

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

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WITHDRAWN      (Y/N)  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

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1 Committee/Subcommittee hearing bill: Regulatory Reform  
2 Subcommittee

3 Representative Andrade offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7  
8 Section 1. Section 553.84, Florida Statutes, is amended to  
9 read:

10 553.84 Statutory civil action.—

11 (1) For purposes of this section, the term "material  
12 violation" means a violation that exists within a completed  
13 building, structure, or facility which may reasonably result, or  
14 has resulted, in personal injury to a person or significant  
15 damage to the performance of a building or its system.

16 (2) Notwithstanding any other remedies available, any

Amendment No. 1.

17 person or party, in an individual capacity or on behalf of a  
18 class of persons or parties, damaged as a result of a material  
19 violation of this part or the Florida Building Code, has a cause  
20 of action in any court of competent jurisdiction against the  
21 person or party who committed the violation.~~‡~~ However, if the  
22 person or party obtains the required building permits and any  
23 local government or public agency with authority to enforce the  
24 Florida Building Code approves the plans, if the construction  
25 project passes all required inspections under the code, and if  
26 there is no personal injury or damage to property other than the  
27 property that is the subject of the permits, plans, and  
28 inspections, this section does not apply unless the violation  
29 resulted in significant damage to the property that is the  
30 subject of the permits, plans, and inspections or may reasonably  
31 result in personal injury to a person or significant damage to  
32 the performance of a building or its system ~~the person or party~~  
33 ~~knew or should have known that the violation existed.~~

34 (3) If a defect is covered under an existing applicable  
35 warranty, a person or party may bring a cause of action under  
36 this section only after the person or party has submitted a  
37 written notice of claim for the alleged material violation under  
38 an existing applicable warranty and the warranty provider denies  
39 the claim or offers a remedy that is unsatisfactory to the  
40 person or party within the time limits provided in the warranty.

41 Section 2. Section 558.001, Florida Statutes, is amended

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Amendment No. 1.

42 to read:

43       558.001 Legislative findings and declaration.—The  
44 Legislature finds that it is beneficial to have a statutorily  
45 defined ~~an~~ alternative method to resolve construction disputes  
46 that would reduce the need for litigation as well as protect the  
47 rights of property owners. An effective alternative dispute  
48 resolution mechanism in certain construction defect matters  
49 should involve the claimant filing a notice of claim with the  
50 contractor, subcontractor, supplier, or design professional that  
51 the claimant asserts is responsible for the defect, and should  
52 provide the contractor, subcontractor, supplier, or design  
53 professional, and the insurer of the contractor, subcontractor,  
54 supplier, or design professional, with an opportunity to resolve  
55 the claim through confidential settlement negotiations without  
56 resort to further legal process. If an agreement to provide  
57 construction services does not incorporate the dispute  
58 resolution mechanism provided in this chapter, or if the parties  
59 do not voluntarily agree to participate in the dispute  
60 resolution process, the Legislature finds that the right of  
61 contracting parties to contemplate and provide for the method of  
62 dispute resolution they deem to be most beneficial to their own  
63 unique circumstances should not be burdened by the statutorily  
64 defined dispute resolution mechanism provided in this chapter.

65       Section 3. Section 558.003, Florida Statutes, is amended  
66 to read:

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

67 558.003 Action; applicability and compliance.-

68 (1) Unless a party has entered into an agreement which  
69 affirmatively incorporates the dispute resolution mechanism  
70 provided in this chapter, or a party has voluntarily agreed to  
71 participate in the dispute resolution mechanism provided in this  
72 chapter, the provisions of s. 558.004 and s. 558.005 do not  
73 apply to a cause of action brought by or against a party.

