

1 A bill to be entitled
2 An act relating to construction defects; amending s.
3 475.278; requiring specified real estate licensees to
4 disclose a construction defect claim relating to
5 residential real property and its outcome under
6 specified circumstances; amending s. 558.004, F.S.;
7 requiring a claimant to submit a construction defect
8 claim to the warranty provider before serving a notice
9 of claim; providing notice requirements; providing
10 that a person who willfully includes a false statement
11 in a notice commits perjury; authorizing a person
12 served with a copy of a notice to perform a reasonable
13 inspection of the property subject to the claim;
14 providing inspection requirements for claimants and
15 persons served with a copy of a notice; requiring,
16 instead of authorizing, a person served with a notice
17 to serve a copy of the notice to specified persons
18 under certain circumstances; making technical changes;
19 creating s. 558.0045; providing jury verdict and final
20 judgment requirements relating to a construction
21 defect claim; creating s. 558.006; requiring a seller
22 of real property to disclose specified information
23 relating to a construction defect to a buyer; creating
24 s. 558.007; requiring a claimant to notify a mortgagee
25 or assignee within a specified timeframe after a

26 settlement or judgment of a construction defect claim;
 27 requiring a claimant to update the notice within a
 28 specified timeframe under certain circumstances;
 29 providing an effective date.

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

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33 Section 1. Paragraph (d) of subsection (2), paragraphs (a)
 34 and (c) of subsection (3), and paragraphs (a) and (c) of
 35 subsection (4) of section 475.278, Florida Statutes, are amended
 36 to read:

37 475.278 Authorized brokerage relationships; presumption of
 38 transaction brokerage; required disclosures.—

39 (2) TRANSACTION BROKER RELATIONSHIP.—A transaction broker
 40 provides a limited form of representation to a buyer, a seller,
 41 or both in a real estate transaction but does not represent
 42 either in a fiduciary capacity or as a single agent. The duties
 43 of the real estate licensee in this limited form of
 44 representation include the following:

45 (d) Disclosing all known facts that materially affect the
 46 value of residential real property and are not readily
 47 observable to the buyer, including whether the seller or an
 48 association acting on the seller's behalf has made a
 49 construction defect claim under chapter 558 relating to the

50 property, the outcome of the claim, and what, if any, repairs
 51 were made;

52 (3) SINGLE AGENT RELATIONSHIP.—

53 (a) Single agent; duties.—The duties of a real estate
 54 licensee owed to a buyer or seller who engages the real estate
 55 licensee as a single agent include the following:

- 56 1. Dealing honestly and fairly;
- 57 2. Loyalty;
- 58 3. Confidentiality;
- 59 4. Obedience;
- 60 5. Full disclosure;
- 61 6. Accounting for all funds;
- 62 7. Skill, care, and diligence in the transaction;
- 63 8. Presenting all offers and counteroffers in a timely
 64 manner, unless a party has previously directed the licensee
 65 otherwise in writing; and
- 66 9. Disclosing all known facts that materially affect the
 67 value of residential real property and are not readily
 68 observable, including whether the seller or an association
 69 acting on the seller's behalf has made a construction defect
 70 claim under chapter 558 relating to the property, the outcome of
 71 the claim, and what, if any, repairs were made.

72 (c) Contents of disclosure.—

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Date	Signature

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2. Transition disclosure.—To gain the principal's written consent to a change in relationship, a licensee must use the following disclosure:

CONSENT TO TRANSITION TO
TRANSACTION BROKER

FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.

