

By Senator Perry

8-00205A-21

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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 cause of action requirements for statutory
5 civil actions relating to certain violations;
6 requiring that a person submit a construction defect
7 claim to the warranty provider before bringing a cause
8 of action; amending s. 558.004, F.S.; requiring that a
9 claimant submit a construction defect claim to the
10 warranty provider before serving a notice of claim;
11 providing applicability; revising requirements for
12 notices of claims; providing that a person who
13 willfully includes a false statement in a notice of
14 claim commits perjury; authorizing a person served
15 with a copy of a notice of claim to perform a
16 reasonable inspection of the property subject to the
17 claim; providing inspection requirements for claimants
18 and persons served with a copy of a notice; requiring,
19 instead of authorizing, a person served with a notice
20 to serve a copy of the notice to specified persons
21 under certain circumstances; making technical changes;
22 creating s. 558.006, F.S.; requiring a claimant to
23 notify a mortgagee or an assignee in writing within a
24 specified timeframe after a settlement or judgment of
25 a construction defect claim under certain
26 circumstances; requiring a claimant to update the
27 notice within a specified timeframe under certain
28 circumstances; providing an effective date.
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8-00205A-21

2021270__

30 Be It Enacted by the Legislature of the State of Florida:

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

34 553.84 Statutory civil action.—

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

40 (2) Notwithstanding any other remedies available, any
41 person or party, in an individual capacity or on behalf of a
42 class of persons or parties, damaged as a result of a material
43 violation of this part or the Florida Building Code, has a cause
44 of action in any court of competent jurisdiction against the
45 person or party who committed the violation; however, if the
46 person or party obtains the required building permits and any
47 local government or public agency with authority to enforce the
48 Florida Building Code approves the plans, if the construction
49 project passes all required inspections under the code, and if
50 there is no personal injury or damage to property other than the
51 property that is the subject of the permits, plans, and
52 inspections, this section does not apply unless the person or
53 party knew or should have known that the violation existed.

54 (3) A person may not bring a cause of action under this
55 section unless the person has first properly submitted a claim
56 for the alleged construction defect under any applicable
57 warranty and the warranty provider has denied the claim or has
58 not offered a remedy satisfactory to the person within the time

8-00205A-21

2021270__

59 limits provided in the warranty.

60 Section 2. Subsections (1) through (4) and subsection (15)
61 of section 558.004, Florida Statutes, are amended to read:

62 558.004 Notice and opportunity to repair.—

63 (1) (a) In actions brought alleging a construction defect,
64 the claimant shall, at least 60 days before filing any action,
65 or at least 120 days before filing an action involving an
66 association representing more than 20 parcels, serve written
67 notice of claim on the contractor, subcontractor, supplier, or
68 design professional, as applicable, which notice shall refer to
69 this chapter. If the construction defect claim arises from work
70 performed under a contract, the written notice of claim must be
71 served on the person with whom the claimant contracted. However,
72 a notice of claim may not be served under this chapter unless
73 the claimant has first properly submitted a claim for the
74 alleged construction defect under any applicable warranty and
75 the warranty provider has denied the claim or has not offered a
76 remedy satisfactory to the claimant within the time limits
77 provided in the warranty. This chapter provides a notice process
78 for a construction defect claim that has been denied or not
79 otherwise satisfied under any applicable warranty.

80 (b) The notice of claim must:

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

83 2. If the alleged construction defect or evidence thereof
84 is visible, include at least one photograph of the alleged
85 defect or evidence thereof, any repair estimates or expert
86 reports obtained relating to the alleged defect, and a
87 description of, ~~if known,~~ the damage or loss resulting from the

8-00205A-21

2021270__

88 alleged defect, if known;

89 3. Based upon at least a visual inspection by the claimant
90 or its agents, ~~the notice of claim must~~ identify the specific
91 location of each alleged construction defect sufficiently to
92 enable the responding parties to locate the alleged defect
93 without undue burden. The claimant has no obligation to perform
94 destructive or other testing for purposes of this notice;

95 4. Affirm that the claimant has personal knowledge of the
96 alleged construction defect;

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

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

102
103 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
104 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST
105 OF MY KNOWLEDGE AND BELIEF.

106
107 (c) Any person who willfully includes a false statement in
108 the notice of claim required by this section commits perjury.

109 (d)~~(e)~~ The claimant shall endeavor to serve the notice of
110 claim within 15 days after discovery of an alleged defect, but
111 the failure to serve notice of claim within 15 days does not bar
112 the filing of an action, subject to s. 558.003. This subsection
113 does not preclude a claimant from filing an action sooner than
114 60 days, or 120 days as applicable, after service of written
115 notice as expressly provided in subsection (6), subsection (7),
116 or subsection (8).