74 (2) A claimant may not file an action subject to this  
75 chapter without first complying with the requirements of this  
76 chapter. If a claimant files an action subject to this chapter  
77 alleging a construction defect without first complying with the  
78 requirements of this chapter, on timely motion by a party to the  
79 action the court shall stay the action, without prejudice, and  
80 the action may not proceed until the claimant has complied with  
81 such requirements. The notice requirement is not intended to  
82 interfere with an owner's ability to complete a project that has  
83 not been substantially completed. The notice is not required for  
84 a project that has not reached the stage of completion of the  
85 building or improvement.

86 Section 4. Subsections (6) through (15) of section  
87 558.004, Florida statutes, are renumbered (7) through (16),  
88 respectively, subsections (1) through (4) and new subsection  
89 (11) and (16) of that section are amended, subsection (6) is  
90 added, to read:

91 558.004 Notice and opportunity to repair.-

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

92 (1) (a) In actions brought alleging a construction defect,  
93 the claimant shall, at least 60 days before filing any action,  
94 or at least 120 days before filing an action involving an  
95 association representing more than 20 parcels, serve written  
96 notice of claim on the contractor, subcontractor, supplier, or  
97 design professional, as applicable, which notice shall refer to  
98 this chapter. If the construction defect claim arises from work  
99 performed under a contract, the ~~written~~ notice of claim must be  
100 served on the person with whom the claimant contracted. However,  
101 if a defect is covered under an existing applicable warranty,  
102 the notice of claim may be served only after the claimant  
103 properly submits a claim for the alleged construction defect  
104 under an existing applicable warranty and the warranty provider  
105 denies the claim or offers a remedy that is unsatisfactory to  
106 the claimant within the time limit provided in the warranty.

107 (b) The notice of claim must:

108 1. Describe in specific ~~reasonable~~ detail the nature of  
109 each alleged construction defect. ~~and~~

110 2. If the alleged construction defect or evidence thereof  
111 is visible, include at least one photograph of the alleged  
112 defect or evidence thereof, any repair estimates or expert  
113 reports obtained relating to the alleged defect, and a  
114 description of, ~~if known,~~ the damage or loss resulting from the  
115 alleged defect, if known.

116 3. Based upon at least a visual inspection by the claimant

Amendment No. 1.

117 or its agents, ~~the notice of claim must~~ identify the specific  
118 location of each alleged construction defect sufficiently to  
119 enable the responding parties to locate the alleged defect  
120 without undue burden. The claimant has no obligation to perform  
121 destructive or other testing for purposes of this notice.

122 4. Affirm that the claimant has personal knowledge of the  
123 alleged construction defect.

124 5. Acknowledge that the claimant is aware of the penalties  
125 for perjury imposed under chapter 837.

126 6. Be signed by the claimant and include the following  
127 statement directly above the claimant's signature line in 18-  
128 point uppercase and boldfaced type:

129  
130 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE  
131 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST  
132 OF MY KNOWLEDGE AND BELIEF.

133  
134 (c) A person who willfully includes a false statement in  
135 the notice of claim under this section commits perjury and, upon  
136 conviction, is subject to punishment as provided by law.

137 (d)-(e) The claimant shall endeavor to serve the notice of  
138 claim within 15 days after discovery of an alleged construction  
139 defect, but the failure to serve notice of claim within 15 days  
140 does not bar the filing of an action, subject to s. 558.003.

141 This subsection does not preclude a claimant from filing an

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

142 action sooner than 60 days, or 120 days as applicable, after  
143 service of written notice as expressly provided in subsection  
144 (7) ~~(6)~~, subsection (8) ~~(7)~~, or subsection (9) ~~(8)~~.

145 ~~(e)~~ ~~(d)~~ A notice of claim served under ~~pursuant to~~ this  
146 chapter shall not toll any statute of repose period under  
147 chapter 95.

