

1 A bill to be entitled

2 An act relating to construction defects; amending ss.  
3 558.001 and 558.002, F.S.; conforming provisions to  
4 changes made by the act; amending s. 558.003, F.S.;  
5 providing that deviations from the initial plans and  
6 specifications for construction projects are not  
7 considered construction defects; amending s. 558.004,  
8 F.S.; revising the list of parties to be served  
9 written notice; revising the list of parties to be  
10 served written notice; requiring such claimants to  
11 describe with specificity the location of the known  
12 damages from the alleged defective conditions;  
13 revising which parts of the property the parties  
14 served may inspect; revising the persons to whom the  
15 parties served may serve a notice of claim; requiring  
16 such claimants who accept an offer to repair an  
17 alleged construction defect to provide the offeror  
18 reasonable access to the claimant's property during a  
19 specified timeframe to perform the repair; providing  
20 that such claimants may proceed with an action against  
21 an offeror without further notice if the payment or  
22 repairs do not occur within the agreed-upon timetable;  
23 providing exceptions; prohibiting a claimant from  
24 proceeding with an action against an offeror if the  
25 offeror makes payment or completes the repairs within

26 | the agreed-upon timetable in the accepted settlement  
 27 | offer; providing that if such persons served by such  
 28 | claimants obtain the required building permits and  
 29 | certificate of occupancy, and the local government  
 30 | approves the plans, the construction project passes  
 31 | all required inspections under the Florida Building  
 32 | Code; providing applicability; reenacting and amending  
 33 | s. 558.005, F.S.; requiring claimants representing  
 34 | more than 20 parcels and any parties served with a  
 35 | notice of claim alleging a construction defect to  
 36 | agree to preaction mediation in writing; requiring  
 37 | such parties served to deposit sufficient funds in an  
 38 | escrow account to be managed by an escrow agent for a  
 39 | specified purpose; providing when funds may be  
 40 | distributed; requiring such parties to contract with a  
 41 | licensed engineer or construction management firm to  
 42 | certify the status of the completion of each agreed-  
 43 | upon defective condition and damage; providing that  
 44 | any remaining funds in the escrow account be released  
 45 | back to the payor; providing an effective date.

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

48 |  
 49 | **Section 1. Section 558.001, Florida Statutes, is amended**  
 50 | **to read:**

51           558.001 Legislative findings and declaration.—The  
52 Legislature finds that it is beneficial to have an alternative  
53 method to resolve construction disputes that would reduce the  
54 need for litigation as well as protect the rights of property  
55 owners. An effective alternative dispute resolution mechanism in  
56 certain construction defect matters should involve the claimant  
57 filing a notice of claim with the developer, contractor,  
58 subcontractor, supplier, or design professional that the  
59 claimant asserts is responsible for the defect, and should  
60 provide the developer, contractor, subcontractor, supplier, or  
61 design professional, and the insurer of the developer,  
62 contractor, subcontractor, supplier, or design professional,  
63 with an opportunity to resolve the claim through confidential  
64 settlement negotiations without resort to further legal process.

65           **Section 2. Subsection (3) of section 558.002, Florida**  
66 **Statutes, is amended to read:**

67           558.002 Definitions.—As used in this chapter, the term:  
68           (3) "Claimant" means a property owner, including a  
69 subsequent purchaser or association, who asserts a claim for  
70 damages against a developer, contractor, subcontractor,  
71 supplier, or design professional concerning a construction  
72 defect or a subsequent owner who asserts a claim for  
73 indemnification for such damages. The term does not include a  
74 developer, contractor, subcontractor, supplier, or design  
75 professional.

**Section 3. Section 558.003, Florida Statutes, is amended to read:**

558.003 Action; compliance.—A claimant may not file an action subject to this chapter without first complying with the requirements of this chapter. If a claimant files an action alleging a construction defect without first complying with the requirements of this chapter, on timely motion by a party to the action the court shall stay the action, without prejudice, and the action may not proceed until the claimant has complied with such requirements. The notice requirement is not intended to interfere with an owner's ability to complete a project that has not been substantially completed. The notice is not required for a project that has not reached the stage of completion of the building or improvement. A deviation from initial plans and specifications, including, but not limited to, the substitution of products or components, is not considered a construction defect as defined in s. 558.002.

**Section 4. Subsections (1) through (4) and subsection (8) of section 558.004, Florida Statutes, are amended, and subsection (16) is added to that section, to read:**

558.004 Notice and opportunity to repair.—

(1)(a) In actions brought alleging a construction defect, the claimant must ~~shall~~, at least 60 days before filing any action, or at least 120 days before filing an action involving an association representing more than 20 parcels, serve written

101 notice of claim on the developer, contractor, subcontractor,  
102 supplier, or design professional, as applicable, which notice  
103 must ~~shall~~ refer to this chapter. If the construction defect  
104 claim arises from work performed under a contract, the written  
105 notice of claim must be served on the person with whom the  
106 claimant contracted.

