

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>    </u>	(Y/N)
ADOPTED AS AMENDED	<u>    </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>    </u>	(Y/N)
FAILED TO ADOPT	<u>    </u>	(Y/N)
WITHDRAWN	<u>    </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Trumbull offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

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 5  
 6 Section 1. Paragraphs (a) and (b) of subsection (1) and  
 7 subsections (2), (3), (7), and (10) of section 558.004, Florida  
 8 Statutes, are amended, and paragraph (d) of subsection (1) of  
 9 that section is created, to read:

10 558.004 Notice and opportunity to repair.-

11 (1) (a) In actions brought alleging a construction defect,  
 12 the claimant shall, at least 60 days before filing any action,  
 13 or at least 120 days before filing an action involving an  
 14 association representing more than 20 parcels, serve written  
 15 notice of claim, personally signed by the claimant, on the  
 16 contractor, subcontractor, supplier, or design professional, as

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17 applicable, which notice shall refer to this chapter. If the  
18 construction defect claim arises from work performed under a  
19 contract, the ~~written~~ notice of claim must be served on the  
20 person with whom the claimant contracted.

21 (b) The notice of claim must describe in ~~reasonable~~ detail  
22 the nature of each alleged construction defect ~~and~~, if a  
23 consultant or expert has inspected the defect known, the damage  
24 or loss resulting from the defect, including the cost of  
25 repairing the construction defect, and other monetary damages,  
26 if any, caused by the construction defect. Based upon at least a  
27 visual inspection by the claimant or its agents, the notice of  
28 claim must identify the location of each alleged construction  
29 defect sufficiently to enable the responding parties to locate  
30 the alleged defect without undue burden. The claimant has no  
31 obligation to perform destructive or other testing for purposes  
32 of this notice.

33 (d) For purposes of this section:

34 1. If a claimant is a business entity, such as a  
35 corporation, limited liability company, partnership, limited  
36 partnership, proprietorship, firm, enterprise, franchise, or  
37 association, an authorized representative of the claimant may  
38 act on the behalf of the claimant.

39 2. If a claimant is an individual, a representative or  
40 agent of the claimant may act on the claimant's behalf with his  
41 or her knowledge.

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42 (2) Within 30 days after service of the notice of claim,  
43 or within 50 days after service of the notice of claim involving  
44 an association representing more than 20 parcels, the person  
45 served with the notice of claim under subsection (1) is entitled  
46 to perform a reasonable inspection of the property or of each  
47 unit subject to the claim to assess each alleged construction  
48 defect. An association's right to access property for either  
49 maintenance or repair includes the authority to grant access for  
50 the inspection. The claimant shall provide the person served  
51 with notice under subsection (1) and such person's contractors  
52 or agents reasonable access to the property during normal  
53 working hours to inspect the property to determine the nature  
54 and cause of each alleged construction defect and the nature and  
55 extent of any repairs or replacements necessary to remedy each  
56 defect. The claimant and all consultants or experts retained by  
57 the claimant as a result of the defect must be physically  
58 present at the inspection to identify the location of the  
59 alleged construction defect. The person served with notice under  
60 subsection (1) and any consultants or experts retained by that  
61 person must also be physically present at the inspection. The  
62 person served with notice under subsection (1) shall reasonably  
63 coordinate the timing and manner of any and all inspections with  
64 the claimant and any contractor, subcontractor, supplier, or  
65 design professional served under subsection (3) to minimize the  
66 number of inspections. The inspection may include destructive

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67 testing by mutual agreement under the following reasonable terms  
68 and conditions:

69 (3) Within 10 days after service of the notice of claim,  
70 or within 30 days after service of the notice of claim involving  
71 an association representing more than 20 parcels, the person  
72 served with notice under subsection (1) must ~~may~~ serve a copy of  
73 the notice of claim to each contractor, subcontractor, supplier,  
74 or design professional whom it reasonably believes is  
75 responsible for each defect specified in the notice of claim and  
76 shall note the specific defect for which it believes the  
77 particular contractor, subcontractor, supplier, or design  
78 professional is responsible. The notice described in this  
79 subsection may not be construed as an admission of any kind and  
80 must provide a description consistent with the notice  
81 requirements under subsection (1). Each such contractor,  
82 subcontractor, supplier, and design professional may inspect the  
83 property as provided in subsection (2).

