

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WITHDRAWN	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>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (2), paragraphs (a) and (c) of subsection (3), and paragraphs (a) and (c) of subsection (4) of section 475.278, Florida Statutes, are amended to read:

475.278 Authorized brokerage relationships; presumption of transaction brokerage; required disclosures.—

(2) TRANSACTION BROKER RELATIONSHIP.—A transaction broker provides a limited form of representation to a buyer, a seller, or both in a real estate transaction but does not represent either in a fiduciary capacity or as a single agent. The duties

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16 of the real estate licensee in this limited form of
17 representation include the following:

18 (d) Disclosing all known facts that materially affect the
19 value of residential real property and are not readily
20 observable to the buyer, including whether the seller or an
21 association acting on the seller's behalf made a construction
22 defect claim under ch. 558 relating to the property, the outcome
23 of the claim, and what, if any, repairs were made;

24 (3) SINGLE AGENT RELATIONSHIP.—

25 (a) Single agent; duties.—The duties of a real estate
26 licensee owed to a buyer or seller who engages the real estate
27 licensee as a single agent include the following:

- 28 1. Dealing honestly and fairly;
- 29 2. Loyalty;
- 30 3. Confidentiality;
- 31 4. Obedience;
- 32 5. Full disclosure;
- 33 6. Accounting for all funds;
- 34 7. Skill, care, and diligence in the transaction;
- 35 8. Presenting all offers and counteroffers in a timely
36 manner, unless a party has previously directed the licensee
37 otherwise in writing; and
- 38 9. Disclosing all known facts that materially affect the
39 value of residential real property and are not readily
40 observable, including whether the seller or an association

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41 acting on the seller's behalf made a construction defect claim
42 under ch. 558 relating to the property, the outcome of the
43 claim, and what, if any, repairs were made.

44 (c) Contents of disclosure.—

45 1. Single agent duties disclosure.—The notice required
46 under subparagraph (b)1. must include the following information
47 in the following form:

48 SINGLE AGENT NOTICE

49 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
50 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

51 As a single agent, ...(insert name of Real Estate Entity
52 and its Associates)... owe to you the following duties:

- 53 1. Dealing honestly and fairly;
54 2. Loyalty;
55 3. Confidentiality;
56 4. Obedience;
57 5. Full disclosure;
58 6. Accounting for all funds;
59 7. Skill, care, and diligence in the transaction;
60 8. Presenting all offers and counteroffers in a timely
61 manner, unless a party has previously directed the licensee
62 otherwise in writing; and

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63 9. Disclosing all known facts that materially affect the
 64 value of residential real property and are not readily
 65 observable, including whether the seller or an association
 66 acting on the seller's behalf made a construction defect claim
 67 under ch. 558 relating to the property, the outcome of the
 68 claim, and what, if any, repairs were made.
 69

.....

Date

.....

Signature

70
 71 2. Transition disclosure.—To gain the principal's written
 72 consent to a change in relationship, a licensee must use the
 73 following disclosure:

74 CONSENT TO TRANSITION TO
 75 TRANSACTION BROKER

76 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
 77 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
 78 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
 79 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
 80 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
 81 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
 82 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

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83 As a transaction broker, ...(insert name of Real Estate Firm and
84 its Associates)..., provides to you a limited form of
85 representation that includes the following duties:

- 86 1. Dealing honestly and fairly;
- 87 2. Accounting for all funds;
- 88 3. Using skill, care, and diligence in the transaction;
- 89 4. Disclosing all known facts that materially affect the
90 value of residential real property and are not readily
91 observable to the buyer, including whether the seller or an
92 association acting on the seller's behalf made a construction
93 defect claim under ch. 558 relating to the property, the outcome
94 of the claim, and what, if any, repairs were made;

95 5. Presenting all offers and counteroffers in a timely
96 manner, unless a party has previously directed the licensee
97 otherwise in writing;

98 6. Limited confidentiality, unless waived in writing by a
99 party. This limited confidentiality will prevent disclosure that
100 the seller will accept a price less than the asking or listed
101 price, that the buyer will pay a price greater than the price
102 submitted in a written offer, of the motivation of any party for
103 selling or buying property, that a seller or buyer will agree to
104 financing terms other than those offered, or of any other
105 information requested by a party to remain confidential; and

106 7. Any additional duties that are entered into by this or
107 by separate written agreement.

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108 Limited representation means that a buyer or seller is not
109 responsible for the acts of the licensee. Additionally, parties
110 are giving up their rights to the undivided loyalty of the
111 licensee. This aspect of limited representation allows a
112 licensee to facilitate a real estate transaction by assisting
113 both the buyer and the seller, but a licensee will not work to
114 represent one party to the detriment of the other party when
115 acting as a transaction broker to both parties.

