

By Senator Hutson

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1                   A bill to be entitled  
2           An act relating to construction defect claims;  
3           amending s. 95.11, F.S.; revising the limitations  
4           period for certain actions founded on the design,  
5           planning, or construction of an improvement on real  
6           property; amending s. 558.004, F.S.; requiring a  
7           claimant to include the reasons for rejecting an offer  
8           in a notice rejecting a settlement offer to remedy a  
9           construction defect; authorizing the person served  
10          with a notice rejecting a settlement offer to make a  
11          supplemental offer within a specified timeframe;  
12          providing notice requirements for a claimant who  
13          rejects a supplemental offer; requiring the court to  
14          stay an action if a claimant initiates an action  
15          without first accepting or rejecting a supplemental  
16          offer; limiting entitlement to attorney fees if a  
17          claimant rejects certain settlement offers to fully  
18          repair an alleged construction defect; requiring a  
19          claimant who accepts a certain offer to enter into a  
20          contract to complete repairs to remedy an alleged  
21          construction defect; requiring the offeror or insurer  
22          to pay the contractor or contractors directly for the  
23          repairs; prohibiting an offeror or insurer from  
24          requiring a claimant to advance payment for repairs;  
25          requiring that the repairs be completed within a  
26          specified timeframe; creating s. 558.0045, F.S.;  
27          requiring a court to appoint an expert to examine  
28          certain alleged construction defects and to prepare an  
29          examination report, under certain circumstances;

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

46  
47 Be It Enacted by the Legislature of the State of Florida:

48  
49 Section 1. Paragraph (c) of subsection (3) of section  
50 95.11, Florida Statutes, is amended to read:

51 95.11 Limitations other than for the recovery of real  
52 property.—Actions other than for recovery of real property shall  
53 be commenced as follows:

54 (3) WITHIN FOUR YEARS.—

55 (c) An action founded on the design, planning, or  
56 construction of an improvement to real property, with the time  
57 running from the date of actual possession by the owner, the  
58 date of the issuance of a certificate of occupancy, the date of

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59 abandonment of construction if not completed, or the date of  
60 completion of the contract or termination of the contract  
61 between the professional engineer, registered architect, or  
62 licensed contractor and his or her employer, whichever date is  
63 latest; ~~except that, when the action involves a latent defect,~~  
64 ~~the time runs from the time the defect is discovered or should~~  
65 ~~have been discovered with the exercise of due diligence. In any~~  
66 ~~event, the action must be commenced within 10 years after the~~  
67 ~~date of actual possession by the owner, the date of the issuance~~  
68 ~~of a certificate of occupancy, the date of abandonment of~~  
69 ~~construction if not completed, or the date of completion of the~~  
70 ~~contract or termination of the contract between the professional~~  
71 ~~engineer, registered architect, or licensed contractor and his~~  
72 ~~or her employer, whichever date is latest. However,~~  
73 counterclaims, cross-claims, and third-party claims that arise  
74 out of the conduct, transaction, or occurrence set out or  
75 attempted to be set out in a pleading may be commenced up to 1  
76 year after the pleading to which such claims relate is served,  
77 even if such claims would otherwise be time barred. With respect  
78 to actions founded on the design, planning, or construction of  
79 an improvement to real property, if such construction is  
80 performed pursuant to a duly issued building permit and if a  
81 local enforcement agency, state enforcement agency, or special  
82 inspector, as those terms are defined in s. 553.71, has issued a  
83 final certificate of occupancy or certificate of completion,  
84 then as to the construction which is within the scope of such  
85 building permit and certificate, the correction of defects to  
86 completed work or repair of completed work, whether performed  
87 under warranty or otherwise, does not extend the period of time

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88 within which an action must be commenced. Completion of the  
89 contract means the later of the date of final performance of all  
90 the contracted services or the date that final payment for such  
91 services becomes due without regard to the date final payment is  
92 made.

93 Section 2. Present subsections (8) through (15) of section  
94 558.004, Florida Statutes, are redesignated as subsections (9)  
95 through (16), respectively, a new subsection (8) is added to  
96 that section, and paragraph (c) of subsection (1) and subsection  
97 (7) of that section are amended, to read:

98 558.004 Notice and opportunity to repair.—

99 (1)

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

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

112 (b) If the claimant rejects the settlement offer, the  
113 claimant must include the reasons for rejecting the offer in the  
114 notice rejecting the offer. If the claimant believes that the  
115 settlement offer omitted reference to any portion of the claim  
116 or was unreasonable in any manner, the claimant must include in

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117 the notice the items that the claimant believes were omitted and  
118 state in detail all known reasons why the claimant believes the  
119 settlement offer is unreasonable.