As a transaction broker, ...(insert name of Real Estate Firm and its Associates)..., provides to you a limited form of representation that includes the following duties:

1. Dealing honestly and fairly;
2. Accounting for all funds;
3. Using skill, care, and diligence in the transaction;
4. Disclosing all known facts that materially affect the

value of residential real property and are not readily observable to the buyer, including whether the seller or an association acting on the seller's behalf has made a

121 construction defect claim under chapter 558 relating to the
122 property, the outcome of the claim, and what, if any, repairs
123 were made;

124 5. Presenting all offers and counteroffers in a timely
125 manner, unless a party has previously directed the licensee
126 otherwise in writing;

127 6. Limited confidentiality, unless waived in writing by a
128 party. This limited confidentiality will prevent disclosure that
129 the seller will accept a price less than the asking or listed
130 price, that the buyer will pay a price greater than the price
131 submitted in a written offer, of the motivation of any party for
132 selling or buying property, that a seller or buyer will agree to
133 financing terms other than those offered, or of any other
134 information requested by a party to remain confidential; and

135 7. Any additional duties that are entered into by this or
136 by separate written agreement.

137 Limited representation means that a buyer or seller is not
138 responsible for the acts of the licensee. Additionally, parties
139 are giving up their rights to the undivided loyalty of the
140 licensee. This aspect of limited representation allows a
141 licensee to facilitate a real estate transaction by assisting
142 both the buyer and the seller, but a licensee will not work to
143 represent one party to the detriment of the other party when
144 acting as a transaction broker to both parties.

145I agree that my agent may assume the role and
 146 duties of a transaction broker. [must be initialed or signed]

147 (4) NO BROKERAGE RELATIONSHIP.—

148 (a) No brokerage relationship; duties.—A real estate
 149 licensee owes to a potential seller or buyer with whom the
 150 licensee has no brokerage relationship the following duties:

- 151 1. Dealing honestly and fairly;
- 152 2. Disclosing all known facts that materially affect the
 153 value of the residential real property which are not readily
 154 observable to the buyer, including whether the seller or an
 155 association acting on the seller's behalf has made a
 156 construction defect claim under chapter 558 relating to the
 157 property, the outcome of the claim, and what, if any, repairs
 158 were made; and

159 3. Accounting for all funds entrusted to the licensee.

160 (c) Contents of disclosure.—The notice required under
 161 paragraph (b) must include the following information in the
 162 following form:

163 NO BROKERAGE RELATIONSHIP NOTICE
 164 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
 165 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
 166 THEIR DUTIES TO SELLERS AND BUYERS.

167 As a real estate licensee who has no brokerage relationship
 168 with you, ...(insert name of Real Estate Entity and its
 169 Associates)... owe to you the following duties:

195 the warranty provider has denied the claim or has not offered a
196 remedy satisfactory to the claimant within the time limits
197 provided in the warranty. This chapter provides a notice process
198 for a construction defect claim that has been denied or not
199 otherwise satisfied under any applicable warranty.

200 (b) The notice of claim must:

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

203 2. Include, if the alleged construction defect or evidence
204 thereof is visible, at least one photograph of the alleged
205 defect or evidence thereof, any repair estimates or expert
206 reports obtained relating to the alleged defect, and a
207 description of, ~~if known,~~ the damage or loss resulting from the
208 alleged defect, if known.

209 3. Based upon at least a visual inspection by the claimant
210 or its agents, the notice of claim must identify the specific
211 location of each alleged construction defect sufficiently to
212 enable the responding parties to locate the alleged defect
213 without undue burden. The claimant has no obligation to perform
214 destructive or other testing for purposes of this notice.

215 4. Affirm that the claimant has personal knowledge of the
216 alleged construction defect.

217 5. Acknowledge that the claimant is aware of the real
218 estate disclosure obligation under s. 558.006 and of the
219 penalties for perjury under chapter 837.

220 6. Be signed by the claimant and include the following
221 statement directly above the claimant's signature line in 18-
222 point uppercase, boldfaced type:

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224 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
225 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST
226 OF MY KNOWLEDGE AND BELIEF.

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228 (c) Any person who willfully includes a false statement in
229 the notice of claim required by this section is guilty of
230 perjury and, upon conviction, will be punished accordingly.

231 (d)~~(e)~~ The claimant shall endeavor to serve the notice of
232 claim within 15 days after discovery of an alleged defect, but
233 the failure to serve notice of claim within 15 days does not bar
234 the filing of an action, subject to s. 558.003. This subsection
235 does not preclude a claimant from filing an action sooner than
236 60 days, or 120 days as applicable, after service of written
237 notice as expressly provided in subsection (6), subsection (7),
238 or subsection (8).