148 (2) Within 30 days after service of the notice of claim,  
149 or within 50 days after service of the notice of claim involving  
150 an association representing more than 20 parcels, a the person  
151 served with the notice of claim under subsection (1), or a copy  
152 thereof under subsection (3), may is entitled to perform a  
153 reasonable inspection of the property or of each unit subject to  
154 the claim to assess each alleged construction defect. An  
155 association's right to access property for either maintenance or  
156 repair includes the authority to grant access for the  
157 inspection. The claimant shall provide the person served with  
158 notice under subsection (1), or a copy thereof under subsection  
159 (3), and such person's contractors or agents reasonable access  
160 to the property during normal working hours to inspect the  
161 property to determine the nature and cause of each alleged  
162 construction defect and the nature and extent of any repairs or  
163 replacements necessary to remedy each defect. The person served  
164 with notice under subsection (1), or a copy thereof under  
165 subsection (3), shall reasonably coordinate the timing and  
166 manner of any and all inspections with the claimant to minimize

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

167 the number of inspections. The inspection may include  
168 destructive testing by mutual agreement under the following  
169 reasonable terms and conditions:

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

174 (b) The notice describes ~~shall describe~~ the destructive  
175 testing to be performed, the person selected to do the testing,  
176 the estimated ~~anticipated~~ damage and repairs to or restoration  
177 of the property resulting from the testing, the estimated amount  
178 of time necessary for the testing and to complete the repairs or  
179 restoration, and the financial responsibility offered for  
180 covering the costs of repairs or restoration.

181 (c) If the claimant promptly objects to the person  
182 selected to perform the destructive testing, the person served  
183 with notice under subsection (1) must ~~shall~~ provide the claimant  
184 with a list of three qualified persons from which the claimant  
185 may select one such person to perform the testing. The person  
186 selected to perform the testing operates ~~shall operate~~ as an  
187 agent or subcontractor of the person served with notice under  
188 subsection (1) and shall communicate with, submit any reports  
189 to, and be solely responsible to the person served with notice.

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

271521 - h0021-strike.docx

Published On: 3/5/2021 6:37:54 PM



Amendment No. 1.

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

194 (f) The destructive testing may ~~shall~~ not render the  
195 property uninhabitable.

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

202  
203 If the claimant refuses to agree and thereafter permit  
204 reasonable destructive testing, the claimant has ~~shall have~~ no  
205 claim for damages which could have been avoided or mitigated had  
206 destructive testing been allowed when requested and had a  
207 feasible remedy been promptly implemented.

208 (3) Within 10 days after service of the notice of claim,  
209 or within 30 days after service of the notice of claim involving  
210 an association representing more than 20 parcels, the person  
211 served with notice under subsection (1) must ~~may~~ serve a copy of  
212 the notice of claim to each contractor, subcontractor, supplier,  
213 or design professional whom it reasonably believes is  
214 responsible for each defect specified in the notice of claim and  
215 shall note the specific defect for which it believes the  
216 particular contractor, subcontractor, supplier, or design

271521 - h0021-strike.docx

Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

217 professional is responsible. The notice described in this  
218 subsection may not be construed as an admission of any kind.  
219 Each such contractor, subcontractor, supplier, and design  
220 professional may inspect the property as provided in subsection  
221 (2).

222 (4) Within 15 days after service of a copy of the notice  
223 of claim under ~~pursuant to~~ subsection (3), or within 30 days  
224 after service of the copy of the notice of claim involving an  
225 association representing more than 20 parcels, the contractor,  
226 subcontractor, supplier, or design professional must serve a  
227 written response to the person who served a copy of the notice  
228 of claim. The written response must include a report, if any, of  
229 the scope of any inspection of the property and the findings and  
230 results of the inspection. The written response must include one  
231 or more of the offers or statements specified in paragraphs  
232 (5) (a)-(e), as chosen by the responding contractor,  
233 subcontractor, supplier, or design professional, with all of the  
234 information required for that offer or statement.

235 (6) A claimant may not file an action subject to this  
236 chapter if the person served with the notice under subsection  
237 (1) offers to remedy the alleged construction defect at no cost  
238 to the claimant, and completes the repairs within 90 days of the  
239 claimant accepting the offer.

