



676720

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/15/2021	.	
	.	
	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

553.84 Statutory civil action.—

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



676720

12 to the performance of a building or its systems.

13 (2) Notwithstanding any other remedies available, any
14 person or party, in an individual capacity or on behalf of a
15 class of persons or parties, damaged as a result of a material
16 violation of this part or the Florida Building Code, has a cause
17 of action in any court of competent jurisdiction against the
18 person or party who committed the violation; however, if the
19 person or party obtains the required building permits and any
20 local government or public agency with authority to enforce the
21 Florida Building Code approves the plans, if the construction
22 project passes all required inspections under the code, and if
23 there is no personal injury or damage to property other than the
24 property that is the subject of the permits, plans, and
25 inspections, this section does not apply unless the person or
26 party knew or should have known that the violation existed.

27 (3) A person may not bring a cause of action under this
28 section unless the person has first properly submitted a claim
29 for the alleged construction defect under any applicable
30 warranty and the warranty provider has denied the claim or has
31 not offered a remedy satisfactory to the person within the time
32 limits provided in the warranty.

33 Section 2. Section 558.001, Florida Statutes, is amended to
34 read:

35 558.001 Legislative findings and declaration.—The
36 Legislature finds that it is beneficial to have a statutorily
37 defined ~~an~~ alternative method to resolve construction disputes
38 which is designed to ~~that would~~ reduce the need for litigation
39 as well as protect the rights of property owners. An effective
40 alternative dispute resolution mechanism in certain construction



676720

41 defect matters should involve the claimant filing a notice of
42 claim with the contractor, subcontractor, supplier, or design
43 professional that the claimant asserts is responsible for the
44 defect, and should provide the contractor, subcontractor,
45 supplier, or design professional, and the insurer of the
46 contractor, subcontractor, supplier, or design professional,
47 with an opportunity to resolve the claim through confidential
48 settlement negotiations without resort to further legal process.
49 If an agreement to provide construction services does not
50 incorporate the dispute resolution mechanism outlined in this
51 chapter, the Legislature finds that the right of the contracting
52 parties to contemplate and provide for the method of dispute
53 resolution they deem to be most beneficial to their own unique
54 circumstances should not be hindered by the statutorily defined
55 dispute resolution mechanism outlined in this chapter.

56 Section 3. Section 558.003, Florida Statutes, is amended to
57 read:

58 558.003 Action; applicability and compliance.—

59 (1) Unless a party has entered into an agreement that
60 affirmatively incorporates this chapter or a party has
61 voluntarily subjected themselves to the requirements of this
62 chapter, the requirements of this chapter are not applicable in
63 a cause of action.

64 (2) A claimant may not file an action subject to this
65 chapter without first complying with the requirements of this
66 chapter. If a claimant files an action alleging a construction
67 defect without first complying with the requirements of this
68 chapter, on timely motion by a party to the action the court
69 shall stay the action, without prejudice, and the action may not



676720

70 proceed until the claimant has complied with such requirements.
71 The notice requirement is not intended to interfere with an
72 owner's ability to complete a project that has not been
73 substantially completed. The notice is not required for a
74 project that has not reached the stage of completion of the
75 building or improvement.

76 Section 4. Subsections (1) through (4) and subsection (15)
77 of section 558.004, Florida Statutes, are amended to read:

78 558.004 Notice and opportunity to repair.—

79 (1) (a) In actions brought alleging a construction defect,
80 the claimant shall, at least 60 days before filing any action,
81 or at least 120 days before filing an action involving an
82 association representing more than 20 parcels, serve written
83 notice of claim on the contractor, subcontractor, supplier, or
84 design professional, as applicable, which notice shall refer to
85 this chapter. If the construction defect claim arises from work
86 performed under a contract, the written notice of claim must be
87 served on the person with whom the claimant contracted. However,
88 a notice of claim may not be served under this chapter unless
89 the claimant has first properly submitted a claim for the
90 alleged construction defect under any applicable warranty and
91 the warranty provider has denied the claim or has not offered a
92 remedy satisfactory to the claimant within the time limits
93 provided in the warranty. This chapter provides a notice process
94 for a construction defect claim that has been denied or not
95 otherwise satisfied under any applicable warranty.