107 (b) The notice of claim must describe in reasonable detail  
108 the nature of each alleged construction defect and, if known,  
109 the damage or loss resulting from the defect. Based upon at  
110 least a visual inspection by the claimant or its agents, the  
111 notice of claim must identify the location of each alleged  
112 construction defect sufficiently to enable the responding  
113 parties to locate the alleged defect without undue burden. For  
114 associations representing more than 20 parcels, the notice of  
115 claim must describe with specificity the locations of and known  
116 damages from the alleged defective condition, including, but not  
117 limited to, those floors and units in the buildings where the  
118 defective condition and damages are located. The claimant has no  
119 obligation to perform destructive or other testing for purposes  
120 of this notice.

121 (c) The claimant must attempt ~~shall endeavor~~ to serve the  
122 notice of claim within 15 days after discovery of an alleged  
123 defect, but the failure to serve notice of claim within 15 days  
124 does not bar the filing of an action, subject to s. 558.003.  
125 This subsection does not preclude a claimant from filing an

126 | action sooner than 60 days, or 120 days as applicable, after  
127 | service of written notice as expressly provided in subsection  
128 | (6), subsection (7), or subsection (8).

129 |       (d) A notice of claim served pursuant to this chapter does  
130 | ~~shall~~ not toll any statute of repose period under chapter 95.

131 |       (2) Within 30 days after service of the notice of claim,  
132 | or within 50 days after service of the notice of claim involving  
133 | an association representing more than 20 parcels, the person  
134 | served with the notice of claim under subsection (1) is entitled  
135 | to perform a reasonable inspection of the property and common  
136 | elements, or of each unit subject to the claim to assess each  
137 | alleged construction defect. An association's right to access  
138 | property for either maintenance or repair includes the authority  
139 | to grant access for the inspection. The claimant shall provide  
140 | the person served with notice under subsection (1) and such  
141 | person's contractors or agents reasonable access to the property  
142 | during normal working hours to inspect the property to determine  
143 | the nature and cause of each alleged construction defect and the  
144 | nature and extent of any repairs, remediation, or replacements  
145 | necessary to remedy each defect. The person served with notice  
146 | under subsection (1) shall reasonably coordinate the timing and  
147 | manner of any and all inspections with the claimant to minimize  
148 | the number of inspections. The inspection may include  
149 | destructive testing by mutual agreement under the following  
150 | reasonable terms and conditions:

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

155 (b) The notice must ~~shall~~ describe the destructive testing  
156 to be performed, the person selected to do the testing, the  
157 estimated anticipated damage and repairs to or restoration of  
158 the property resulting from the testing, the estimated amount of  
159 time necessary for the testing and to complete the repairs or  
160 restoration, and the financial responsibility offered for  
161 covering the costs of repairs or restoration.

162 (c) If the claimant promptly objects to the person  
163 selected to perform the destructive testing, the person served  
164 with notice under subsection (1) must ~~shall~~ provide the claimant  
165 with a list of three qualified persons from which the claimant  
166 may select one such person to perform the testing. The person  
167 selected to perform the testing shall operate as an agent or  
168 subcontractor of the person served with notice under subsection  
169 (1) and shall communicate with, submit any reports to, and be  
170 solely responsible to the person served with notice.

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

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

175 (f) The destructive testing may ~~shall~~ not render the

176 property uninhabitable.

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

183

184 If the claimant refuses to agree and thereafter permit  
185 reasonable destructive testing, the claimant has ~~shall have~~ no  
186 claim for damages which could have been avoided or mitigated had  
187 destructive testing been allowed when requested and had a  
188 feasible remedy been promptly implemented.

189 (3) Within 10 days after service of the notice of claim,  
190 or within 30 days after service of the notice of claim involving  
191 an association representing more than 20 parcels, the person  
192 served with notice under subsection (1) may serve a copy of the  
193 notice of claim to each developer, contractor, subcontractor,  
194 supplier, or design professional whom it reasonably believes is  
195 responsible for each defect specified in the notice of claim and  
196 must ~~shall~~ note the specific defect for which it believes the  
197 particular developer, contractor, subcontractor, supplier, or  
198 design professional is responsible. The notice described in this  
199 subsection may not be construed as an admission of any kind.  
200 Each such developer, contractor, subcontractor, supplier, and



201 design professional may inspect the property as provided in  
202 subsection (2).

203 (4) Within 15 days after service of a copy of the notice  
204 of claim pursuant to subsection (3), or within 30 days after  
205 service of the copy of the notice of claim involving an  
206 association representing more than 20 parcels, the developer,  
207 contractor, subcontractor, supplier, or design professional must  
208 serve a written response to the person who served a copy of the  
209 notice of claim. The written response must include a report, if  
210 any, of the scope of any inspection of the property and the  
211 findings and results of the inspection. The written response  
212 must include one or more of the offers or statements specified  
213 in paragraphs (5) (a)-(e), as chosen by the responding developer,  
214 contractor, subcontractor, supplier, or design professional,  
215 with all of the information required for that offer or  
216 statement.

