

1 A bill to be entitled
2 An act relating to construction defects; amending s.
3 553.84, F.S.; defining the term "material violation";
4 revising cause of action requirements for statutory
5 civil actions relating to certain violations;
6 providing requirements for bringing a cause of action;
7 amending s. 558.001, F.S.; revising legislative
8 findings relating to a statutorily defined alternative
9 method to resolve construction disputes; amending s.
10 558.003, F.S.; providing applicability of certain
11 requirements in order to bring a construction defect
12 claim; providing an exception; amending s. 558.004,
13 F.S.; requiring that a claimant submit a construction
14 defect claim to the warranty provider before serving a
15 notice of claim; providing requirements for a claimant
16 and a warranty provider; providing that certain
17 actions do not constitute an admission of liability
18 and may not be admissible in an action; revising
19 requirements for notices of claims; providing that a
20 person who willfully includes a false statement in a
21 notice of claim commits perjury; authorizing a person
22 served with a copy of a notice of claim to perform a
23 reasonable inspection of the property subject to the
24 claim; requiring, instead of authorizing, a person
25 served with a notice to serve a copy of the notice to

26 specified persons under certain circumstances;
 27 prohibiting a claimant from filing an action relating
 28 to an alleged construction defect in certain
 29 circumstances; authorizing a claimant to request that
 30 an independent qualified third party make repairs;
 31 tolling the statute of limitations in certain
 32 circumstances; requiring the exchange of certain
 33 information within a specified time; amending s.
 34 558.005, F.S.; requiring certain parties to opt in to,
 35 rather than opt out of, certain requirements; revising
 36 requirements for certain contracts made after a
 37 specified date; providing applicability; creating s.
 38 558.006, F.S.; requiring a claimant to notify a
 39 mortgagee or an assignee within a specified timeframe
 40 after service of the notice of a construction defect
 41 claim; requiring a claimant to send a second notice
 42 within a specified timeframe under certain
 43 circumstances; providing an effective date.

44

45 Be It Enacted by the Legislature of the State of Florida:

46

47 Section 1. Section 553.84, Florida Statutes, is amended to
 48 read:

49 553.84 Statutory civil action.—

50 (1) For purposes of this section, the term "material

51 violation" means a violation that exists within a completed
52 building, structure, or facility which may reasonably result, or
53 has resulted, in personal injury to a person or significant
54 damage to the performance of a building or its system.

55 (2) Notwithstanding any other remedies available, any
56 person or party, in an individual capacity or on behalf of a
57 class of persons or parties, damaged as a result of a material
58 violation of this part or the Florida Building Code, has a cause
59 of action in any court of competent jurisdiction against the
60 person or party who committed the violation. † However, if the
61 person or party obtains the required building permits and any
62 local government or public agency with authority to enforce the
63 Florida Building Code approves the plans, if the construction
64 project passes all required inspections under the code, and if
65 there is no personal injury or damage to property other than the
66 property that is the subject of the permits, plans, and
67 inspections, this section does not apply unless the violation
68 resulted in significant damage to the property that is the
69 subject of the permits, plans, and inspections or may reasonably
70 result in personal injury to a person or significant damage to
71 the performance of a building or its system ~~person or party knew~~
72 ~~or should have known that the violation existed.~~

73 (3) (a) Before bringing a cause of action under this
74 section, a person or party must submit a written claim for the
75 alleged material violation under an existing applicable warranty

76 and provide access to the property for an inspection within 30
77 days after serving a written warranty claim.

78 (b) If the warranty provider offers to repair the alleged
79 material violation after an inspection, the person or party has
80 30 days after the inspection to provide written authorization to
81 proceed with the repair and allow access.

82 (c) If written authorization is not provided by the person
83 or party to the warranty provider, the person or party is barred
84 from filing a cause of action under this section. However, if
85 the person or party provides written authorization and access to
86 the property to repair the alleged material violation, the
87 warranty provider has 120 days after the inspection to complete
88 the repair of the alleged material violation or offer another
89 remedy.

