

1 A bill to be entitled  
2 An act relating to construction defect claims;  
3 amending s. 558.004, F.S.; requiring a claimant to  
4 include the reasons for rejecting an offer in a notice  
5 rejecting a settlement offer to remedy a construction  
6 defect; authorizing the person served with a notice  
7 rejecting a settlement offer to make a supplemental  
8 offer within a specified timeframe; providing notice  
9 requirements for a claimant who rejects a supplemental  
10 offer; requiring the court to stay an action if a  
11 claimant initiates an action without first accepting  
12 or rejecting a supplemental offer; limiting  
13 entitlement to attorney fees if a claimant rejects  
14 certain settlement offers to fully repair an alleged  
15 construction defect; requiring a claimant who accepts  
16 a certain offer to enter into a contract to complete  
17 repairs to remedy an alleged construction defect;  
18 requiring the offeror or insurer to pay the contractor  
19 or contractors directly for the repairs; prohibiting  
20 an offeror or insurer from requiring a claimant to  
21 advance payment for repairs; requiring that the  
22 repairs be completed within a specified timeframe;  
23 creating s. 558.0045, F.S.; requiring a court to  
24 appoint an expert to examine certain alleged  
25 construction defects and to prepare an examination

26 report, under certain circumstances; requiring that  
27 the report contain specified information; requiring  
28 the parties to compensate the expert; prohibiting the  
29 expert from being employed to make repairs or from  
30 recommending contractors to make repairs; creating s.  
31 558.0046, F.S.; requiring a claimant to repair a  
32 construction defect if the claimant receives  
33 compensation for an alleged construction defect from  
34 specified persons; providing that a claimant is liable  
35 for damages resulting from failure to disclose a  
36 construction defect to a purchaser of a property;  
37 creating s. 558.006, F.S.; requiring a claimant to  
38 serve certain notices relating to construction defects  
39 on the mortgagee or assignee of the relevant real  
40 property within a specified timeframe under certain  
41 circumstances; providing applicability; providing an  
42 effective date.

43  
44 Be It Enacted by the Legislature of the State of Florida:

45  
46 Section 1. Subsections (8) through (15) of section  
47 558.004, Florida Statutes, are renumbered as subsections (9)  
48 through (16), respectively, paragraph (c) of subsection (1) and  
49 subsection (7) are amended, and a new subsection (8) is added to  
50 that section, to read:

51 558.004 Notice and opportunity to repair.-

52 (1)

53 (c) The claimant shall endeavor to serve the notice of  
54 claim within 15 days after discovery of an alleged defect, but  
55 the failure to serve notice of claim within 15 days does not bar  
56 the filing of an action, subject to s. 558.003. This subsection  
57 does not preclude a claimant from filing an action sooner than  
58 60 days, or 120 days as applicable, after service of written  
59 notice as expressly provided in subsection (6), subsection (7),  
60 or subsection (9) ~~(8)~~.

61 (7)(a) A claimant who receives a timely settlement offer  
62 must accept or reject the offer by serving written notice of  
63 such acceptance or rejection on the person making the offer  
64 within 45 days after receiving the settlement offer.

65 (b) If the claimant rejects the settlement offer, the  
66 claimant must include the reasons for rejecting the offer in the  
67 notice rejecting the offer. If the claimant believes that the  
68 settlement offer omitted reference to any portion of the claim  
69 or was unreasonable in any manner, the claimant must include in  
70 the notice the items that the claimant believes were omitted and  
71 state in detail all known reasons why the claimant believes the  
72 settlement offer is unreasonable.

73 (c) Within 15 days after receipt of the notice of  
74 rejection, the person served with the rejection may make a  
75 supplemental offer of repair or monetary payment, or both, to

76 the claimant.

77 (d) If the claimant rejects a supplemental offer to repair  
78 the construction defect or to settle the claim by monetary  
79 payment or a combination of both, the claimant must serve  
80 written notice of the claimant's rejection on the person making  
81 the supplemental offer. The notice must include all known  
82 reasons for the claimant's rejection of the supplemental  
83 settlement offer.

84 (e) If a claimant initiates an action without first  
85 accepting or rejecting the offer or supplemental offer, the  
86 court shall stay the action upon timely motion until the  
87 claimant complies with this subsection.

88 (8)(a) If the claimant rejects a timely settlement offer  
89 or supplemental offer provided to remedy the alleged  
90 construction defect at no cost to the claimant, in any action  
91 brought for that defect, the claimant may not recover attorney  
92 fees from the offeror on any basis unless the claimant proves by  
93 a preponderance of the evidence that, at the time of the offer,  
94 additional repairs beyond those offered were necessary to remedy  
95 the defect. This paragraph does not apply to any claim for  
96 attorney fees based on a contract between the claimant and the  
97 offeror.

