

By Senator McClain

9-01136-25

20251442\_\_

1                   A bill to be entitled  
2       An act relating to construction defects; amending s.  
3       558.003, F.S.; providing that deviations from the  
4       initial plans and specifications for construction  
5       projects are not considered construction defects;  
6       amending s. 558.004, F.S.; revising the timeframe in  
7       which a claimant representing more than a certain  
8       number of parcels must serve written notice of claim  
9       to certain parties; 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 the timeframe in which the parties served may  
14      perform a reasonable inspection of the property;  
15      revising which parts of the property the parties  
16      served may inspect; revising the timeframe in which  
17      the parties served may serve a notice of claim to any  
18      other person such party served believes is responsible  
19      for the construction defects; revising the persons to  
20      whom the parties served may serve a notice of claim;  
21      revising the timeframe to file a written response to  
22      such notice of claim; revising the timeframe in which  
23      a served party must respond to a notice of claim;  
24      requiring such claimants who accept an offer to repair  
25      an alleged construction defect to provide the offeror  
26      reasonable access to the claimant's property during a  
27      specified timeframe to perform the repair; providing  
28      that such claimants may proceed with an action against  
29      an offeror without further notice if the payment or

9-01136-25

20251442\_\_

30 repairs do not occur within the agreed-upon timetable;  
31 providing exceptions; prohibiting a claimant from  
32 proceeding with an action against an offeror if the  
33 offeror makes payment or completes the repairs within  
34 the agreed-upon timetable in the accepted settlement  
35 offer; providing that if such persons served by such  
36 claimants obtain the required building permits and  
37 certificate of occupancy, and the local government  
38 approves the plans, the construction project passes  
39 all required inspections under the code; providing  
40 applicability; making technical changes; reenacting  
41 and amending s. 558.005, F.S.; requiring claimants  
42 representing more than 20 parcels and any parties  
43 served with a notice of claim alleging a construction  
44 defect to agree to preaction mediation in writing;  
45 requiring such parties served to deposit sufficient  
46 funds in an escrow account and managed by an escrow  
47 agent for a specified purpose; providing when funds  
48 may be distributed; requiring such parties to contract  
49 with a licensed engineer or construction management  
50 firm to certify the status of the completion of each  
51 agreed-upon defective condition and damage; providing  
52 that any remaining funds in the escrow account be  
53 released back to the payor; providing an effective  
54 date.

55  
56 Be It Enacted by the Legislature of the State of Florida:

57  
58 Section 1. Section 558.003, Florida Statutes, is amended to

9-01136-25

20251442\_\_

59 read:

60 558.003 Action; compliance.—A claimant may not file an  
61 action subject to this chapter without first complying with the  
62 requirements of this chapter. If a claimant files an action  
63 alleging a construction defect without first complying with the  
64 requirements of this chapter, on timely motion by a party to the  
65 action the court shall stay the action, without prejudice, and  
66 the action may not proceed until the claimant has complied with  
67 such requirements. The notice requirement is not intended to  
68 interfere with an owner's ability to complete a project that has  
69 not been substantially completed. The notice is not required for  
70 a project that has not reached the stage of completion of the  
71 building or improvement. A deviation from initial plans and  
72 specifications, including, but not limited to, substitution of  
73 products or components, is not considered a construction defect  
74 as defined in s. 558.002.

75 Section 2. Subsections (1) through (5) and (8) of section  
76 558.004, Florida Statutes, are amended, and subsection (16) is  
77 added to that section, to read:

78 558.004 Notice and opportunity to repair.—

79 (1)(a) In actions brought alleging a construction defect,  
80 the claimant must ~~shall~~, at least 60 days before filing any  
81 action, or at least 180 ~~120~~ days before filing an action  
82 involving an association representing more than 20 parcels,  
83 serve written notice of claim on the developer, contractor,  
84 subcontractor, supplier, or design professional, as applicable,  
85 which notice must ~~shall~~ refer to this chapter. If the  
86 construction defect claim arises from work performed under a  
87 contract, the written notice of claim must be served on the

9-01136-25

20251442\_\_

88 person with whom the claimant contracted.