90 (d) If the warranty provider denies the claim, does not
91 complete the repair, or the remedy offered is unsatisfactory to
92 the person or party, the person or party may file a cause of
93 action under this section. Any offer or failure to offer a
94 repair of the alleged material violation or to compromise and
95 settle the claim by monetary payment or some other remedy does
96 not constitute an admission of liability with respect to the
97 material violation and is not admissible in an action brought
98 under this section.

99 Section 2. Section 558.001, Florida Statutes, is amended
100 to read:

101 558.001 Legislative findings and declaration.—The
102 Legislature finds that it is beneficial to have a statutorily
103 defined ~~an~~ alternative method to resolve construction disputes
104 that would reduce the need for litigation as well as protect the
105 rights of property owners. An effective alternative dispute
106 resolution mechanism in certain construction defect matters
107 should involve the claimant filing a notice of claim with the
108 contractor, subcontractor, supplier, or design professional that
109 the claimant asserts is responsible for the defect, and should
110 provide the contractor, subcontractor, supplier, or design
111 professional, and the insurer of the contractor, subcontractor,
112 supplier, or design professional, with an opportunity to resolve
113 the claim through confidential settlement negotiations without
114 resorting ~~resort~~ to further legal process. If an agreement to
115 provide construction services does not incorporate the dispute
116 resolution mechanism provided in this chapter, or if the
117 responding parties do not voluntarily agree to participate in
118 the dispute resolution mechanism provided in this chapter, the
119 Legislature finds that the rights of the responding parties to
120 contemplate and provide for the method of dispute resolution
121 they deem to be most beneficial to their own unique
122 circumstances should not be burdened by the statutorily defined
123 dispute resolution mechanism provided in this chapter.

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

126 558.003 Action; applicability and compliance.—

127 (1) Unless a responding party has entered into an
128 agreement that affirmatively incorporates the dispute resolution
129 mechanism provided in this chapter, or a responding party has
130 voluntarily agreed to participate in the dispute resolution
131 mechanism provided in this chapter, ss. 558.004 and 558.005 do
132 not apply to a cause of action for an alleged construction
133 defect.

134 (2) A claimant may not file an action subject to this
135 chapter without first complying with the requirements of this
136 chapter. If a claimant files an action subject to this chapter
137 alleging a construction defect without first complying with the
138 requirements of this chapter, on timely motion by a party to the
139 action the court shall stay the action, without prejudice, and
140 the action may not proceed until the claimant has complied with
141 such requirements. The notice requirement is not intended to
142 interfere with an owner's ability to complete a project that has
143 not been substantially completed. The notice is not required for
144 a project that has not reached the stage of completion of the
145 building or improvement.

146 Section 4. Subsections (6) through (15) of section
147 558.004, Florida Statutes, are renumbered as subsections (7)
148 through (16), respectively, subsections (1) through (4) and
149 present subsections (10) and (15) are amended, and a new
150 subsection (6) is added to that section, to read:

151 558.004 Notice and opportunity to repair.—

152 (1) (a) In actions brought alleging a construction defect,
153 the claimant shall, at least 60 days before filing any action,
154 or at least 120 days before filing an action involving an
155 association representing more than 20 parcels, serve written
156 notice of claim on the contractor, subcontractor, supplier, or
157 design professional, as applicable, which notice shall refer to
158 this chapter. If the construction defect claim arises from work
159 performed under a contract, the ~~written~~ notice of claim must be
160 served on the person with whom the claimant contracted.

161 (b)1. Before serving a notice of claim under this chapter,
162 a claimant must submit a written claim for the alleged
163 construction defect under an existing applicable warranty and
164 provide access to the property for an inspection within 30 days
165 after serving a written warranty claim.

166 2. If the warranty provider offers to repair the alleged
167 construction defect after an inspection, the claimant has 30
168 days after the inspection to provide written authorization to
169 proceed with the repair and allow access to the property.

170 3. If written authorization is not provided by the
171 claimant to the warranty provider, the claimant is barred from
172 filing a cause of action under this chapter. However, if the
173 claimant provides written authorization and access to the
174 property to repair the alleged construction defect, the warranty
175 provider has 120 days after the inspection to complete the

176 repair of the alleged construction defect or offer another
 177 remedy.

