

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 amending ss. 718.203 and 719.203, F.S.; conforming
11 provisions to changes made by the act; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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

18 558.001 Legislative findings and declaration.—The
19 Legislature finds that it is beneficial to have an alternative
20 method to resolve construction disputes that would reduce the
21 need for litigation as well as protect the rights of property
22 owners. An effective alternative dispute resolution mechanism in
23 certain construction defect matters should involve the claimant
24 filing a notice of claim with the contractor, subcontractor,
25 supplier, or design professional that the claimant asserts is
26 responsible for the defect, and should provide the contractor,

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

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

34 | 558.002 Definitions.—As used in this chapter, the term:

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

45 | Section 3. Subsections (1), (4), (13), and (15) of section
 46 | 558.004, Florida Statutes, are amended to read:

47 | 558.004 Notice and opportunity to repair.—

48 | (1) (a) In actions brought alleging a construction defect,
 49 | the claimant shall, at least 60 days before filing any action,
 50 | or at least 120 days before filing an action involving an
 51 | association representing more than 20 parcels, serve written
 52 | notice of claim on the contractor, subcontractor, supplier, or

53 design professional, as applicable, which notice shall refer to
54 this chapter. If the construction defect claim arises from work
55 performed under a contract, the written notice of claim must be
56 served on the person with whom the claimant contracted.

57 (b) The notice of claim must describe ~~the claim~~ in
58 reasonable detail ~~sufficient to determine the general~~ nature of
59 each alleged construction defect and, if known, a description of
60 the damage or loss resulting from the defect, ~~if known~~. Based
61 upon at least a visual inspection by the claimant or its agents,
62 the notice of claim must identify the location of each alleged
63 construction defect sufficiently to enable the responding
64 parties to locate the alleged defect without undue burden. The
65 claimant has no obligation to perform destructive or other
66 testing for purposes of this notice.

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

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

105 liability policy or alter, amend, or change existing Florida law
106 relating to rights between insureds and insurers except as
107 otherwise specifically provided herein.

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

131 is used or relied upon by an expert who testifies on behalf of
 132 the party for whom the report was prepared.

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

135 718.203 Warranties.—

136 (3) "Completion of a building or improvement" means
 137 issuance of a certificate of occupancy, whether temporary or
 138 otherwise, that allows for occupancy or use of ~~for~~ the entire
 139 building or improvement, or an ~~the~~ equivalent authorization
 140 issued by the governmental body having jurisdiction. ~~and~~ In
 141 jurisdictions where no certificate of occupancy or equivalent
 142 authorization is issued, the term ~~it~~ means substantial
 143 completion of construction, finishing, and equipping of the
 144 building or improvement according to the plans and
 145 specifications.

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

148 719.203 Warranties.—

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

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157 | building or improvement according to the plans and
158 | specifications.

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