



337012

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2022	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 91 - 236

and insert:

(12) ACTIONS RELATING TO AN IMPROVEMENT TO REAL PROPERTY.-

(a) *Running of time to commence action.*-An action founded on the design, planning, or construction of an improvement to real property must be commenced within the timeframes set forth in this section or the action is time barred.

1. The time to commence the action runs from the date of actual possession by the owner, the date of the issuance of a



337012

12 certificate of occupancy, the date of abandonment of
13 construction if not completed, or the date of completion of the
14 contract or termination of the contract between the professional
15 engineer, registered architect, or licensed contractor and his
16 or her employer, whichever date is earliest. For the purposes of
17 this subparagraph, the term "completion of the contract" means
18 the later of the date of final performance of all the contracted
19 services or the date that final payment for such services
20 becomes due without regard to the date final payment is made.

21 2. Counterclaims, cross-claims, and third-party claims that
22 arise out of the conduct, transaction, or occurrence set out or
23 attempted to be set out in a pleading may be commenced up to 1
24 year after the pleading to which such claims relate is served,
25 even if such claims would otherwise be time barred.

26 3. If the action is based on construction that is performed
27 pursuant to a duly issued building permit and if a local
28 enforcement agency, state enforcement agency, or special
29 inspector, as those terms are defined in s. 553.71, has issued a
30 final certificate of occupancy or certificate of completion,
31 then as to the construction which is within the scope of such
32 building permit and certificate, the correction of defects to
33 completed work or repair of completed work, whether performed
34 under warranty or otherwise, does not extend the period of time
35 within which an action must be commenced.

36 (b) Limitations and repose periods.-

37 1. An action founded on the design, planning, or
38 construction of an improvement to real property may be commenced
39 within 4 years after the time to commence an action begins to
40 run.



337012

41 2. An action involving a latent defect may be commenced
42 within 4 years after the facts giving rise to the cause of
43 action are discovered or should have be discovered through the
44 exercise of due diligence. However, the action may not be
45 commenced more than 5 years after the time for commencing an
46 action begins to run for a one-family, two-family, or three-
47 family residence not exceeding two habitable stories above no
48 more than one uninhabitable story and accessory use structures
49 in connection therewith and 10 years for any other improvement.

50 Section 2. Subsection (2) of section 627.441, Florida
51 Statutes, is amended to read:

52 627.441 Commercial general liability policies; coverage to
53 contractors for completed operations.—

54 (2) A liability insurer must offer coverage at an
55 appropriate additional premium for liability arising out of
56 current or completed operations under an owner-controlled
57 insurance program for any period beyond the period for which the
58 program provides liability coverage, as specified in s.
59 255.0517(2) (b). The period of such coverage must be sufficient
60 to protect against liability arising out of an action brought
61 within the time limits provided in s. 95.11(12) ~~s. 95.11(3)(e)~~.

62 Section 3. Present subsections (8) through (15) of section
63 558.004, Florida Statutes, are redesignated as subsections (9)
64 through (16), respectively, a new subsection (8) is added to
65 that section, and paragraphs (b) and (c) of subsection (1) and
66 subsection (7) of that section are amended, to read:

67 558.004 Notice and opportunity to repair.—

68 (1)

69 (b)1. The notice of claim must include an inspection report



337012

70 that is verified pursuant to s. 92.525 by a contractor,
71 engineer, building code inspector, or other inspector who has a
72 state license and experience relevant to the type of
73 construction that is the basis of the claim. The report must
74 include all of the following:

75 a. A short statement describing the relevant experience and
76 licenses of the person conducting the inspection.

77 b. A description of each alleged construction defect, a
78 clear description of the location of the defect; pictures,
79 videos, and any results of testing which pertain to the defect;
80 and, if known, an explanation of the damage resulting from the
81 defect.

82 c. A description of how the inspection was conducted,
83 including a description of any specialized equipment used during
84 the inspection or of any tests conducted.

85 d. An explanation of whether or to what extent and how the
86 property owner or person acting at the direction of the property
87 owner inspected, maintained, repaired, or renovated a portion of
88 the structure containing the alleged defect since the owner took
89 possession of the structure.

90 2. The preparation of an inspection report in bad faith
91 constitutes grounds for discipline by any relevant licensing
92 board or agency.

