

1                                   A bill to be entitled  
 2           An act relating to construction defect claims;  
 3           amending s. 558.004, F.S.; providing additional  
 4           requirements for notices of claim, inspections, and  
 5           notices of acceptance or rejection of settlement  
 6           offers; requiring, rather than authorizing, certain  
 7           persons to serve copies of notices of claim to certain  
 8           professionals; revising provisions relating to tolling  
 9           certain statutes of limitations; providing an  
 10          effective date.

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

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 14           Section 1. Paragraph (a) of subsection (1) and subsections  
 15           (2), (3), (7), and (10) of section 558.004, Florida Statutes,  
 16           are amended to read:

17           558.004 Notice and opportunity to repair.—

18           (1) (a) In actions brought alleging a construction defect,  
 19           the claimant shall, at least 60 days before filing any action,  
 20           or at least 120 days before filing an action involving an  
 21           association representing more than 20 parcels, serve written  
 22           notice of claim, personally signed by him or her, on the  
 23           contractor, subcontractor, supplier, or design professional, as  
 24           applicable, which notice shall refer to this chapter. If the  
 25           construction defect claim arises from work performed under a

HB 1271

2017

26 | contract, the ~~written~~ notice of claim must be served on the  
27 | person with whom the claimant contracted.

28 |       (2) Within 30 days after service of the notice of claim,  
29 | or within 50 days after service of the notice of claim involving  
30 | an association representing more than 20 parcels, the person  
31 | served with the notice of claim under subsection (1) is entitled  
32 | to perform a reasonable inspection of the property or of each  
33 | unit subject to the claim to assess each alleged construction  
34 | defect. An association's right to access property for either  
35 | maintenance or repair includes the authority to grant access for  
36 | the inspection. The claimant shall provide the person served  
37 | with notice under subsection (1) and such person's contractors  
38 | or agents reasonable access to the property during normal  
39 | working hours to inspect the property to determine the nature  
40 | and cause of each alleged construction defect and the nature and  
41 | extent of any repairs or replacements necessary to remedy each  
42 | defect. The claimant and any experts retained by the claimant  
43 | with respect to the claim must be physically present for the  
44 | inspection to identify the location of the alleged construction  
45 | defects. The person served with notice under subsection (1)  
46 | shall reasonably coordinate the timing and manner of any and all  
47 | inspections with the claimant to minimize the number of  
48 | inspections. The inspection may include destructive testing by  
49 | mutual agreement under the following reasonable terms and  
50 | conditions:

51 (a) If the person served with notice under subsection (1)  
52 determines that destructive testing is necessary to determine  
53 the nature and cause of the alleged defects, such person shall  
54 notify the claimant in writing.

55 (b) The notice shall describe the destructive testing to  
56 be performed, the person selected to do the testing, the  
57 estimated anticipated damage and repairs to or restoration of  
58 the property resulting from the testing, the estimated amount of  
59 time necessary for the testing and to complete the repairs or  
60 restoration, and the financial responsibility offered for  
61 covering the costs of repairs or restoration.

62 (c) If the claimant promptly objects to the person  
63 selected to perform the destructive testing, the person served  
64 with notice under subsection (1) shall provide the claimant with  
65 a list of three qualified persons from which the claimant may  
66 select one such person to perform the testing. The person  
67 selected to perform the testing shall operate as an agent or  
68 subcontractor of the person served with notice under subsection  
69 (1) and shall communicate with, submit any reports to, and be  
70 solely responsible to the person served with notice.

71 (d) The testing shall be done at a mutually agreeable  
72 time.

73 (e) The claimant or a representative of the claimant may  
74 be present to observe the destructive testing.

75 (f) The destructive testing shall not render the property

76 uninhabitable.

77 (g) There shall be no construction lien rights under part  
78 I of chapter 713 for the destructive testing caused by a person  
79 served with notice under subsection (1) or for restoring the  
80 area destructively tested to the condition existing prior to  
81 testing, except to the extent the owner contracts for the  
82 destructive testing or restoration.

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84 If the claimant refuses to agree and thereafter permit  
85 reasonable destructive testing, the claimant shall have no claim  
86 for damages which could have been avoided or mitigated had  
87 destructive testing been allowed when requested and had a  
88 feasible remedy been promptly implemented.

89 (3) Within 10 days after service of the notice of claim,  
90 or within 30 days after service of the notice of claim involving  
91 an association representing more than 20 parcels, the person  
92 served with notice under subsection (1) must ~~may~~ serve a copy of  
93 the notice of claim to each contractor, subcontractor, supplier,  
94 or design professional whom it reasonably believes is  
95 responsible for each defect specified in the notice of claim and  
96 shall note the specific defect for which it believes the  
97 particular contractor, subcontractor, supplier, or design  
98 professional is responsible. The notice described in this  
99 subsection may not be construed as an admission of any kind.  
100 Each such contractor, subcontractor, supplier, and design

101 professional may inspect the property as provided in subsection  
102 (2).

103 (7) (a) A claimant who receives a timely settlement offer  
104 must accept or reject the offer by serving written notice of  
105 such acceptance or rejection, personally signed by him or her,  
106 on the person making the offer within 45 days after receiving  
107 the settlement offer. If a claimant initiates an action without  
108 first accepting or rejecting the offer, the court shall stay the  
109 action upon timely motion until the claimant complies with this  
110 subsection.

111 (b) Before rejecting the offer, the claimant shall serve a  
112 written demand for mediation on the person making the offer. The  
113 demand must explain why the claimant considers the offer  
114 inadequate. Unless mediation is waived in writing by the person  
115 making the offer, the parties must, within 20 days after service  
116 of the demand for mediation, mutually select an independent  
117 certified mediator and meet with the mediator to attempt to  
118 resolve the dispute. The meeting must take place in the county  
119 in which the subject real property is located, at a mutually  
120 convenient date, time, and location to be selected by the  
121 mediator, unless otherwise agreed to by the parties. The  
122 mediator may extend the date of the meeting for good cause shown  
123 by either party or upon stipulation of both parties. The person  
124 making the offer shall bear the costs of mediation, unless the  
125 parties are unable to mutually select a mediator, in which case

126 each party shall select and bear the cost of its own mediator  
 127 and equally split any other mediation costs. Mediation must be  
 128 conducted by a certified circuit court mediator, pursuant to the  
 129 mediation rules of practice and procedures for circuit court  
 130 adopted by the Florida Supreme Court and pursuant to the  
 131 Mediation Confidentiality and Privilege Act, unless otherwise  
 132 agreed to by the parties. The time for serving written notice  
 133 under paragraph (a) is tolled until the mediation is concluded  
 134 or terminated, or an impasse is declared.

135 (10) A claimant's service of the written notice of claim  
 136 under subsection (1) tolls the applicable statute of limitations  
 137 relating to any person covered by this chapter and any bond  
 138 surety until the later of:

139 (a) Ninety days, or 120 days, as applicable, after service  
 140 of the notice of claim pursuant to subsection (1);

141 (b) Thirty days after the mediation pursuant to paragraph  
 142 (7) (b) is concluded or terminated, or an impasse is declared; or

143 (c) ~~(b)~~ Thirty days after the end of the repair period or  
 144 payment period stated in the offer, if the claimant has accepted  
 145 the offer. By stipulation of the parties, the period may be  
 146 extended and the statute of limitations is tolled during the  
 147 extension.

148 Section 2. This act shall take effect July 1, 2017.