178 4. If the warranty provider denies the claim, does not
 179 complete the repair, or the remedy offered is unsatisfactory to
 180 the claimant, the claimant may serve a notice of claim under
 181 this section. Any offer or failure to offer a repair of the
 182 alleged construction defect or to compromise and settle the
 183 claim by monetary payment or some other remedy does not
 184 constitute an admission of liability with respect to the
 185 construction defect and is not admissible in an action brought
 186 under this section.

187 (c) ~~(b)~~ The notice of claim must:

188 1. Describe in specific ~~reasonable~~ detail the nature of
 189 each alleged construction defect. ~~and~~

190 2. If the alleged construction defect or evidence thereof
 191 is visible, include at least one photograph of the alleged
 192 defect or evidence thereof, any repair estimates or expert
 193 reports obtained relating to the alleged defect, and a
 194 description of, ~~if known,~~ the damage or loss resulting from the
 195 alleged defect, if known.

196 3. Based upon at least a visual inspection by the claimant
 197 or its agents, ~~the notice of claim must~~ identify the specific
 198 location of each alleged construction defect sufficiently to
 199 enable the responding parties to locate the alleged defect
 200 without undue burden. The claimant has no obligation to perform

201 destructive or other testing for purposes of this notice.

202 4. Affirm that the claimant has personal knowledge of the
 203 alleged construction defect.

204 5. Acknowledge that the claimant is aware of the penalties
 205 for perjury imposed under chapter 837.

206 6. Be signed by the claimant and include the following
 207 statement directly above the claimant's signature line in 18-
 208 point uppercase and boldfaced type:

209
 210 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
 211 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST
 212 OF MY KNOWLEDGE AND BELIEF.

213
 214 (d) A person who willfully includes a false statement in
 215 the notice of claim under this section commits perjury and, upon
 216 conviction, is subject to punishment as provided by law.

217 (e) ~~(e)~~ The claimant shall endeavor to serve the notice of
 218 claim within 15 days after discovery of an alleged construction
 219 defect, but the failure to serve notice of claim within 15 days
 220 does not bar the filing of an action, subject to s. 558.003.
 221 This subsection does not preclude a claimant from filing an
 222 action sooner than 60 days, or 120 days as applicable, after
 223 service of written notice as expressly provided in subsection
 224 (7) ~~(6)~~, subsection (8) ~~(7)~~, or subsection (9) ~~(8)~~.

225 (f) ~~(d)~~ A notice of claim served under ~~pursuant to~~ this

226 chapter shall not toll any statute of repose period under
227 chapter 95.

228 (2) Within 30 days after service of the notice of claim,
229 or within 50 days after service of the notice of claim involving
230 an association representing more than 20 parcels, a the person
231 served with the notice of claim under subsection (1), or a copy
232 thereof under subsection (3), may ~~is entitled to~~ perform a
233 reasonable inspection of the property or of each unit subject to
234 the claim to assess each alleged construction defect. An
235 association's right to access property for either maintenance or
236 repair includes the authority to grant access for the
237 inspection. The claimant shall provide the person served with
238 notice under subsection (1), or a copy thereof under subsection
239 (3), and such person's contractors or agents reasonable access
240 to the property during normal working hours to inspect the
241 property to determine the nature and cause of each alleged
242 construction defect and the nature and extent of any repairs or
243 replacements necessary to remedy each defect. The person served
244 with notice under subsection (1), or a copy thereof under
245 subsection (3), shall reasonably coordinate the timing and
246 manner of any and all inspections with the claimant to minimize
247 the number of inspections. The inspection may include
248 destructive testing by mutual agreement under the following
249 reasonable terms and conditions:

250 (a) If the person served with notice under subsection (1)

251 determines that destructive testing is necessary to determine
252 the nature and cause of the alleged defects, the ~~such~~ person
253 must ~~shall~~ notify the claimant in writing.

254 (b) The notice describes ~~shall describe~~ the destructive
255 testing to be performed, the person selected to do the testing,
256 the estimated ~~anticipated~~ damage and repairs to or restoration
257 of the property resulting from the testing, the estimated amount
258 of time necessary for the testing and to complete the repairs or
259 restoration, and the financial responsibility offered for
260 covering the costs of repairs or restoration.

