 of the policy. Nothing in this section shall be construed to
139 impair technical notice provisions or requirements of the
140 liability policy or alter, amend, or change existing Florida law
141 relating to rights between insureds and insurers except as
142 otherwise specifically provided herein.

143 (15) Upon request, the claimant and any person served with
144 notice pursuant to subsection (1) shall exchange, within 30 days
145 after service of a written request, which request must cite this
146 subsection and include an offer to pay the reasonable costs of
147 reproduction and related fees, any design plans, specifications,
148 and as-built plans; ~~any documents detailing the design drawings~~
149 ~~or specifications~~; photographs and videos of the alleged
150 construction defect identified in the notice of claim; and
151 nonprivileged expert reports that describe any defect upon which
152 the claim is made; subcontracts; ~~and~~ purchase orders for the
153 work that is claimed defective or any part of such materials;
154 and the claimant's maintenance records and other documents
155 related to the discovery, investigation, causation, and extent
156 of the alleged defect identified in the notice of claim and any

157 damages resulting therefrom. In the event of subsequent
158 litigation, any party who failed to provide the requested
159 materials shall be subject to such sanctions as the court may
160 impose for a discovery violation. Expert reports exchanged
161 between the parties may not be used in any subsequent litigation
162 for any purpose, unless the expert, or a person affiliated with
163 the expert, testifies as a witness or the report is used or
164 relied upon by an expert who testifies on behalf of the party
165 for whom the report was prepared.

166 (16) Upon motion filed by the person served with a notice
167 of claim, the court shall award monetary sanctions for costs
168 incurred by such person with respect to an alleged construction
169 defect identified in the notice of claim that was solely the
170 fault of the claimant or its agents, including costs of
171 inspection, investigation, testing, related costs, and attorney
172 fees, upon a finding by the court that the claimant or the
173 claimant's attorney knew or should have known that the claimed
174 defect when initially presented was not supported by the
175 material facts necessary to establish the claim in accordance
176 with this chapter or would not be supported by the application
177 of then-existing law to those material facts. However, monetary
178 sanctions may not be awarded against the claimant's attorney
179 under this subsection if he or she acted in good faith, based on
180 the representations of his or her client, as to the existence of
181 those material facts.

182 Section 4. Subsection (3) of section 718.203, Florida

183 Statutes, is amended to read:

184 718.203 Warranties.—

185 (3) "Completion of a building or improvement" means
 186 issuance of a certificate of occupancy, whether temporary or
 187 otherwise, that allows for occupancy or use of ~~for~~ the entire
 188 building or improvement, or an ~~the~~ equivalent authorization
 189 issued by the governmental body having jurisdiction. ~~and~~ In
 190 jurisdictions where no certificate of occupancy or equivalent
 191 authorization is issued, the term ~~it~~ means substantial
 192 completion of construction, finishing, and equipping of the
 193 building or improvement according to the plans and
 194 specifications.

195 Section 5. Subsection (3) of section 719.203, Florida
 196 Statutes, is amended to read:

197 719.203 Warranties.—

198 (3) "Completion of a building or improvement" means
 199 issuance of a certificate of occupancy, whether temporary or
 200 otherwise, that allows for occupancy or use of ~~for~~ the entire
 201 building or improvement, or an ~~the~~ equivalent authorization
 202 issued by the governmental body having jurisdiction. ~~and~~ In
 203 jurisdictions where no certificate of occupancy or equivalent
 204 authorization is issued, the term ~~it~~ means substantial
 205 completion of construction, finishing, and equipping of the
 206 building or improvement according to the plans and
 207 specifications.

208 Section 6. This act shall take effect October 1, 2015.