

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; revising
9 provisions relating to production of certain records;
10 providing for sanctions for unsupported claims under
11 certain circumstances; amending ss. 718.203 and
12 719.203, F.S.; conforming provisions to changes made
13 by the act; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Section 558.001, Florida Statutes, is amended
18 to read:

19 558.001 Legislative findings and declaration.—The
20 Legislature finds that it is beneficial to have an alternative
21 method to resolve construction disputes that would reduce the
22 need for litigation as well as protect the rights of property
23 owners. An effective alternative dispute resolution mechanism in
24 certain construction defect matters should involve the claimant
25 filing a notice of claim with the contractor, subcontractor,
26 supplier, or design professional that the claimant asserts is

27 responsible for the defect, and should provide the contractor,
 28 subcontractor, supplier, or design professional, and the insurer
 29 of the contractor, subcontractor, supplier, or design
 30 professional, with an opportunity to resolve the claim through
 31 confidential settlement negotiations without resort to further
 32 legal process.

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

35 558.002 Definitions.—As used in this chapter, the term:

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

46 Section 3. Subsections (1), (4), (13), and (15) of section
 47 558.004, Florida Statutes, are amended, and subsection (16) is
 48 added to that section, to read:

49 558.004 Notice and opportunity to repair.—

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

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

59 (b) The notice of claim must describe ~~the claim~~ in
60 reasonable detail ~~sufficient to determine~~ the ~~general~~ nature of
61 each alleged construction defect and, if known, a description of
62 the damage or loss resulting from the defect, if known. Based
63 upon at least a visual inspection by the claimant or its agents,
64 the notice of claim must identify the location of each alleged
65 construction defect sufficiently to enable the responding
66 parties to locate the alleged defect without undue burden.

67 (c) The claimant shall endeavor to serve the notice of
68 claim within 15 days after discovery of an alleged defect, but
69 the failure to serve notice of claim within 15 days does not bar
70 the filing of an action, subject to s. 558.003. This subsection
71 does not preclude a claimant from filing an action sooner than
72 60 days, or 120 days as applicable, after service of written
73 notice as expressly provided in subsection (6), subsection (7),
74 or subsection (8).

75 (4) Within 15 days after service of a copy of the notice
76 of claim pursuant to subsection (3), or within 30 days after
77 service of the copy of the notice of claim involving an
78 association representing more than 20 parcels, the contractor,

79 subcontractor, supplier, or design professional must serve a
80 written response to the person who served a copy of the notice
81 of claim. The written response shall include a report, if any,
82 of the scope of any inspection of the property and, the findings
83 and results of the inspection. The written response shall also
84 include one or more of the offers or statements specified in
85 paragraphs (5) (a)-(e), as chosen by the responding contractor,
86 subcontractor, supplier, or design professional, with all of the
87 information required therein, ~~a statement of whether the~~
88 ~~contractor, subcontractor, supplier, or design professional is~~
89 ~~willing to make repairs to the property or whether such claim is~~
90 ~~disputed, a description of any repairs they are willing to make~~
91 ~~to remedy the alleged construction defect, and a timetable for~~
92 ~~the completion of such repairs. This response may also be served~~
93 ~~on the initial claimant by the contractor.~~

94 (13) This section does not relieve the person who is
95 served a notice of claim under subsection (1) from complying
96 with all contractual provisions of any liability insurance
97 policy as a condition precedent to coverage for any claim under
98 this section. However, notwithstanding the foregoing or any
99 contractual provision, the providing of a copy of such notice to
100 the person's insurer, if applicable, shall not constitute a
101 claim for insurance purposes unless provided for under the terms
102 of the policy. Nothing in this section shall be construed to
103 impair technical notice provisions or requirements of the
104 liability policy or alter, amend, or change existing Florida law

105 relating to rights between insureds and insurers except as
106 otherwise specifically provided herein.

107 (15) Upon request, the claimant and any person served with
108 notice pursuant to subsection (1) shall exchange, within 30 days
109 after service of a written request, which request must cite this
110 subsection and include an offer to pay the reasonable costs of
111 reproduction, any design plans, specifications, and as-built
112 plans; ~~any documents detailing the design drawings or~~
113 ~~specifications;~~ photographs and, videos of the alleged
114 construction defect identified in the notice of claim; ~~and~~
115 expert reports that describe any defect upon which the claim is
116 made; subcontracts; ~~and~~ purchase orders for the work that is
117 claimed defective or any part of such materials; and the
118 claimant's maintenance records and other documents related to
119 the discovery, investigation, causation, and extent of the
120 alleged defect identified in the notice of claim and any damages
121 resulting therefrom. In the event of subsequent litigation, any
122 party who failed to provide the requested materials shall be
123 subject to such sanctions as the court may impose for a
124 discovery violation. Expert reports exchanged between the
125 parties may not be used in any subsequent litigation for any
126 purpose, unless the expert, or a person affiliated with the
127 expert, testifies as a witness or the report is used or relied
128 upon by an expert who testifies on behalf of the party for whom
129 the report was prepared.

130 (16) In any action filed by a claimant, if the court

131 grants a motion for sanctions pursuant to s. 57.105(1) against
132 the claimant or the claimant's attorney, the court shall award
133 the movant the sanctions provided therein and, if the court
134 finds that the claimant knew or should have known at the time
135 the notice of claim was served that the corresponding
136 construction defects alleged in the notice were unsupported
137 pursuant to s. 57.105(1) (a) or (b), the court shall also award
138 the reasonable presuit costs incurred by the movant in
139 responding to the unsupported construction defects, including
140 costs of inspection, investigation, testing, attorney fees, and
141 prejudgment interest.

142 Section 4. Subsection (3) of section 718.203, Florida
143 Statutes, is amended to read:

144 718.203 Warranties.—

145 (3) "Completion of a building or improvement" means
146 issuance of a certificate of occupancy, whether temporary or
147 otherwise, that allows for occupancy or use of ~~for~~ the entire
148 building or improvement, or an ~~the~~ equivalent authorization
149 issued by the governmental body having jurisdiction. ~~and~~ In
150 jurisdictions where no certificate of occupancy or equivalent
151 authorization is issued, the term ~~it~~ means substantial
152 completion of construction, finishing, and equipping of the
153 building or improvement according to the plans and
154 specifications.

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

157 719.203 Warranties.—

158 (3) "Completion of a building or improvement" means
159 issuance of a certificate of occupancy, whether temporary or
160 otherwise, that allows for occupancy or use of ~~for~~ the entire
161 building or improvement, or an ~~the~~ equivalent authorization
162 issued by the governmental body having jurisdiction. ~~and~~ In
163 jurisdictions where no certificate of occupancy or equivalent
164 authorization is issued, the term ~~it~~ means substantial
165 completion of construction, finishing, and equipping of the
166 building or improvement according to the plans and
167 specifications.

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