240 (a) The claimant may require the person served with the  
241 notice to have an independent qualified third party make the

Amendment No. 1.

242 repairs. The claimant may not deny access to the property to an  
243 independent qualified third party hired by the person served  
244 with the notice.

245 (b) A claimant is not barred from filing an action subject  
246 to this chapter or to accept another offer to repair, if the  
247 claimant determines the repairs are unsatisfactory.

248 (c) If a claimant accepts an offer to repair, it tolls the  
249 applicable statute of limitations relating to any person covered  
250 by this chapter, and any bond surety, until 90 days after the  
251 claimant accepts the offer.

252 (11)-(10) A claimant's service of a notice of claim for the  
253 alleged construction defect under an existing applicable  
254 warranty or the written notice of claim under subsection (1)  
255 tolls the applicable statute of limitations relating to any  
256 person covered by this chapter and any bond surety until the  
257 later of:

258 (a) Ninety days, or 120 days, as applicable, after service  
259 of a notice of claim for the alleged construction defect under  
260 an existing applicable warranty or the written the notice of  
261 claim pursuant to subsection (1); or

262 (b) Thirty days after the end of the repair period or  
263 payment period stated in the offer, if the claimant has accepted  
264 the offer. By stipulation of the parties, the period may be  
265 extended and the statute of limitations is tolled during the  
266 extension.

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

267        ~~(16)~~~~(15)~~ Upon request, the claimant and any person served  
268 with notice under ~~pursuant to~~ subsection (1) shall exchange,  
269 within 30 days after service of a written request that cites  
270 this subsection and includes, ~~which request must cite this~~  
271 ~~subsection and include~~ an offer to pay the reasonable costs of  
272 reproduction, any design plans, specifications, and as-built  
273 plans; videos and additional photographs ~~and videos~~ of the  
274 alleged construction defect identified in the notice of claim;  
275 expert reports not already provided which ~~that~~ describe any  
276 defect upon which the claim is made; subcontracts; purchase  
277 orders for the work that is claimed defective or any part of  
278 such materials; and maintenance records and other documents  
279 related to the discovery, investigation, causation, and extent  
280 of the alleged defect identified in the notice of claim and any  
281 resulting damages. A party may assert any claim of privilege  
282 recognized under the laws of the ~~this~~ state with respect to any  
283 of the disclosure obligations specified in this chapter. In the  
284 event of subsequent litigation, any party who fails ~~failed~~ to  
285 provide the requested materials is ~~shall be~~ subject to such  
286 sanctions as the court may impose for a discovery violation.  
287 Expert reports exchanged between the parties may not be used in  
288 any subsequent litigation for any purpose, unless the expert, or  
289 a person affiliated with the expert, testifies as a witness or  
290 the report is used or relied upon by an expert who testifies on  
291 behalf of the party for whom the report was prepared.

271521 - h0021-strike.docx

Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

292 Section 5. Subsections (1), (5), and (6) of section  
293 558.005, Florida Statutes, are amended to read:

294 558.005 Contract provisions; application.-

295 (1) Unless a claimant and a potential defendant have  
296 agreed in writing to opt in to ~~out of~~ the requirements of this  
297 section, the dispute resolution mechanism provided in provisions  
298 ~~of~~ this chapter shall not apply to any claim for legal relief  
299 for which the agreement to make the improvement was made after  
300 October 1, 2021 ~~2009~~, and for which the basis of the claim is a  
301 construction defect that has arisen after completion of a  
302 building or improvement.

303 (5) Notwithstanding the notice requirements of this  
304 section for contracts entered into on or after October 1, 2021  
305 ~~2006~~, this chapter applies to all actions accruing before  
306 October ~~July~~ 1, 2021 ~~2004~~, but not yet commenced as of October  
307 ~~July~~ 1, 2021 ~~2004~~, and failure to include such notice  
308 requirements in a contract entered into before October ~~July~~ 1,  
309 2021 ~~2004~~, does not operate to bar the procedures of this  
310 chapter from applying to all such actions.