98 (b) If a claimant accepts an offer made under paragraph  
99 (5)(b), paragraph (5)(c), or paragraph (5)(e) or a supplemental  
100 offer made under paragraph (7)(c), the claimant must, within 90

101 days after the acceptance, enter into a contract with one or  
102 more appropriately licensed contractors to complete the repairs  
103 necessary to remedy the alleged construction defect. The offeror  
104 or insurer shall pay directly to the contractor or contractors,  
105 from the accepted monetary payment, the amounts necessary to  
106 begin and to continue the repairs as the work is performed and  
107 expenses are incurred. The offeror or insurer may not require  
108 the claimant to advance payment for the repairs. The repairs  
109 must be completed within 12 months after the claimant enters  
110 into the contract for repairs, absent mutual agreement between  
111 the offeror or insurer and the claimant.

112 Section 2. Section 558.0045, Florida Statutes, is created  
113 to read:

114 558.0045 Appointment of an expert in construction defect  
115 actions; required report; compensation of expert.—

116 (1) In a civil action alleging a construction defect, the  
117 court shall appoint an engineer, a contractor, a building code  
118 inspector, or another expert having experience in the type of  
119 construction that is the basis of the claimant's claim to  
120 examine the alleged defect or, if repairs have been made, any  
121 evidence of the alleged defect. However, the court may not  
122 appoint an expert if all of the parties object or if the court  
123 finds that the costs of an expert outweigh any potential  
124 benefits to the resolution of the action. If an expert is  
125 appointed, the expert must coordinate and communicate with the

126 parties as directed by the court. Within 15 days after  
127 conducting the examination, or as otherwise determined by the  
128 court, the expert shall submit a written report to the court for  
129 its consideration and to the parties which contains the expert's  
130 findings. The report must do all of the following:

131 (a) Describe how the expert conducted the examination of  
132 the alleged defect.

133 (b) Identify persons present at the site of the  
134 improvement while the expert conducted the examination.

135 (c) Include photographs or other documentation of the  
136 alleged defect including any relevant test results.

137 (d) State whether the damages claimed by the claimant are  
138 more likely than not the result of a construction defect,  
139 another identified cause, or a construction defect and another  
140 identified cause.

141 (e) Address other matters related to the alleged defect as  
142 directed by the court.

143 (2) If the expert concludes that the damages are wholly or  
144 partially the result of a construction defect, the report must  
145 state the actions necessary to repair the defect and any repairs  
146 related to the defect, provide an estimate of the reasonable  
147 cost of repairs, and state the anticipated time needed for  
148 repairs under the current market conditions for construction  
149 services and materials.

150 (3) The parties shall compensate the expert, but the

151 prevailing party is entitled to reimbursement from the  
 152 nonprevailing party.

153 (4) An expert appointed by the court under this section  
 154 may not be employed to repair the alleged defect or recommend  
 155 contractors to repair the defect.

156 Section 3. Section 558.0046, Florida Statutes, is created  
 157 to read:

158 558.0046 Duty to repair construction defect.—If a claimant  
 159 receives compensation for an alleged construction defect from a  
 160 contractor, a subcontractor, a supplier, a design professional,  
 161 or an insurer, the claimant must repair the defect. A claimant  
 162 who receives compensation and fails to fully repair the defect  
 163 is liable to a purchaser of the property for any damages  
 164 resulting from the failure to disclose the defect.

165 Section 4. Section 558.006, Florida Statutes, is created  
 166 to read:

167 558.006 Notice to mortgagee or assignee.—

168 (1) If a notice of claim alleging a construction defect is  
 169 made with respect to real property to which a mortgagee or an  
 170 assignee has a security interest, the claimant must, within 30  
 171 days after service of the notice of claim on the contractor,  
 172 subcontractor, supplier, or design professional, provide the  
 173 mortgagee or assignee with a copy of the notice of claim by  
 174 certified mail, return receipt requested.

175 (2) If repairs relating to the defect are completed after

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176 the claimant notifies the mortgagee or assignee as required  
177 under subsection (1), or if any settlement, partial settlement,  
178 arbitration award, or judgment is obtained by the claimant, the  
179 claimant must provide an additional notice to the mortgagee or  
180 assignee within 60 days after completion of the repairs or any  
181 settlement, partial settlement, arbitration award, or judgment,  
182 whichever is later, by certified mail, return receipt requested.

183       Section 5. This act applies to compensation for  
184 construction defects received on or after July 1, 2022, and to  
185 civil actions and proceedings for a construction defect which  
186 are initiated on or after July 1, 2022.

187       Section 6. This act shall take effect July 1, 2022.