89 (b) The notice of claim must describe in reasonable detail  
90 the nature of each alleged construction defect and, if known,  
91 the damage or loss resulting from the defect. Based upon at  
92 least a visual inspection by the claimant or its agents, the  
93 notice of claim must identify the location of each alleged  
94 construction defect sufficiently to enable the responding  
95 parties to locate the alleged defect without undue burden. For  
96 associations representing more than 20 parcels, the notice of  
97 claim must describe with specificity the locations of and known  
98 damages from the alleged defective condition, including, but not  
99 limited to, those floors and units in the buildings where the  
100 defective condition and damages are located. The claimant has no  
101 obligation to perform destructive or other testing for purposes  
102 of this notice.

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

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

113 (2) Within 30 days after service of the notice of claim, or  
114 within 75 ~~50~~ days after service of the notice of claim involving  
115 an association representing more than 20 parcels, the person  
116 served with the notice of claim under subsection (1) is entitled

9-01136-25

20251442\_\_

117 to perform a reasonable inspection of the property and common  
118 elements, or of each unit subject to the claim to assess each  
119 alleged construction defect. An association's right to access  
120 property for either maintenance or repair includes the authority  
121 to grant access for the inspection. The claimant shall provide  
122 the person served with notice under subsection (1) and such  
123 person's contractors or agents reasonable access to the property  
124 during normal working hours to inspect the property to determine  
125 the nature and cause of each alleged construction defect and the  
126 nature and extent of any repairs, remediation, or replacements  
127 necessary to remedy each defect. The person served with notice  
128 under subsection (1) shall reasonably coordinate the timing and  
129 manner of any and all inspections with the claimant to minimize  
130 the number of inspections. The inspection may include  
131 destructive testing by mutual agreement under the following  
132 reasonable terms and conditions:

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

137 (b) The notice must ~~shall~~ describe the destructive testing  
138 to be performed, the person selected to do the testing, the  
139 estimated anticipated damage and repairs to or restoration of  
140 the property resulting from the testing, the estimated amount of  
141 time necessary for the testing and to complete the repairs or  
142 restoration, and the financial responsibility offered for  
143 covering the costs of repairs or restoration.

144 (c) If the claimant promptly objects to the person selected  
145 to perform the destructive testing, the person served with

9-01136-25

20251442\_\_

146 notice under subsection (1) must ~~shall~~ provide the claimant with  
147 a list of three qualified persons from which the claimant may  
148 select one such person to perform the testing. The person  
149 selected to perform the testing shall operate as an agent or  
150 subcontractor of the person served with notice under subsection  
151 (1) and shall communicate with, submit any reports to, and be  
152 solely responsible to the person served with notice.

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

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

157 (f) The destructive testing may ~~shall~~ not render the  
158 property uninhabitable.

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

165  
166 If the claimant refuses to agree and thereafter permit  
167 reasonable destructive testing, the claimant has ~~shall have~~ no  
168 claim for damages which could have been avoided or mitigated had  
169 destructive testing been allowed when requested and had a  
170 feasible remedy been promptly implemented.

171 (3) Within 10 days after service of the notice of claim, or  
172 within 45 ~~30~~ days after service of the notice of claim involving  
173 an association representing more than 20 parcels, the person  
174 served with notice under subsection (1) may serve a copy of the

9-01136-25

20251442\_\_

175 notice of claim to each developer, contractor, subcontractor,  
176 supplier, or design professional whom it reasonably believes is  
177 responsible for each defect specified in the notice of claim and  
178 must ~~shall~~ note the specific defect for which it believes the  
179 particular developer, contractor, subcontractor, supplier, or  
180 design professional is responsible. The notice described in this  
181 subsection may not be construed as an admission of any kind.  
182 Each such contractor, subcontractor, supplier, and design  
183 professional may inspect the property as provided in subsection  
184 (2).