93 3. The claimant and the person preparing the inspection
94 report do not have an describe in reasonable detail the nature
95 of each alleged construction defect and, if known, the damage or
96 loss resulting from the defect. Based upon at least a visual
97 inspection by the claimant or its agents, the notice of claim
98 must identify the location of each alleged construction defect



337012

99 ~~sufficiently to enable the responding parties to locate the~~
100 ~~alleged defect without undue burden. The claimant has no~~
101 obligation to perform destructive or other testing for purposes
102 of this notice.

103 (c) The claimant shall endeavor to serve the notice of
104 claim within 15 days after discovery of an alleged defect, but
105 the failure to serve notice of claim within 15 days does not bar
106 the filing of an action, subject to s. 558.003. This subsection
107 does not preclude a claimant from filing an action sooner than
108 60 days, or 120 days as applicable, after service of written
109 notice as expressly provided in subsection (6), subsection (7),
110 or subsection (9) ~~(8)~~.

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

115 (b) If the claimant rejects the settlement offer, the
116 claimant must include the reasons for rejecting the offer in the
117 notice rejecting the offer. If the claimant believes that the
118 settlement offer omitted reference to any portion of the claim
119 or was unreasonable in any manner, the claimant must include in
120 the notice the items that the claimant believes were omitted and
121 state in detail all known reasons why the claimant believes the
122 settlement offer is unreasonable.

123 (c) Upon receipt of a claimant's notice of rejection and
124 the reasons for such rejection, the person served with the
125 rejection, within 15 days after receipt of the notice, may make
126 a supplemental offer of repair or monetary payment, or both, to
127 the claimant.



337012

128 (d) If the claimant rejects a supplemental offer to repair
129 the construction defect or to settle the claim by monetary
130 payment or a combination of both, the claimant must serve
131 written notice of the claimant's rejection on the person making
132 the supplemental offer. The notice must include all known
133 reasons for the claimant's rejection of the supplemental
134 settlement offer.

135 (e) If a claimant initiates an action without first
136 accepting or rejecting the offer or supplemental offer, the
137 court shall stay the action upon timely motion until the
138 claimant complies with this subsection.

139 (8) (a) If the claimant rejects a timely settlement offer or
140 supplemental offer provided to remedy the alleged construction
141 defect at no cost to the claimant, in any action brought for
142 that defect, the claimant may not recover attorney fees from the
143 offeror on any basis unless the claimant proves by a
144 preponderance of the evidence that, at the time of the offer,
145 additional repairs beyond those offered were necessary to remedy
146 the defect. This paragraph does not apply to any claim for
147 attorney fees based on a contract between the claimant and the
148 offeror.

149 (b) If a claimant accepts an offer made pursuant to
150 paragraph (5) (b), paragraph (5) (c), or paragraph (5) (e) or a
151 supplemental offer made pursuant to paragraph (7) (c), the
152 claimant must, within 90 days after the acceptance, enter into a
153 contract with one or more appropriately licensed contractors to
154 complete the repairs necessary to remedy the alleged
155 construction defect. The offeror or insurer shall pay directly
156 to the contractor or contractors, from the accepted monetary



157 payment, the amounts necessary to begin and to continue the
158 repairs as the work is performed and expenses are incurred. The
159 offeror or insurer may not require the claimant to advance
160 payment for the repairs. The repairs must be completed within 12
161 months after the claimant enters into the contract for repairs,
162 absent mutual agreement between the offeror or insurer and the
163 claimant.

164 Section 4. Section 558.0045, Florida Statutes, is created
165 to read:

166 558.0045 Construction defect actions.-

167
168 ===== T I T L E A M E N D M E N T =====

169 And the title is amended as follows:

170 Delete lines 3 - 7

171 and insert:

172 amending s. 95.11, F.S.; revising the limitations
173 period for certain actions founded on the design,
174 planning, or construction of an improvement to real
175 property; amending s. 627.441, F.S.; conforming a
176 cross-reference; amending s. 558.004, F.S.; requiring
177 a notice of claim to include an inspection report that
178 is verified by the person conducting the inspection;
179 specifying the required contents of the report;
180 providing that a bad faith preparation of an
181 inspection report constitutes grounds for discipline;
182 specifying that the person preparing the inspection
183 report does not have an obligation to perform certain
184 testing; requiring