311 (6) Notwithstanding s. 558.003, ~~unless the parties agree~~  
312 ~~that this chapter does not apply,~~ after October 1, 2021 ~~2009~~,  
313 for the dispute resolution mechanism provided this chapter to  
314 apply, any written contract for improvement of real property  
315 entered into between an owner and a contractor, or between an  
316 owner and a design professional, must contain substantially the

271521 - h0021-strike.docx

Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

317 following notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARISING  
318 FROM THIS CONTRACT ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS  
319 OF CHAPTER 558, FLORIDA STATUTES." The failure to include in the  
320 contract the notice provided in this subsection does not  
321 prohibit ~~subject~~ the contracting owner, contractor, or design  
322 professional from opting in to the dispute resolution mechanism  
323 provided in this chapter ~~to any penalty~~. The purpose of the  
324 contractual notice is to promote awareness of the desire of the  
325 parties to utilize the dispute resolution mechanism provided in  
326 this chapter ~~procedure~~, not to be a penalty.

327 Section 6. Section 558.006, Florida Statutes, is created  
328 to read:

329 558.006 Notice to mortgagee or assignee.-

330 (1) If a notice of claim alleging a construction defect  
331 under this chapter is made with respect to real property to  
332 which a mortgagee or an assignee has a security interest in the  
333 real property, the claimant must, within 30 days after service  
334 of the notice of the claim on the contractor, subcontractor,  
335 supplier, or design professional, serve the mortgagee or  
336 assignee with a copy of the notice of claim, via certified mail  
337 return receipt requested.

338 (2) If repairs relating to the defect are completed after  
339 the claimant notifies the mortgagee or assignee as required  
340 under subsection (1), or if any settlement, partial settlement,  
341 arbitration award, or judgment is obtained by the claimant, the

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

342 claimant must provide an additional notice to the mortgagee or  
343 assignee within 60 days after the completion of the repairs, or  
344 any settlement, partial settlement, arbitration award, or  
345 judgement, whichever is later, via certified mail return receipt  
346 requested.

347 Section 7. This act shall take effect July 1, 2021.

348

349

350

351

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**T I T L E   A M E N D M E N T**

352

Remove everything before the enacting clause and insert:

353

An act relating to construction defects; amending s.

354

553.84, F.S.; defining the term "material violation";

355

revising cause of action requirements for statutory

356

civil actions relating to certain violations;

357

providing requirements for bringing a cause of action;

358

amending s. 558.001, F.S.; amending Legislative

359

findings and declaration; amending s. 558.003, F.S.;

360

requiring parties to agree to enter into certain

361

statutory dispute resolution; amending s. 558.004,

362

F.S.; requiring that a claimant submit a construction

363

defect claim to the warranty provider before serving a

364

notice of claim; providing applicability; revising

365

requirements for notices of claims; providing that a

366

person who willfully includes a false statement in a

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Published On: 3/5/2021 6:37:54 PM

Amendment No. 1.

367 notice of claim commits perjury; authorizing a person  
368 served with a copy of a notice of claim to perform a  
369 reasonable inspection of the property subject to the  
370 claim; requiring, instead of authorizing, a person  
371 served with a notice to serve a copy of the notice to  
372 specified persons under certain circumstances;  
373 prohibiting a person from filing an action in certain  
374 circumstances; tolling a statute of limitations in  
375 certain circumstances; amending s. 558.005, F.S.;  
376 requiring parties to agree to enter into certain  
377 statutory disputes; creating s. 558.006, F.S.;  
378 requiring a claimant to notify a mortgagee or an  
379 assignee within a specified timeframe after a filing a  
380 construction defect claim; providing notice  
381 requirements; requiring a claimant to update the  
382 notice within a specified timeframe under certain  
383 circumstances; providing an effective date.