261 (c) If the claimant promptly objects to the person
262 selected to perform the destructive testing, the person served
263 with notice under subsection (1) must ~~shall~~ provide the claimant
264 with a list of three qualified persons from which the claimant
265 may select one such person to perform the testing. The person
266 selected to perform the testing operates ~~shall operate~~ as an
267 agent or subcontractor of the person served with notice under
268 subsection (1) and shall communicate with, submit any reports
269 to, and be solely responsible to the person served with notice.

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

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

274 (f) The destructive testing may ~~shall~~ not render the
275 property uninhabitable.

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

282
283 If the claimant refuses to agree and thereafter permit
284 reasonable destructive testing, the claimant has ~~shall have~~ no
285 claim for damages which could have been avoided or mitigated had
286 destructive testing been allowed when requested and had a
287 feasible remedy been promptly implemented.

288 (3) Within 10 days after service of the notice of claim,
289 or within 30 days after service of the notice of claim involving
290 an association representing more than 20 parcels, the person
291 served with notice under subsection (1) must ~~may~~ serve a copy of
292 the notice of claim to each contractor, subcontractor, supplier,
293 or design professional whom it reasonably believes is
294 responsible for each defect specified in the notice of claim and
295 shall note the specific defect for which it believes the
296 particular contractor, subcontractor, supplier, or design
297 professional is responsible. The notice described in this
298 subsection may not be construed as an admission of any kind.
299 Each such contractor, subcontractor, supplier, and design
300 professional may inspect the property as provided in subsection

301 (2) .

302 (4) Within 15 days after service of a copy of the notice
 303 of claim under ~~pursuant to~~ subsection (3), or within 30 days
 304 after service of the copy of the notice of claim involving an
 305 association representing more than 20 parcels, the contractor,
 306 subcontractor, supplier, or design professional must serve a
 307 written response to the person who served a copy of the notice
 308 of claim. The written response must include a report, if any, of
 309 the scope of any inspection of the property and the findings and
 310 results of the inspection. The written response must include one
 311 or more of the offers or statements specified in paragraphs
 312 (5) (a)-(e), as chosen by the responding contractor,
 313 subcontractor, supplier, or design professional, with all of the
 314 information required for that offer or statement.

315 (6) A claimant may not file any action relating to the
 316 alleged construction defect if the person served with notice
 317 under subsection (1) offers to remedy the alleged construction
 318 defect at no cost to the claimant and the claimant either
 319 rejects the offer or fails to respond to the offer within 45
 320 days after receiving it.

321 (a) A claimant may require the person served with the
 322 notice under subsection (1) to have an independent qualified
 323 third party make the repairs. The claimant may not deny access
 324 to the property to an independent qualified third party hired by
 325 the person served with notice under subsection (1).

326 (b) A claimant is not barred from filing an action under
 327 this chapter or to accept another offer to repair if the
 328 claimant determines that the repairs are unsatisfactory.

329 (c) If a claimant accepts an offer to repair, such
 330 acceptance tolls the applicable statute of limitations relating
 331 to any person covered by this chapter and any bond surety until
 332 90 days after the claimant accepts the offer.

333 (11)-(10) A claimant's service of a notice of claim for the
 334 alleged construction defect under an existing applicable
 335 warranty or the written notice of claim under subsection (1)
 336 tolls the applicable statute of limitations relating to any
 337 person covered by this chapter and any bond surety until the
 338 later of:

339 (a) Ninety days, or 120 days, as applicable, after service
 340 of a notice of claim for the alleged construction defect under
 341 an existing applicable warranty or the written ~~the~~ notice of
 342 claim pursuant to subsection (1); or

343 (b) Thirty days after the end of the repair period or
 344 payment period stated in the offer, if the claimant has accepted
 345 the offer. By stipulation of the parties, the period may be
 346 extended and the statute of limitations is tolled during the
 347 extension.