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

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

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

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

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146 (b) If a claimant accepts an offer made pursuant to  
147 paragraph (5)(b), paragraph (5)(c), or paragraph (5)(e) or a  
148 supplemental offer made pursuant to paragraph (7)(c), the  
149 claimant must, within 90 days after the acceptance, enter into a  
150 contract with one or more appropriately licensed contractors to  
151 complete the repairs necessary to remedy the alleged  
152 construction defect. The offeror or insurer shall pay directly  
153 to the contractor or contractors, from the accepted monetary  
154 payment, the amounts necessary to begin and to continue the  
155 repairs as the work is performed and expenses are incurred. The  
156 offeror or insurer may not require the claimant to advance  
157 payment for the repairs. The repairs must be completed within 12  
158 months after the claimant enters into the contract for repairs,  
159 absent mutual agreement between the offeror or insurer and the  
160 claimant.

161 Section 3. Section 558.0045, Florida Statutes, is created  
162 to read:

163 558.0045 Construction defect actions; attorney fees and  
164 costs.-

165 (1) In a civil action alleging a construction defect, the  
166 court shall appoint an engineer, a contractor, a building code  
167 inspector, or another expert having experience in the type of  
168 construction that is the basis of the claimant's claim to  
169 examine the alleged defect or, if repairs have been made, any  
170 evidence of the alleged defect. However, the court may not  
171 appoint an expert if all of the parties object or if the court  
172 finds that the costs of an expert outweigh any potential  
173 benefits to the resolution of the action. If an expert is  
174 appointed, the expert must coordinate and communicate with the

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

180 (a) Describe how the expert conducted the examination of  
181 the alleged defect.

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

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

186 (d) State whether the damages claimed by the claimant are  
187 more likely than not the result of a construction defect,  
188 another identified cause, or a construction defect and another  
189 identified cause.

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

192 (2) If the expert concludes that the damages are wholly or  
193 partially the result of a construction defect, the report must  
194 state the actions necessary to repair the defect and any repairs  
195 related to the defect, provide an estimate of the reasonable  
196 cost of repairs, and state the anticipated time needed for  
197 repairs under the current market conditions for construction  
198 services and materials.

199 (3) The parties shall compensate the expert, but the  
200 prevailing party is entitled to reimbursement from the  
201 nonprevailing party.

202 (4) An expert appointed by the court under this section may  
203 not be employed to repair the alleged defect or recommend

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204 contractors to repair the defect.

205 Section 4. Section 558.0046, Florida Statutes, is created  
206 to read:

207 558.0046 Duty to repair construction defect.—If a claimant  
208 receives compensation for an alleged construction defect from a  
209 contractor, a subcontractor, a supplier, a design professional,  
210 or an insurer, the claimant must repair the defect. A claimant  
211 who receives compensation and fails to fully repair the defect  
212 is liable to a purchaser of the property for any damages  
213 resulting from the failure to disclose the defect.

214 Section 5. Section 558.006, Florida Statutes, is created to  
215 read:

216 558.006 Notice to mortgagee or assignee.—

217 (1) If a notice of claim alleging a construction defect is  
218 made with respect to real property to which a mortgagee or an  
219 assignee has a security interest, the claimant must, within 30  
220 days after service of the notice of claim on the contractor,  
221 subcontractor, supplier, or design professional, provide the  
222 mortgagee or assignee with a copy of the notice of claim, by  
223 certified mail, return receipt requested.

224 (2) If repairs relating to the defect are completed after  
225 the claimant notifies the mortgagee or assignee as required  
226 under subsection (1), or if any settlement, partial settlement,  
227 arbitration award, or judgment is obtained by the claimant, the  
228 claimant must provide an additional notice to the mortgagee or  
229 assignee within 60 days after completion of the repairs or any  
230 settlement, partial settlement, arbitration award, or judgment,  
231 whichever is later, by certified mail, return receipt requested.

232 Section 6. (1) The amendments by this act to s.

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233 95.11(3)(c), Florida Statutes, apply to any action commenced on  
234 or after July 1, 2022, regardless of when the cause of action  
235 accrued. However, any action that would not have been barred  
236 under s. 95.11(3)(c), Florida Statutes, before the amendments  
237 made by this act to that section may be commenced before July 1,  
238 2023. If such action is not commenced by July 1, 2023, and is  
239 barred by the amendments made by this act to s. 95.11(3)(c),  
240 Florida Statutes, the action is barred.

241 (2) Sections 2 through 5 of this act apply to compensation  
242 for construction defects received on or after July 1, 2022, and  
243 to civil actions and proceedings for a construction defect which  
244 are initiated on or after July 1, 2022.

245 Section 7. This act shall take effect July 1, 2022.