185 (4) Within 15 days after service of a copy of the notice of  
186 claim pursuant to subsection (3), or within 45 ~~30~~ days after  
187 service of the copy of the notice of claim involving an  
188 association representing more than 20 parcels, the developer,  
189 contractor, subcontractor, supplier, or design professional must  
190 serve a written response to the person who served a copy of the  
191 notice of claim. The written response must include a report, if  
192 any, of the scope of any inspection of the property and the  
193 findings and results of the inspection. The written response  
194 must include one or more of the offers or statements specified  
195 in paragraphs (5) (a)-(e), as chosen by the responding developer,  
196 contractor, subcontractor, supplier, or design professional,  
197 with all of the information required for that offer or  
198 statement.

199 (5) Within 45 days after service of the notice of claim, or  
200 within 90 ~~75~~ days after service of a copy of the notice of claim  
201 involving an association representing more than 20 parcels, the  
202 person who was served the notice under subsection (1) must serve  
203 a written response to the claimant. The response must ~~shall~~ be

9-01136-25

20251442\_\_

204 served to the attention of the person who signed the notice of  
205 claim, unless otherwise designated in the notice of claim. The  
206 written response must provide:

207 (a) A written offer to remedy the alleged construction  
208 defect at no cost to the claimant, a detailed description of the  
209 proposed repairs necessary to remedy the defect, and a timetable  
210 for the completion of such repairs;

211 (b) A written offer to compromise and settle the claim by  
212 monetary payment, that will not obligate the person's insurer,  
213 and a timetable for making payment;

214 (c) A written offer to compromise and settle the claim by a  
215 combination of repairs and monetary payment, that will not  
216 obligate the person's insurer, that includes a detailed  
217 description of the proposed repairs and a timetable for the  
218 completion of such repairs and making payment;

219 (d) A written statement that the person disputes the claim  
220 and will not remedy the defect or compromise and settle the  
221 claim; or

222 (e) A written statement that a monetary payment, including  
223 insurance proceeds, if any, will be determined by the person's  
224 insurer within 30 days after notification to the insurer by  
225 means of serving the claim, which service must ~~shall~~ occur at  
226 the same time the claimant is notified of this settlement  
227 option, which the claimant may accept or reject. A written  
228 statement under this paragraph may also include an offer under  
229 paragraph (c), but such offer is ~~shall be~~ contingent upon the  
230 claimant also accepting the determination of the insurer whether  
231 to make any monetary payment in addition thereto. If the insurer  
232 for the person served with the claim makes no response within



9-01136-25

20251442\_\_

233 the 30 days following service, ~~then~~ the claimant is ~~shall be~~  
234 deemed to have met all conditions precedent to commencing an  
235 action.

236 (8) (a) If the claimant timely and properly accepts the  
237 offer to repair an alleged construction defect, the claimant  
238 must ~~shall~~ provide the offeror and the offeror's agents  
239 reasonable access to the claimant's property during normal  
240 working hours to perform the repair by the agreed-upon timetable  
241 as stated in the offer. If the offeror does not make the payment  
242 or repair the defect within the agreed time and in the agreed  
243 manner, except for reasonable delays beyond the control of the  
244 offeror, including, but not limited to, weather conditions,  
245 delivery of materials, claimant's actions, or issuance of any  
246 required permits, the claimant may, without further notice,  
247 proceed with an action against the offeror based upon the claim  
248 in the notice of claim. If the offeror makes payment or repairs  
249 the defect within the agreed time and in the agreed manner, the  
250 claimant is barred from proceeding with an action for the claim  
251 described in the notice of claim or as otherwise provided in the  
252 accepted settlement offer.