239 (e)~~(d)~~ A notice of claim served pursuant to this chapter
240 shall not toll any statute of repose period under chapter 95.

241 (2) Within 30 days after service of the notice of claim,
242 or within 50 days after service of the notice of claim involving
243 an association representing more than 20 parcels, any ~~the~~ person
244 served with the notice of claim under subsection (1), or a copy

245 thereof under subsection (3), may ~~is entitled to~~ perform a
246 reasonable inspection of the property or of each unit subject to
247 the claim to assess each alleged construction defect. An
248 association's right to access property for either maintenance or
249 repair includes the authority to grant access for the
250 inspection. The claimant must ~~shall~~ provide the person served
251 with notice under subsection (1), or a copy thereof under
252 subsection (3), and such person's contractors or agents
253 reasonable access to the property during normal working hours to
254 inspect the property to determine the nature and cause of each
255 alleged construction defect and the nature and extent of any
256 repairs or replacements necessary to remedy each defect. The
257 person served with notice under subsection (1), or a copy
258 thereof under subsection (3), must ~~shall~~ reasonably coordinate
259 the timing and manner of any and all inspections with the
260 claimant to minimize the number of inspections. The inspection
261 may include destructive testing by mutual agreement under the
262 following reasonable terms and conditions:

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

267 (b) The notice must ~~shall~~ describe the destructive testing
268 to be performed, the person selected to do the testing, the
269 estimated anticipated damage and repairs to or restoration of

270 the property resulting from the testing, the estimated amount of
271 time necessary for the testing and to complete the repairs or
272 restoration, and the financial responsibility offered for
273 covering the costs of repairs or restoration.

274 (c) If the claimant promptly objects to the person
275 selected to perform the destructive testing, the person served
276 with notice under subsection (1) must ~~shall~~ provide the claimant
277 with a list of three qualified persons from which the claimant
278 may select one such person to perform the testing. The person
279 selected to perform the testing must ~~shall~~ operate as an agent
280 or subcontractor of the person served with notice under
281 subsection (1) and must ~~shall~~ communicate with, submit any
282 reports to, and be solely responsible to the person served with
283 notice.

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

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

288 (f) The destructive testing may ~~shall~~ not render the
289 property uninhabitable.

290 (g) There are ~~shall be~~ no construction lien rights under
291 part I of chapter 713 for the destructive testing caused by a
292 person served with notice under subsection (1) or for restoring
293 the area destructively tested to the condition existing before

294 ~~prior to~~ testing, except to the extent the owner contracts for
295 the destructive testing or restoration.

296

297 If the claimant refuses to agree and thereafter permit
298 reasonable destructive testing, the claimant has ~~shall have~~ no
299 claim for damages which could have been avoided or mitigated had
300 destructive testing been allowed when requested and had a
301 feasible remedy been promptly implemented.

302 (3) Within 10 days after service of the notice of claim,
303 or within 30 days after service of the notice of claim involving
304 an association representing more than 20 parcels, the person
305 served with notice under subsection (1) must ~~may~~ serve a copy of
306 the notice of claim to each contractor, subcontractor, supplier,
307 or design professional whom it reasonably believes is
308 responsible for each defect specified in the notice of claim and
309 shall note the specific defect for which it believes the
310 particular contractor, subcontractor, supplier, or design
311 professional is responsible. The notice described in this
312 subsection may not be construed as an admission of any kind.
313 Each such contractor, subcontractor, supplier, and design
314 professional may inspect the property as provided in subsection
315 (2).

316 (4) Within 15 days after service of a copy of the notice
317 of claim under ~~pursuant to~~ subsection (3), or within 30 days
318 after service of the copy of the notice of claim involving an

319 association representing more than 20 parcels, the contractor,
320 subcontractor, supplier, or design professional must serve a
321 written response to the person who served a copy of the notice
322 of claim. The written response must include a report, if any, of
323 the scope of any inspection of the property and the findings and
324 results of the inspection. The written response must include one
325 or more of the offers or statements specified in paragraphs
326 (5) (a)-(e), as chosen by the responding contractor,
327 subcontractor, supplier, or design professional, with all of the
328 information required for that offer or statement.