116I agree that my agent may assume the role and
117 duties of a transaction broker. [must be initialed or signed]

118 (4) NO BROKERAGE RELATIONSHIP.-

119 (a) No brokerage relationship; duties.-A real estate
120 licensee owes to a potential seller or buyer with whom the
121 licensee has no brokerage relationship the following duties:

- 122 1. Dealing honestly and fairly;
- 123 2. Disclosing all known facts that materially affect the
124 value of the residential real property which are not readily
125 observable to the buyer, including whether the seller or an
126 association acting on the seller's behalf made a construction
127 defect claim under ch. 558 relating to the property, the outcome
128 of the claim, and what, if any, repairs were made; and
- 129 3. Accounting for all funds entrusted to the licensee.

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130 (c) Contents of disclosure.—The notice required under
131 paragraph (b) must include the following information in the
132 following form:

133 NO BROKERAGE RELATIONSHIP NOTICE

134 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
135 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
136 THEIR DUTIES TO SELLERS AND BUYERS.

137 As a real estate licensee who has no brokerage relationship
138 with you, ... (insert name of Real Estate Entity and its
139 Associates)... owe to you the following duties:

- 140 1. Dealing honestly and fairly;
- 141 2. Disclosing all known facts that materially affect the
142 value of residential real property which are not readily
143 observable to the buyer, including whether the seller or an
144 association acting on the seller's behalf made a construction
145 defect claim under ch. 558 relating to the property, the outcome
146 of the claim, and what, if any, repairs were made.
- 147 3. Accounting for all funds entrusted to the licensee.

148 ... (Date) ... (Signature) ...

149 Section 2. Subparagraphs (1) (a) and (b) and subsections
150 (2), (3), (4), and (15) of section 558.004, Florida Statutes,

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151 are amended, subparagraphs (1)(c) and (1)(d) of that section are
152 renumbered as subparagraphs (1)(d) and (1)(e), respectively, and
153 new subsection (1)(c) of that section is created, to read:

154 558.004 Notice and opportunity to repair.—

155 (1)(a) In actions brought alleging a construction defect,
156 the claimant shall, at least 60 days before filing any action,
157 or at least 120 days before filing an action involving an
158 association representing more than 20 parcels, serve written
159 notice of claim on the contractor, subcontractor, supplier, or
160 design professional, as applicable, which notice shall refer to
161 this chapter. If the construction defect claim arises from work
162 performed under a contract, the written notice of claim must be
163 served on the person with whom the claimant contracted. However,
164 a notice of claim may not be served under this chapter unless
165 the claimant has first properly submitted a claim for the
166 alleged construction defect under any applicable warranty, and
167 the warranty provider has denied the claim or has not offered a
168 remedy satisfactory to the claimant within the time limits
169 provided in the warranty. This chapter provides a noticing
170 process for a construction defect claim denied or not otherwise
171 satisfied under any applicable warranty.

172 (b) The notice of claim must:

173 1. Describe ~~describe~~ in specific ~~reasonable~~ detail the
174 nature of each alleged construction defect. and

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175 2. Include, if the alleged defect or evidence thereof is
176 visible, at least one photograph of the alleged defect or
177 evidence thereof, any repair estimates or expert reports
178 obtained relating to the alleged defect, and ~~, if known,~~ a
179 description of the damage or loss resulting from the alleged
180 defect, if known.

181 3. Based upon at least a visual inspection by the claimant
182 or its agents, ~~the notice of claim must~~ identify the specific
183 location of each alleged construction defect sufficiently to
184 enable the responding parties to locate the alleged defect
185 without undue burden. The claimant has no obligation to perform
186 destructive or other testing for purposes of this notice.

187 4. Affirm that the claimant has personal knowledge of the
188 alleged defect.

189 5. Acknowledge that the claimant is aware of the real
190 estate disclosure obligation under s. 558.006 and of the
191 penalties for perjury in Ch. 837.

192 6. Be signed by the claimant and include the following
193 statement directly above the claimant's signature line in 18
194 point uppercase, boldfaced type:

195
196 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
197 FOREGOING STATEMENT, AND THE FACTS ALLEGED ARE TRUE TO THE BEST
198 OF MY KNOWLEDGE AND BELIEF.
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200 (c) Any person who willfully includes a false statement in
201 the notice of claim required by this section is guilty of
202 perjury and upon conviction will be punished accordingly.