253 (b) For associations representing more than 20 parcels, if  
254 the claimant timely and properly accepts the offer to repair an  
255 alleged construction defect pursuant to paragraph (a), the  
256 claimant must provide the offeror and the offeror's agents,  
257 including the developer, contractor, subcontractor, suppliers,  
258 or design professional, reasonable access to the claimant's  
259 property, including common elements, association property, and  
260 individual units, during normal working hours to perform the  
261 repair according to the agreed-upon timetable as stated in the

9-01136-25

20251442\_\_

262 offer. If the offeror does not make the payment or repair the  
263 defect within the agreed time and in the agreed manner, except  
264 for reasonable delays beyond the control of the offeror,  
265 including, but not limited to, weather conditions, delivery of  
266 materials, claimant's actions, or issuance of any required  
267 permits, the claimant may, without further notice, proceed with  
268 an action against the offeror based upon the claim in the notice  
269 of claim. If the offeror makes payment or repairs the defect  
270 within the agreed-upon timetable and in the agreed manner, the  
271 claimant is barred from proceeding with an action for the claim  
272 described in the notice of claim or as otherwise provided in the  
273 accepted settlement offer.

274 (16) If the person served with the notice of claim in  
275 subsection (1) obtains the required building permits and  
276 certificate of occupancy, and a local government or public  
277 agency with authority to enforce the Florida Building Code  
278 approves the plans, the construction project passes all required  
279 inspections under the code. If there is no personal injury or  
280 damage to property other than the property that is the subject  
281 of the permits, plans, and inspections, this chapter does not  
282 apply unless the person or party knew or should have known that  
283 the material violation existed.

284 Section 3. Subsection (4) of section 558.005, Florida  
285 Statutes, is amended, subsections (7), (8), and (9) are added to  
286 that section, and subsection (6) of that section is reenacted,  
287 to read:

288 558.005 Contract provisions; application.—

289 (4) At any time after the scope of the alleged defects has  
290 been determined and sufficiently described by the claimant and

9-01136-25

20251442\_\_

291 receipt of a notice of claim is acknowledged by the person to  
292 whom notice is served or otherwise must be served under s.  
293 558.004(1), a claimant and such person ~~the person to whom notice~~  
294 ~~is served or otherwise must be served under s. 558.004(1)~~ may  
295 agree in writing to preaction mediation or otherwise alter the  
296 procedure for the notice of claim process described in this  
297 chapter. However, for associations that represent more than 20  
298 parcels, if the scope of the alleged defects has been determined  
299 and sufficiently described by the claimant and receipt of a  
300 notice of claim is acknowledged by the person to whom notice is  
301 served under s. 558.004(1), a claimant and such person must  
302 agree in writing to preaction mediation.

303 (6) Notwithstanding s. 558.003, unless the parties agree  
304 that this chapter does not apply, after October 1, 2009, any  
305 written contract for improvement of real property entered into  
306 between an owner and a contractor, or between an owner and a  
307 design professional, must contain substantially the following  
308 notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE  
309 NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES."  
310 The failure to include in the contract the notice provided in  
311 this subsection does not subject the contracting owner,  
312 contractor, or design professional to any penalty. The purpose  
313 of the contractual notice is to promote awareness of the  
314 procedure, not to be a penalty.

315 (7) Upon agreement between the parties that such persons  
316 served are responsible for the costs associated with the alleged  
317 defective condition, the persons served shall deposit sufficient  
318 funds in an escrow account to be managed by an escrow agent for  
319 the purpose of protecting and distributing the funds. The funds

9-01136-25

20251442\_\_

320 may be released from escrow only as follows:

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

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

326 (8) The parties shall contract with a third-party licensed  
327 engineer as defined in s. 471.005 or a construction management  
328 entity as defined in s. 255.32 to confirm and certify the status  
329 of completion of each identified and agreed-upon defective  
330 condition and damages occurring as a consequence of the  
331 defective condition.

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

335 Section 4. This act shall take effect July 1, 2025.