

By Senator Baxley

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1 A bill to be entitled
2 An act relating to construction defects; amending s.
3 553.84, F.S.; defining the term "material violation";
4 revising when a person has a cause of action for a
5 violation relating to the Florida Building Code;
6 providing requirements for such cause of action;
7 amending s. 558.004, F.S.; revising requirements
8 relating to notices of claim; requiring a claimant to
9 allow persons served with a notice of claim to inspect
10 certain records; providing that the claimant, under
11 certain circumstances, does not have a claim for
12 damages that could have been avoided or mitigated;
13 reenacting s. 558.002(5), F.S., relating to
14 definitions for ch. 558, F.S.; providing an effective
15 date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Section 553.84, Florida Statutes, is amended to
20 read:

21 553.84 Statutory civil action.—

22 (1) For purposes of this section, the term "material
23 violation" means a violation that exists within a completed
24 building, structure, or facility which may reasonably result, or
25 has resulted, in physical harm to a person or significant damage
26 to the performance of a building or its systems.

27 (2) Notwithstanding any other remedies available, any
28 person or party, in an individual capacity or on behalf of a
29 class of persons or parties, damaged as a result of a material

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30 violation of this part or the Florida Building Code, has a cause
31 of action in any court of competent jurisdiction against the
32 person or party who committed the violation; however, if the
33 person or party obtains the required building permits and any
34 local government or public agency with authority to enforce the
35 Florida Building Code approves the plans, and if the
36 construction project passes all required inspections under the
37 Florida Building Code, ~~and if there is no personal injury or~~
38 ~~damage to property other than the property that is the subject~~
39 ~~of the permits, plans, and inspections~~, this section does not
40 apply.

41 (3) A cause of action pled under this section must cite to
42 the specific provisions of this part or the Florida Building
43 Code allegedly violated, must explain how each provision was
44 allegedly violated, and is subject to dismissal for failing to
45 do so unless the person or party knew or should have known that
46 the violation existed.

47 Section 2. Paragraph (b) of subsection (1) and subsections
48 (2) and (7) of section 558.004, Florida Statutes, are amended to
49 read:

50 558.004 Notice and opportunity to repair.-

51 (1)

52 (b) The notice of claim must be made under oath by the
53 claimant and must describe in specific reasonable detail the
54 nature of each alleged construction defect, the name and contact
55 information of any consultants retained by the claimant or on
56 the claimant's behalf to inspect the defect, and, if known, the
57 damage or loss resulting from the defect, including the alleged
58 cost of repairing the defect and any other damages alleged to

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59 have been suffered as a result of the defect. The notice of
60 claim must specifically identify, as applicable, the allegedly
61 defective materials, products, or components and the applicable
62 code provisions, professional standards of care for design, or
63 accepted trade standards for the construction or remodeling
64 allegedly violated and must explain how each cited code
65 provision or standard was violated. Based upon at least a visual
66 inspection by the claimant or its agents, the notice of claim
67 must identify the specific location of each alleged construction
68 defect sufficiently to enable the responding parties to locate
69 the alleged defect without undue burden. If requested, the
70 claimant must allow the person served with the notice of claim
71 under this subsection the opportunity to inspect all maintenance
72 records for the subject property. The claimant has no obligation
73 to perform destructive or other testing for purposes of this
74 notice.

75 (2) Within 30 days after service of the notice of claim, or
76 within 50 days after service of the notice of claim involving an
77 association representing more than 20 parcels, the person served
78 with the notice of claim under subsection (1) is entitled to
79 perform a reasonable inspection of the property or of each unit
80 subject to the claim to assess each alleged construction defect.
81 An association's right to access property for either maintenance
82 or repair includes the authority to grant access for the
83 inspection. The claimant shall provide the person served with
84 notice under subsection (1) and such person's contractors or
85 agents reasonable access to the property during normal working
86 hours to inspect the property to determine the nature and cause
87 of each alleged construction defect and the nature and extent of

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88 any repairs or replacements necessary to remedy each defect. The
89 person served with notice under subsection (1) shall reasonably
90 coordinate the timing and manner of any and all inspections with
91 the claimant to minimize the number of inspections. If the
92 claimant fails to grant the person served with the notice under
93 subsection (1) the opportunity to conduct a reasonable
94 inspection of the property with the alleged defect during the
95 timeframe established in this section, the claimant does not
96 have a claim for damages that could have been avoided or
97 mitigated had an inspection taken place. The inspection may
98 include destructive testing by mutual agreement under the
99 following reasonable terms and conditions:

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

104 (b) The notice shall describe the destructive testing to be
105 performed, the person selected to do the testing, the estimated
106 anticipated damage and repairs to or restoration of the property
107 resulting from the testing, the estimated amount of time
108 necessary for the testing and to complete the repairs or
109 restoration, and the financial responsibility offered for
110 covering the costs of repairs or restoration.

111 (c) If the claimant promptly objects to the person selected
112 to perform the destructive testing, the person served with
113 notice under subsection (1) shall provide the claimant with a
114 list of three qualified persons from which the claimant may
115 select one such person to perform the testing. The person
116 selected to perform the testing shall operate as an agent or

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117 subcontractor of the person served with notice under subsection
118 (1) and shall communicate with, submit any reports to, and be
119 solely responsible to the person served with notice.

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

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

123 (f) The destructive testing shall not render the property
124 uninhabitable.

125 (g) There shall be no construction lien rights under part I
126 of chapter 713 for the destructive testing caused by a person
127 served with notice under subsection (1) or for restoring the
128 area destructively tested to the condition existing prior to
129 testing, except to the extent the owner contracts for the
130 destructive testing or restoration.

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132 If the claimant refuses to agree and thereafter permit
133 reasonable destructive testing, the claimant shall have no claim
134 for damages which could have been avoided or mitigated had
135 destructive testing been allowed when requested and had a
136 feasible remedy been promptly implemented.

137 (7) A claimant who receives a timely settlement offer must
138 accept or reject the offer by serving written notice of such
139 acceptance or rejection, signed by the claimant, on the person
140 making the offer within 45 days after receiving the settlement
141 offer. If a claimant initiates an action without first accepting
142 or rejecting the offer, the court shall stay the action upon
143 timely motion until the claimant complies with this subsection.

144 Section 3. For the purpose of incorporating the amendment
145 made by this act to section 553.84, Florida Statutes, in a

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146 reference thereto, subsection (5) of section 558.002, Florida
147 Statutes, is reenacted to read:

148 558.002 Definitions.—As used in this chapter, the term:

149 (5) "Construction defect" means a deficiency in, or a
150 deficiency arising out of, the design, specifications,
151 surveying, planning, supervision, observation of construction,
152 or construction, repair, alteration, or remodeling of real
153 property resulting from:

154 (a) Defective material, products, or components used in the
155 construction or remodeling;

156 (b) A violation of the applicable codes in effect at the
157 time of construction or remodeling which gives rise to a cause
158 of action pursuant to s. 553.84;

159 (c) A failure of the design of real property to meet the
160 applicable professional standards of care at the time of
161 governmental approval; or

162 (d) A failure to construct or remodel real property in
163 accordance with accepted trade standards for good and
164 workmanlike construction at the time of construction.

165 Section 4. This act shall take effect July 1, 2020.