217 (8) (a) If the claimant timely and properly accepts the  
218 offer to repair an alleged construction defect, the claimant  
219 must ~~shall~~ provide the offeror and the offeror's agents  
220 reasonable access to the claimant's property during normal  
221 working hours to perform the repair by the agreed-upon timetable  
222 as stated in the offer. If the offeror does not make the payment  
223 or repair the defect within the agreed time and in the agreed  
224 manner, except for reasonable delays beyond the control of the  
225 offeror, including, but not limited to, weather conditions,

226 delivery of materials, claimant's actions, or issuance of any  
227 required permits, the claimant may, without further notice,  
228 proceed with an action against the offeror based upon the claim  
229 in the notice of claim. If the offeror makes payment or repairs  
230 the defect within the agreed time and in the agreed manner, the  
231 claimant is barred from proceeding with an action for the claim  
232 described in the notice of claim or as otherwise provided in the  
233 accepted settlement offer.

234 (b) For associations representing more than 20 parcels, if  
235 the claimant timely and properly accepts the offer to repair an  
236 alleged construction defect pursuant to paragraph (a), the  
237 claimant must provide the offeror and the offeror's agents,  
238 including the developer, contractor, subcontractor, supplier, or  
239 design professional, reasonable access to the claimant's  
240 property, including common elements, association property, and  
241 individual units, during normal working hours to perform the  
242 repair according to the agreed-upon timetable as stated in the  
243 offer. If the offeror does not make the payment or repair the  
244 defect within the agreed time and in the agreed manner, except  
245 for reasonable delays beyond the control of the offeror,  
246 including, but not limited to, weather conditions, delivery of  
247 materials, claimant's actions, or issuance of any required  
248 permits, the claimant may, without further notice, proceed with  
249 an action against the offeror based upon the claim in the notice  
250 of claim. If the offeror makes payment or repairs the defect

251 within the agreed-upon timetable and in the agreed manner, the  
252 claimant is barred from proceeding with an action for the claim  
253 described in the notice of claim or as otherwise provided in the  
254 accepted settlement offer.

255 (16) If the person served with the notice of claim in  
256 subsection (1) obtains the required building permits and  
257 certificate of occupancy, and a local government or public  
258 agency with authority to enforce the Florida Building Code  
259 approves the plans, the construction project passes all required  
260 inspections under the Florida Building Code. If there is no  
261 personal injury or damage to property other than the property  
262 that is the subject of the permits, plans, and inspections, this  
263 chapter does not apply unless the person or party knew or should  
264 have known that the material violation existed.

265 **Section 5. Subsection (4) of section 558.005, Florida**  
266 **Statutes, is amended, subsections (7), (8), and (9) are added to**  
267 **that section, and subsection (6) of that section is reenacted,**  
268 **to read:**

269 558.005 Contract provisions; application.—

270 (4) At any time after the scope of the alleged defects has  
271 been determined and sufficiently described by the claimant and  
272 receipt of a notice of claim is acknowledged by the person to  
273 whom notice is served or otherwise must be served under s.  
274 558.004(1), a claimant and such person ~~the person to whom notice~~  
275 ~~is served or otherwise must be served under s. 558.004(1) may~~

276 | agree in writing to preaction mediation or otherwise alter the  
277 | procedure for the notice of claim process described in this  
278 | chapter. However, for associations that represent more than 20  
279 | parcels, if the scope of the alleged defects has been determined  
280 | and sufficiently described by the claimant and receipt of a  
281 | notice of claim is acknowledged by the person to whom notice is  
282 | served under s. 558.004(1), a claimant and such person must  
283 | agree in writing to preaction mediation.

284 |         (6) Notwithstanding s. 558.003, unless the parties agree  
285 | that this chapter does not apply, after October 1, 2009, any  
286 | written contract for improvement of real property entered into  
287 | between an owner and a contractor, or between an owner and a  
288 | design professional, must contain substantially the following  
289 | notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE  
290 | NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES."  
291 | The failure to include in the contract the notice provided in  
292 | this subsection does not subject the contracting owner,  
293 | contractor, or design professional to any penalty. The purpose  
294 | of the contractual notice is to promote awareness of the  
295 | procedure, not to be a penalty.

296 |         (7) Upon agreement between the parties that such persons  
297 | served are responsible for the costs associated with the alleged  
298 | defective condition, the persons served shall deposit sufficient  
299 | funds in an escrow account to be managed by an escrow agent for  
300 | the purpose of protecting and distributing the funds. The funds

301 may be released from escrow only as follows:

302 (a) For remediation or repairs of the agreed-upon  
303 defective condition as determined by the settlement; or

304 (b) For remediation or repairs of known damages occurring  
305 as a consequence of the agreed-upon defective condition as  
306 determined by the settlement.

307 (8) The parties shall contract with a third-party licensed  
308 engineer as defined in s. 471.005 or a construction management  
309 entity as defined in s. 255.32(1) to confirm and certify the  
310 status of completion of each identified and agreed-upon  
311 defective condition and damages occurring as a consequence of  
312 the defective condition.

313 (9) Upon completion of the remediation or repair of the  
314 defective condition, any remaining funds in the escrow account  
315 must be released by the agent back to the payor.

316 **Section 6.** This act shall take effect July 1, 2025.