96 (b) The notice of claim must:

97 1. Describe in specific ~~reasonable~~ detail the nature of
98 each alleged construction defect; ~~and~~



676720

99 2. If the alleged construction defect or evidence thereof
100 is visible, include at least one photograph of the alleged
101 defect or evidence thereof, any repair estimates or expert
102 reports obtained relating to the alleged defect, and a
103 description of, ~~if known,~~ the damage or loss resulting from the
104 alleged defect, if known;-

105 3. Based upon at least a visual inspection by the claimant
106 or its agents, ~~the notice of claim must~~ identify the specific
107 location of each alleged construction defect sufficiently to
108 enable the responding parties to locate the alleged defect
109 without undue burden. The claimant has no obligation to perform
110 destructive or other testing for purposes of this notice;-

111 4. Affirm that the claimant has personal knowledge of the
112 alleged construction defect;

113 5. Acknowledge that the claimant is aware of the penalties
114 for perjury imposed under chapter 837; and

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

118
119 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
120 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST
121 OF MY KNOWLEDGE AND BELIEF.

122
123 (c) Any person who willfully includes a false statement in
124 the notice of claim required by this section commits perjury.

125 (d) ~~(e)~~ The claimant shall endeavor to serve the notice of
126 claim within 15 days after discovery of an alleged defect, but
127 the failure to serve notice of claim within 15 days does not bar



676720

128 the filing of an action, subject to s. 558.003. This subsection
129 does not preclude a claimant from filing an action sooner than
130 60 days, or 120 days as applicable, after service of written
131 notice as expressly provided in subsection (6), subsection (7),
132 or subsection (8).

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

135 (2) Within 30 days after service of the notice of claim, or
136 within 50 days after service of the notice of claim involving an
137 association representing more than 20 parcels, any ~~the~~ person
138 served with the notice of claim under subsection (1), or a copy
139 thereof under subsection (3), may is entitled to perform a
140 reasonable inspection of the property or of each unit subject to
141 the claim to assess each alleged construction defect. An
142 association's right to access property for either maintenance or
143 repair includes the authority to grant access for the
144 inspection. The claimant shall provide the person served with
145 notice under subsection (1), or a copy thereof under subsection
146 (3), and such person's contractors or agents reasonable access
147 to the property during normal working hours to inspect the
148 property to determine the nature and cause of each alleged
149 construction defect and the nature and extent of any repairs or
150 replacements necessary to remedy each defect. The person served
151 with notice under subsection (1), or a copy thereof under
152 subsection (3), shall reasonably coordinate the timing and
153 manner of any and all inspections with the claimant to minimize
154 the number of inspections. The inspection may include
155 destructive testing by mutual agreement under the following
156 reasonable terms and conditions:



676720

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

161 (b) The notice must ~~shall~~ describe the destructive testing
162 to be performed, the person selected to do the testing, the
163 estimated anticipated damage and repairs to or restoration of
164 the property resulting from the testing, the estimated amount of
165 time necessary for the testing and to complete the repairs or
166 restoration, and the financial responsibility offered for
167 covering the costs of repairs or restoration.

168 (c) If the claimant promptly objects to the person selected
169 to perform the destructive testing, the person served with
170 notice under subsection (1) must ~~shall~~ provide the claimant with
171 a list of three qualified persons from which the claimant may
172 select one such person to perform the testing. The person
173 selected to perform the testing shall operate as an agent or
174 subcontractor of the person served with notice under subsection
175 (1) and shall communicate with, submit any reports to, and be
176 solely responsible to the person served with notice.

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

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

181 (f) The destructive testing may ~~shall~~ not render the
182 property uninhabitable.

183 (g) There are ~~shall be~~ no construction lien rights under
184 part I of chapter 713 for the destructive testing caused by a
185 person served with notice under subsection (1) or for restoring



186 the area destructively tested to the condition existing before
187 ~~prior to~~ testing, except to the extent the owner contracts for
188 the destructive testing or restoration.

189
190 If the claimant refuses to agree and thereafter permit
191 reasonable destructive testing, the claimant has ~~shall have~~ no
192 claim for damages which could have been avoided or mitigated had
193 destructive testing been allowed when requested and had a
194 feasible remedy been promptly implemented.

195 (3) Within 10 days after service of the notice of claim, or
196 within 30 days after service of the notice of claim involving an
197 association representing more than 20 parcels, the person served
198 with notice under subsection (1) shall ~~may~~ serve a copy of the
199 notice of claim to each contractor, subcontractor, supplier, or
200 design professional whom it reasonably believes is responsible
201 for each defect specified in the notice of claim and shall note
202 the specific defect for which it believes the particular
203 contractor, subcontractor, supplier, or design professional is
204 responsible. The notice described in this subsection may not be
205 construed as an admission of any kind. Each such contractor,
206 subcontractor, supplier, and design professional may inspect the
207 property as provided in subsection (2).