348 (16)-(15) Upon request, the claimant and any person served
 349 with notice under ~~pursuant to~~ subsection (1) shall exchange,
 350 within 30 days after service of a written request that cites

351 this subsection and includes, ~~which request must cite this~~
352 ~~subsection and include~~ an offer to pay the reasonable costs of
353 reproduction, any design plans, specifications, and as-built
354 plans; videos and additional photographs ~~and videos~~ of the
355 alleged construction defect identified in the notice of claim;
356 expert reports not already provided which ~~that~~ describe any
357 defect upon which the claim is made; subcontracts; purchase
358 orders for the work that is claimed defective or any part of
359 such materials; and maintenance records and other documents
360 related to the discovery, investigation, causation, and extent
361 of the alleged defect identified in the notice of claim and any
362 resulting damages. A party may assert any claim of privilege
363 recognized under the laws of the ~~this~~ state with respect to any
364 of the disclosure obligations specified in this chapter. In the
365 event of subsequent litigation, any party who fails ~~failed~~ to
366 provide the requested materials is ~~shall be~~ subject to such
367 sanctions as the court may impose for a discovery violation.
368 Expert reports exchanged between the parties may not be used in
369 any subsequent litigation for any purpose, unless the expert, or
370 a person affiliated with the expert, testifies as a witness or
371 the report is used or relied upon by an expert who testifies on
372 behalf of the party for whom the report was prepared.

373 Section 5. Subsections (1), (5), and (6) of section
374 558.005, Florida Statutes, are amended to read:

375 558.005 Contract provisions; application.-

376 (1) Unless a claimant and a potential defendant have
377 agreed in writing to opt in to ~~out of~~ the requirements of this
378 section, the dispute resolution mechanism provided in provisions
379 ~~of~~ this chapter shall not apply to any claim for legal relief
380 for which the agreement to make the improvement was made after
381 October 1, 2021 ~~2009~~, and for which the basis of the claim is a
382 construction defect that has arisen after completion of a
383 building or improvement.

384 (5) Notwithstanding the notice requirements of this
385 section for contracts entered into on or after October 1, 2021
386 ~~2006~~, this chapter applies to all actions accruing before
387 October 1, 2021 ~~July 1, 2004~~, but not yet commenced as of
388 October 1, 2021 ~~July 1, 2004~~, and failure to include such notice
389 requirements in a contract entered into before October 1, 2021
390 ~~July 1, 2004~~, does not operate to bar the procedures of this
391 chapter from applying to all such actions.

392 (6) Notwithstanding s. 558.003, ~~unless the parties agree~~
393 ~~that this chapter does not apply~~, after October 1, 2021 ~~2009~~,
394 for the dispute resolution mechanism provided in this chapter to
395 apply, any written contract for improvement of real property
396 entered into between an owner and a contractor, or between an
397 owner and a design professional, must contain substantially the
398 following notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARISING
399 FROM THIS CONTRACT ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS
400 OF CHAPTER 558, FLORIDA STATUTES." The failure to include in the

401 contract the notice provided in this subsection does not
 402 prohibit ~~subject~~ the contracting owner, contractor, or design
 403 professional from opting in to the dispute resolution mechanism
 404 provided in this chapter ~~to any penalty~~. The purpose of the
 405 contractual notice is to promote awareness of the desire of the
 406 parties to use the dispute resolution mechanism provided in this
 407 chapter procedure, not to be a penalty.

408 Section 6. Section 558.006, Florida Statutes, is created
 409 to read:

410 558.006 Notice to mortgagee or assignee.-

411 (1) If a notice of claim alleging a construction defect
 412 under this chapter is made with respect to real property to
 413 which a mortgagee or an assignee has a security interest in the
 414 real property, the claimant must, within 30 days after service
 415 of the notice of the claim on the contractor, subcontractor,
 416 supplier, or design professional, serve the mortgagee or
 417 assignee with a copy of the notice of claim, by certified mail,
 418 return receipt requested.

419 (2) If repairs relating to the defect are completed after
 420 the claimant notifies the mortgagee or assignee as required
 421 under subsection (1), or if any settlement, partial settlement,
 422 arbitration award, or judgment is obtained by the claimant, the
 423 claimant must provide an additional notice to the mortgagee or
 424 assignee within 60 days after completion of the repairs or any
 425 settlement, partial settlement, arbitration award, or judgment,

CS/HB 21

2021

426 | whichever is later, by certified mail, return receipt requested.

427 | Section 7. This act shall take effect July 1, 2021.