329 (15) Upon request, the claimant and any person served with
330 notice under ~~pursuant to~~ subsection (1) shall exchange, within
331 30 days after service of a written request, which request must
332 cite this subsection and include an offer to pay the reasonable
333 costs of reproduction, any design plans, specifications, and as-
334 built plans; videos and additional photographs ~~and videos~~ of the
335 alleged construction defect identified in the notice of claim;
336 expert reports not already provided that describe any defect
337 upon which the claim is made; subcontracts; purchase orders for
338 the work that is claimed defective or any part of such
339 materials; and maintenance records and other documents related
340 to the discovery, investigation, causation, and extent of the
341 alleged defect identified in the notice of claim and any
342 resulting damages. A party may assert any claim of privilege
343 recognized under the laws of this state with respect to any of

344 the disclosure obligations specified in this chapter. In the
345 event of subsequent litigation, any party who failed to provide
346 the requested materials ~~is shall be~~ subject to such sanctions as
347 the court may impose for a discovery violation. Expert reports
348 exchanged between the parties may not be used in any subsequent
349 litigation for any purpose, unless the expert, or a person
350 affiliated with the expert, testifies as a witness or the report
351 is used or relied upon by an expert who testifies on behalf of
352 the party for whom the report was prepared.

353 Section 3. Section 558.0045, Florida Statutes, is created
354 to read:

355 558.0045 Construction defect litigation; special
356 requirements.-

357 (1) This section applies to all actions involving
358 construction defects, including civil suits and arbitrations.

359 (2) If a claimant proceeds to trial in an action, the jury
360 verdict and final judgment must include a detailed description
361 of the nature of the defect and the monetary amount awarded
362 against each liable party separately, including the monetary
363 amount of the award attributable to:

364 (a) Repairing or replacing the defective work.

365 (b) Repairing or replacing nondefective property damaged
366 by the defective work.

367 (c) Other recoverable damages authorized by law that are
368 awarded against the liable party.

369 Section 4. Section 558.006, Florida Statutes, is created
370 to read:

371 558.006 Construction defect disclosure statement.—The
372 seller of real property must disclose to the buyer, before
373 closing, in a written disclosure statement set forth in the sale
374 contract or a separate writing:

375 (1) Whether the seller or an association acting on the
376 seller's behalf has made a claim under this chapter alleging a
377 construction defect relating to the real property subject to the
378 sale contract.

379 (2) The specific nature of the alleged defect.

380 (3) The outcome of the claim. This subsection does not
381 require the seller to disclose the amount of any monetary
382 settlement reached or judgment awarded.

383 (4) Whether the defect has been repaired and a description
384 of any repairs made.

385 Section 5. Section 558.007, Florida Statutes, is created
386 to read:

387 558.007 Notice to mortgagee or assignee.—

388 (1) If a notice of claim alleging a construction defect
389 under this chapter results in a monetary settlement or judgment
390 in favor of the claimant, and a mortgagee or assignee has a
391 security interest in the real property subject to the claim, the
392 claimant must, within 90 days after the resolution of the claim,
393 notify the mortgagee or assignee, in writing, of:

394 (a) The specific nature of the defect.
 395 (b) The outcome of the claim, including the amount of any
 396 monetary settlement reached or judgment awarded.
 397 (c) Whether the defect has been repaired and a description
 398 of any repairs made, or, if repairs have not yet begun, the
 399 anticipated date that the repairs will begin.
 400 (2) If repairs relating to the defect are completed after
 401 the claimant notifies the mortgagee or assignee as required
 402 under subsection (1), the claimant must update the notice within
 403 30 days after completion of the repairs.
 404 Section 6. This act shall take effect July 1, 2020.