208 (4) Within 15 days after service of a copy of the notice of
209 claim under ~~pursuant to~~ subsection (3), or within 30 days after
210 service of the copy of the notice of claim involving an
211 association representing more than 20 parcels, the contractor,
212 subcontractor, supplier, or design professional must serve a
213 written response to the person who served a copy of the notice
214 of claim. The written response must include a report, if any, of



676720

215 the scope of any inspection of the property and the findings and
216 results of the inspection. The written response must include one
217 or more of the offers or statements specified in paragraphs
218 (5) (a)-(e), as chosen by the responding contractor,
219 subcontractor, supplier, or design professional, with all of the
220 information required for that offer or statement.

221 (15) Upon request, the claimant and any person served with
222 notice under ~~pursuant to~~ subsection (1) shall exchange, within
223 30 days after service of a written request, which request must
224 cite this subsection and include an offer to pay the reasonable
225 costs of reproduction, any design plans, specifications, and as-
226 built plans; videos and additional photographs ~~and videos~~ of the
227 alleged construction defect identified in the notice of claim;
228 expert reports not already provided which ~~that~~ describe any
229 defect upon which the claim is made; subcontracts; purchase
230 orders for the work that is claimed defective or any part of
231 such materials; and maintenance records and other documents
232 related to the discovery, investigation, causation, and extent
233 of the alleged defect identified in the notice of claim and any
234 resulting damages. A party may assert any claim of privilege
235 recognized under the laws of this state with respect to any of
236 the disclosure obligations specified in this chapter. In the
237 event of subsequent litigation, any party who fails ~~failed~~ to
238 provide the requested materials is ~~shall be~~ subject to such
239 sanctions as the court may impose for a discovery violation.
240 Expert reports exchanged between the parties may not be used in
241 any subsequent litigation for any purpose, unless the expert, or
242 a person affiliated with the expert, testifies as a witness or
243 the report is used or relied upon by an expert who testifies on



676720

244 behalf of the party for whom the report was prepared.

245 Section 5. Section 558.006, Florida Statutes, is created to
246 read:

247 558.006 Notice to mortgagee or assignee.—

248 (1) If a notice of claim alleging a construction defect
249 under this chapter is made with respect to real property with
250 regard to which a mortgagee or an assignee has a security
251 interest in the real property, the claimant must, within 10 days
252 after initiating the claim, notify the mortgagee or assignee and
253 any attorney for the mortgagee or assignee of all of the
254 following:

255 (a) The specific nature of each of the defects.

256 (b) The expected or estimated amount to repair the claimed
257 defects, itemized.

258 (c) Whether the defect has been repaired and a description
259 of any repairs made or required, and, if repairs have not yet
260 begun, the anticipated date on which the repairs will begin.

261
262 The notice required under this subsection must be in writing and
263 sent by certified mail with return receipt requested.

264 (2) If repairs relating to the defect are completed after
265 the claimant notifies the mortgagee or assignee as required
266 under subsection (1), or if any settlement, partial settlement,
267 arbitration award, or judgment is obtained by the claimant, the
268 claimant must provide an additional notice in accordance with
269 subsection (1) within 30 days after completion of the repairs or
270 obtaining any settlement, partial settlement, arbitration award,
271 or judgment.

272 Section 6. This act shall take effect July 1, 2021.



273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to construction defects; amending s.
553.84, F.S.; defining the term "material violation";
revising cause of action requirements for statutory
civil actions relating to certain violations;
requiring that a person submit a construction defect
claim to the warranty provider before bringing a cause
of action; amending s. 558.001, F.S.; revising
legislative findings; amending s. 558.003, F.S.;
providing applicability; amending s. 558.004, F.S.;
requiring that a claimant submit a construction defect
claim to the warranty provider before serving a notice
of claim; providing applicability; revising
requirements for notices of claims; providing that a
person who willfully includes a false statement in a
notice of claim commits perjury; authorizing a person
served with a copy of a notice of claim to perform a
reasonable inspection of the property subject to the
claim; providing inspection requirements for claimants
and persons served with a copy of a notice; requiring,
instead of authorizing, a person served with a notice
to serve a copy of the notice to specified persons
under certain circumstances; making technical changes;
creating s. 558.006, F.S.; requiring a claimant to



676720

302 provide specified notice relating to claims alleging
303 construction defects; requiring a claimant provide
304 additional notice within a specified timeframe under
305 certain circumstances; providing an effective date.