203 (2) Within 30 days after service of the notice of claim,
204 or within 50 days after service of the notice of claim involving
205 an association representing more than 20 parcels, any ~~the~~ person
206 served with the notice of claim under subsection (1) or a copy
207 thereof under subsection (3) is entitled to perform a reasonable
208 inspection of the property or of each unit subject to the claim
209 to assess each alleged construction defect. An association's
210 right to access property for either maintenance or repair
211 includes the authority to grant access for the inspection. The
212 claimant must ~~shall~~ provide the person served with notice under
213 subsection (1) or subsection (3) and such person's contractors
214 or agents reasonable access to the property during normal
215 working hours to inspect the property to determine the nature
216 and cause of each alleged construction defect and the nature and
217 extent of any repairs or replacements necessary to remedy each
218 defect. The person served with notice under subsection (1) must
219 ~~shall~~ reasonably coordinate the timing and manner of any and all
220 inspections with the claimant and any person served a copy of
221 the notice of claim under subsection (3) to minimize the number
222 of inspections. The inspection may include destructive testing
223 by mutual agreement under the following reasonable terms and
224 conditions:

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225 (a) If the person served with notice under subsection (1)
226 determines that destructive testing is necessary to determine
227 the nature and cause of the alleged defects, such person must
228 ~~shall~~ notify the claimant in writing.

229 (b) The notice must ~~shall~~ describe the destructive testing
230 to be performed, the person selected to do the testing, the
231 estimated anticipated damage and repairs to or restoration of
232 the property resulting from the testing, the estimated amount of
233 time necessary for the testing and to complete the repairs or
234 restoration, and the financial responsibility offered for
235 covering the costs of repairs or restoration.

236 (c) If the claimant promptly objects to the person
237 selected to perform the destructive testing, the person served
238 with notice under subsection (1) must ~~shall~~ provide the claimant
239 with a list of three qualified persons from which the claimant
240 may select one such person to perform the testing. The person
241 selected to perform the testing must ~~shall~~ operate as an agent
242 or subcontractor of the person served with notice under
243 subsection (1) and must ~~shall~~ communicate with, submit any
244 reports to, and be solely responsible to the person served with
245 notice.

246 (d) The testing must ~~shall~~ be done at a mutually agreeable
247 time.

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

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250 (f) The destructive testing may ~~shall~~ not render the
251 property uninhabitable.

252 (g) There are ~~shall be~~ no construction lien rights under
253 part I of chapter 713 for the destructive testing caused by a
254 person served with notice under subsection (1) or for restoring
255 the area destructively tested to the condition existing before
256 ~~prior to~~ testing, except to the extent the owner contracts for
257 the destructive testing or restoration.

258
259 If the claimant refuses to agree and thereafter permit
260 reasonable destructive testing, the claimant has ~~shall have~~ no
261 claim for damages which could have been avoided or mitigated had
262 destructive testing been allowed when requested and had a
263 feasible remedy been promptly implemented.

264 (3) Within 10 days after service of the notice of claim,
265 or within 30 days after service of the notice of claim involving
266 an association representing more than 20 parcels, the person
267 served with notice under subsection (1) must ~~may~~ serve a copy of
268 the notice of claim to each contractor, subcontractor, supplier,
269 or design professional whom it reasonably believes is
270 responsible for each defect specified in the notice of claim and
271 shall note the specific defect for which it believes the
272 particular contractor, subcontractor, supplier, or design
273 professional is responsible. The notice described in this
274 subsection may not be construed as an admission of any kind.

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275 Each such contractor, subcontractor, supplier, and design
276 professional may inspect the property as provided in subsection
277 (2).

278 (4) Within 15 days after service of a copy of the notice
279 of claim pursuant to subsection (3), or within 30 days after
280 service of the copy of the notice of claim involving an
281 association representing more than 20 parcels, the contractor,
282 subcontractor, supplier, or design professional must serve a
283 written response to the person who served a copy of the notice
284 of claim. The written response must include a report, if any, of
285 the scope of any inspection of the property and the findings and
286 results of the inspection. The written response must include one
287 or more of the offers or statements specified in paragraphs
288 (5) (a)-(e), as chosen by the responding contractor,
289 subcontractor, supplier, or design professional, with all of the
290 information required for that offer or statement.

