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LEGISLATIVE ACTION

Senate

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House

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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



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



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



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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~~



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



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:



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





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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



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.



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===== 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



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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.