

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

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. Mediation
125 must be conducted by a certified circuit court mediator,

126 pursuant to the mediation rules of practice and procedures for
127 circuit court adopted by the Florida Supreme Court and pursuant
128 to the Mediation Confidentiality and Privilege Act, unless
129 otherwise agreed to by the parties. The time for serving written
130 notice under paragraph (a) is tolled until the mediation is
131 concluded or terminated, or an impasse is declared.

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

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

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

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

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