291 (15) Upon request, the claimant and any person served with
292 notice pursuant to subsection (1) shall exchange, within 30 days
293 after service of a written request, which request must cite this
294 subsection and include an offer to pay the reasonable costs of
295 reproduction, any design plans, specifications, and as-built
296 plans; videos and additional photographs ~~and videos~~ of the
297 alleged construction defect identified in the notice of claim;
298 expert reports not already provided that describe any defect
299 upon which the claim is made; subcontracts; purchase orders for

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300 the work that is claimed defective or any part of such
301 materials; and maintenance records and other documents related
302 to the discovery, investigation, causation, and extent of the
303 alleged defect identified in the notice of claim and any
304 resulting damages. A party may assert any claim of privilege
305 recognized under the laws of this state with respect to any of
306 the disclosure obligations specified in this chapter. In the
307 event of subsequent litigation, any party who failed to provide
308 the requested materials is ~~shall be~~ subject to such sanctions as
309 the court may impose for a discovery violation. Expert reports
310 exchanged between the parties may not be used in any subsequent
311 litigation for any purpose, unless the expert, or a person
312 affiliated with the expert, testifies as a witness or the report
313 is used or relied upon by an expert who testifies on behalf of
314 the party for whom the report was prepared.

315 Section 3. Section 558.0045, Florida Statutes, is created
316 to read:

317 558.0045 Construction defect litigation; special
318 requirements.-

319 (1) This section applies to all actions involving
320 construction defects, including civil suits and arbitrations.

321 (2) If a claimant proceeds to trial in an action, the jury
322 verdict and final judgment must include a detailed description
323 of the nature of the defect and the monetary amount awarded

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324 against each liable party separately, including the monetary
325 amount of the award attributable to:

326 (a) Repairing or replacing the defective work.

327 (b) Repairing or replacing non-defective property damaged
328 by the defective work.

329 (c) Other recoverable damages authorized by law being
330 awarded against the party.

331 (3) Any defense, with or without a reservation of rights,
332 an insurance carrier provides to a party asserting additional
333 insured status or indemnitee status in a proceeding under this
334 chapter, and in any subsequent civil proceeding, shall only be
335 as to the scope of work of the named insured. Such defense shall
336 not extend to the additional insured or indemnitee regarding the
337 work of other construction parties or trades.

338 Section 4. Section 558.006, Florida Statutes, is created
339 to read:

340 558.006 Construction defect disclosure statement.— The
341 seller of real property must disclose to the buyer, before
342 closing, in a written disclosure statement set forth in the
343 contract or a separate writing:

344 (1) Whether the seller or an association acting on the
345 seller's behalf made a claim under this chapter alleging a
346 construction defect relating to the real property subject to the
347 sale contract.

348 (2) The specific nature of the defect alleged.

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349 (3) The claim's outcome. Nothing in this subsection
350 requires the seller to disclose the amount of any monetary
351 settlement reached or judgment awarded.

352 (4) Whether the defect was repaired and a description of
353 any repairs made.

354 Section 5. Section 558.007, Florida Statutes, is created
355 to read:

356 558.007 Notice to Mortgagee or Assignee.—

357 (1) If a notice of claim alleging a construction defect
358 under this chapter results in a monetary settlement or judgment
359 in favor of the claimant, and a mortgagee or assignee has a
360 security interest in the real property subject to the claim, the
361 claimant must, within 90 days of the claim's resolution, notify
362 the mortgagee or assignee, in writing, of:

363 (a) The specific nature of the defect.

364 (b) The claim's outcome, including the amount of any
365 monetary settlement reached or judgment awarded.

366 (c) Whether the defect was repaired and a description of
367 any repairs made, or, if repairs have not yet begun, the
368 anticipated repair start date.

369 (2) If repairs relating to the defect are completed after
370 the claimant sends the mortgagee or assignee notice required by
371 subsection (1), the claimant must supplement the notice within
372 30 days of repair completion.

373 Section 6. This act shall take effect July 1, 2020.

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T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to construction defects; amending s. 475.278;
requiring specified real estate licensees to disclose a
construction defect claim relating to residential real property
and its outcome under specified circumstances; amending s.
558.004, F.S.; providing notice of claim requirements; providing
that a person who willfully includes a false statement in a
notice of claim commits perjury; entitling a person served with
a copy of the notice of claim to a reasonable inspection of the
property subject to the claim; requiring a person served with a
notice of claim to reasonably coordinate the time and manner of
all inspections with the claimant and any person served with a
notice copy to minimize the number of inspections; extending the
time frame for sending a written response after service of a
copy of the notice of claim; requiring a person served with a
notice of claim to serve a copy of the notice on each
contractor, subcontractor, supplier, or design professional whom
it reasonably believes is responsible for each defect specified
in the notice; making technical changes; creating s. 558.0045;
providing jury verdict and final judgment requirements;
providing that an insurer's defense applies only to the named
insured; creating s. 558.006; requiring written disclosure of a
construction defect claim and its outcome to a real property

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 295 (2020)

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399 | buyer under specified circumstances; creating s. 558.007;
400 | requiring a claimant to notify his or her mortgage lender of a
401 | construction defect settlement or judgment relating to the
402 | mortgaged property under specified circumstances; providing an
403 | effective date.