8-00205A-21

2021270__

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

119 (2) Within 30 days after service of the notice of claim, or
120 within 50 days after service of the notice of claim involving an
121 association representing more than 20 parcels, any ~~the~~ person
122 served with the notice of claim under subsection (1), or a copy
123 thereof under subsection (3), may is entitled to perform a
124 reasonable inspection of the property or of each unit subject to
125 the claim to assess each alleged construction defect. An
126 association's right to access property for either maintenance or
127 repair includes the authority to grant access for the
128 inspection. The claimant shall provide the person served with
129 notice under subsection (1), or a copy thereof under subsection
130 (3), and such person's contractors or agents reasonable access
131 to the property during normal working hours to inspect the
132 property to determine the nature and cause of each alleged
133 construction defect and the nature and extent of any repairs or
134 replacements necessary to remedy each defect. The person served
135 with notice under subsection (1), or a copy thereof under
136 subsection (3), shall reasonably coordinate the timing and
137 manner of any and all inspections with the claimant to minimize
138 the number of inspections. The inspection may include
139 destructive testing by mutual agreement under the following
140 reasonable terms and conditions:

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

145 (b) The notice must ~~shall~~ describe the destructive testing

8-00205A-21

2021270__

146 to be performed, the person selected to do the testing, the
147 estimated anticipated damage and repairs to or restoration of
148 the property resulting from the testing, the estimated amount of
149 time necessary for the testing and to complete the repairs or
150 restoration, and the financial responsibility offered for
151 covering the costs of repairs or restoration.

152 (c) If the claimant promptly objects to the person selected
153 to perform the destructive testing, the person served with
154 notice under subsection (1) must ~~shall~~ provide the claimant with
155 a list of three qualified persons from which the claimant may
156 select one such person to perform the testing. The person
157 selected to perform the testing shall operate as an agent or
158 subcontractor of the person served with notice under subsection
159 (1) and shall communicate with, submit any reports to, and be
160 solely responsible to the person served with notice.

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

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

165 (f) The destructive testing may ~~shall~~ not render the
166 property uninhabitable.

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

173
174 If the claimant refuses to agree and thereafter permit

8-00205A-21

2021270__

175 reasonable destructive testing, the claimant has ~~shall have~~ no
176 claim for damages which could have been avoided or mitigated had
177 destructive testing been allowed when requested and had a
178 feasible remedy been promptly implemented.

179 (3) Within 10 days after service of the notice of claim, or
180 within 30 days after service of the notice of claim involving an
181 association representing more than 20 parcels, the person served
182 with notice under subsection (1) shall ~~may~~ serve a copy of the
183 notice of claim to each contractor, subcontractor, supplier, or
184 design professional whom it reasonably believes is responsible
185 for each defect specified in the notice of claim and shall note
186 the specific defect for which it believes the particular
187 contractor, subcontractor, supplier, or design professional is
188 responsible. The notice described in this subsection may not be
189 construed as an admission of any kind. Each such contractor,
190 subcontractor, supplier, and design professional may inspect the
191 property as provided in subsection (2).

192 (4) Within 15 days after service of a copy of the notice of
193 claim under ~~pursuant to~~ subsection (3), or within 30 days after
194 service of the copy of the notice of claim involving an
195 association representing more than 20 parcels, the contractor,
196 subcontractor, supplier, or design professional must serve a
197 written response to the person who served a copy of the notice
198 of claim. The written response must include a report, if any, of
199 the scope of any inspection of the property and the findings and
200 results of the inspection. The written response must include one
201 or more of the offers or statements specified in paragraphs
202 (5) (a)-(e), as chosen by the responding contractor,
203 subcontractor, supplier, or design professional, with all of the

8-00205A-21

2021270__

204 information required for that offer or statement.

205 (15) Upon request, the claimant and any person served with
206 notice under ~~pursuant to~~ subsection (1) shall exchange, within
207 30 days after service of a written request, which request must
208 cite this subsection and include an offer to pay the reasonable
209 costs of reproduction, any design plans, specifications, and as-
210 built plans; videos and additional photographs ~~and videos~~ of the
211 alleged construction defect identified in the notice of claim;
212 expert reports not already provided which ~~that~~ describe any
213 defect upon which the claim is made; subcontracts; purchase
214 orders for the work that is claimed defective or any part of
215 such materials; and maintenance records and other documents
216 related to the discovery, investigation, causation, and extent
217 of the alleged defect identified in the notice of claim and any
218 resulting damages. A party may assert any claim of privilege
219 recognized under the laws of this state with respect to any of
220 the disclosure obligations specified in this chapter. In the
221 event of subsequent litigation, any party who fails ~~failed~~ to
222 provide the requested materials is ~~shall be~~ subject to such
223 sanctions as the court may impose for a discovery violation.
224 Expert reports exchanged between the parties may not be used in
225 any subsequent litigation for any purpose, unless the expert, or
226 a person affiliated with the expert, testifies as a witness or
227 the report is used or relied upon by an expert who testifies on
228 behalf of the party for whom the report was prepared.

229 Section 3. Section 558.006, Florida Statutes, is created to
230 read:

231 558.006 Notice to mortgagee or assignee.—

232 (1) If a notice of claim alleging a construction defect

8-00205A-21

2021270__

233 under this chapter results in a monetary settlement or judgment
234 in favor of the claimant, and a mortgagee or an assignee has a
235 security interest in the real property subject to the claim, the
236 claimant must, within 90 days after the resolution of the claim,
237 notify the mortgagee or assignee, in writing, of all of the
238 following:

239 (a) The specific nature of the defect.

240 (b) The outcome of the claim, including the amount of any
241 monetary settlement reached or judgment awarded.

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

245 (2) If repairs relating to the defect are completed after
246 the claimant notifies the mortgagee or assignee as required
247 under subsection (1), the claimant must update the notice within
248 30 days after completion of the repairs.

249 Section 4. This act shall take effect July 1, 2021.