84 (7) (a) A claimant who receives a timely settlement offer  
85 must accept or reject the offer by serving written notice of  
86 such acceptance or rejection, personally signed by the claimant,  
87 on the person making the offer within 45 days after receiving  
88 the settlement offer. If a claimant initiates an action without  
89 first accepting or rejecting the offer, the court shall stay the  
90 action upon timely motion until the claimant complies with this  
91 subsection.

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92        (b)1. Before rejecting the offer, the claimant shall serve  
93 a written demand for mediation on the person making the offer.  
94 The demand must explain why the claimant considers the offer  
95 inadequate. Unless mediation is waived in writing by the person  
96 making the offer, the parties must, within 20 days after service  
97 of the demand for mediation, mutually select an independent  
98 certified mediator and subsequently meet with the mediator to  
99 attempt to resolve the dispute. If the parties do not mutually  
100 select, or are not able to agree on, an independent certified  
101 mediator within the specified period, each party must select an  
102 independent certified mediator, and the selected mediators must  
103 then mutually select an independent certified mediator to  
104 conduct the mediation.

105        2. The mediation must take place in the county in which  
106 the subject real property is located, at a mutually convenient  
107 date, time, and location to be selected by the mediator, unless  
108 otherwise agreed to by the parties. The mediator may extend the  
109 date of the meeting for good cause shown by either party or upon  
110 stipulation of both parties. The person making the offer bears  
111 the costs of mediation. Mediation must be conducted by a  
112 certified circuit court mediator, pursuant to the applicable  
113 mediation rules of practice and procedures for circuit courts  
114 adopted by the Florida Supreme Court and pursuant to the  
115 Mediation Confidentiality and Privilege Act, unless otherwise  
116 agreed to by the parties. The time for serving written notice

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117 under paragraph (a) is tolled until the person making the offer  
118 waives mediation or until the mediator declares an impasse,  
119 whichever occurs earlier.

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

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

126 (b) Thirty days after the mediation conducted under  
127 paragraph (7) (b) is declared to be at an impasse by the  
128 mediator;

129 (c) Thirty days after waiver of the mediation by the  
130 person making the offer under paragraph (7) (b); or

131 (d) ~~(b)~~ Thirty days after the end of the repair period or  
132 payment period stated in the offer, if the claimant has accepted  
133 the offer. By stipulation of the parties, the period may be  
134 extended and the statute of limitations is tolled during the  
135 extension.

136 Section 2. Section 558.006, Florida Statutes, is created to  
137 read:

138 558.006 Special verdict form.— If a claim is brought to  
139 court for legal relief and the jury finds in favor of the  
140 plaintiff on the construction defect claim, the verdict must  
141 include a detailed description of the amount of damage awarded

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142 against each separate defendant and a detailed description of  
143 the building feature to be repaired or replaced. Amounts awarded  
144 against each defendant for damages other than repair or  
145 replacement shall be stated separately as to each defendant with  
146 a detailed description of the damage or loss being compensated  
147 with each damage award against each defendant. This section  
148 applies to all claims involving such defect and damages,  
149 including third-party claims, cross claims, and counter claims.

150 Section 3. This act shall take effect July 1, 2018.

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153 -----  
154 **T I T L E A M E N D M E N T**

155 Remove everything before the enacting clause and insert:

156 An act relating to construction defect claims; amending s.  
157 558.004, F.S.; providing additional requirements for notices of  
158 claim, inspections, and notices of acceptance or rejection of  
159 settlement offers; providing that an authorized representative  
160 of a claimant may act on the behalf of the claimant if the  
161 claimant is a business entity; prohibiting a representative of  
162 the claimant from acting without the claimant's knowledge if the  
163 claimant is an individual; requiring, rather than authorizing,  
164 certain persons to serve copies of notices of claim to certain  
165 professionals; providing for mediation under certain  
166 circumstances, subject to certain requirements; revising

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167 provisions relating to tolling certain statutes of limitations;  
168 creating s. 558.006, F.S.; providing a special verdict form for  
169 construction defect claims; providing an effective date.