

1 A bill to be entitled
2 An act relating to construction defects; amending s.
3 558.001, F.S.; revising legislative intent; amending
4 s. 558.002, F.S.; deleting and revising definitions;
5 amending s. 558.003, F.S.; specifying that certain
6 disclosures and documents must be provided before a
7 claimant may file an action; amending s. 558.004,
8 F.S.; deleting provisions related to an action
9 involving an association; providing requirements for
10 the notice of claim, the repair of alleged
11 construction defects, and payments for such repairs;
12 revising the timeframe within which certain persons
13 are required to serve a written response to a
14 claimant; prohibiting advance payments for such
15 repairs; limiting liability under certain
16 circumstances; providing requirements for certain
17 payments held in trust; creating s. 558.0045, F.S.;
18 requiring parties to a construction defect claim to
19 participate in mandatory nonbinding arbitration within
20 a specified time; authorizing any party to agree that
21 the arbitration is binding; providing award
22 requirements; providing applicability; providing an
23 effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Section 558.001, Florida Statutes, is amended
28 to read:

29 558.001 Legislative findings and declaration.—The
30 Legislature finds that it is beneficial to have an effective and
31 cost efficient ~~alternative~~ method to resolve construction
32 disputes that would reduce ~~the need for~~ litigation as well as
33 protect the rights of property owners. An effective alternative
34 dispute resolution mechanism in ~~certain~~ construction defect
35 matters should involve the claimant, ~~filing a notice of claim~~
36 ~~with~~ the contractor, subcontractor, supplier, or design
37 professional that the claimant asserts is responsible for the
38 defect, and should provide the claimant, contractor,
39 subcontractor, supplier, or design professional, and the insurer
40 of the claimant, contractor, subcontractor, supplier, or design
41 professional, through meaningful arbitration of claims ~~with an~~
42 ~~opportunity to resolve the claim through confidential settlement~~
43 ~~negotiations~~ without resort to extended litigation ~~further legal~~
44 ~~process~~. It is the intent of the Legislature to promote
45 efficient resolution of claims and reduce litigation, and
46 nothing in this chapter precludes resolution of claims through
47 settlement negotiations.

48 Section 2. Subsections (2) and (3) of section 558.002,
49 Florida Statutes, are amended to read:

50 558.002 Definitions.—As used in this chapter, the term:

51 ~~(2) "Association" has the same meaning as in s.~~
52 ~~718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.~~

53 (3) "Claimant" means a property owner, including a
54 subsequent purchaser ~~or association~~, who asserts a claim for
55 damages against a contractor, subcontractor, supplier, or design
56 professional concerning a construction defect or a subsequent
57 owner who asserts a claim for indemnification for such damages.
58 The term does not include a contractor, subcontractor, supplier,
59 or design professional.

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

62 558.003 Action; compliance.—A claimant may not file an
63 action subject to this chapter without first complying with the
64 requirements of this chapter. If a claimant files an action
65 alleging a construction defect without first complying with the
66 requirements of this chapter, including the requirements under
67 s. 558.004 to provide certain disclosures and documents, on
68 timely motion by a party to the action the court shall stay the
69 action, without prejudice, and the action may not proceed until
70 the claimant has complied with such requirements. The notice
71 requirement is not intended to interfere with an owner's ability
72 to complete a project that has not been substantially completed.
73 The notice is not required for a project that has not reached
74 the stage of completion of the building or improvement.

75 Section 4. Subsections (9) through (15) of section

558.004, Florida Statutes, are renumbered as subsections (10) through (16), respectively, subsections (1) through (6) and present subsection (10) are amended, and a new subsection (9) 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 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 notice of claim, personally signed by the claimant, on the contractor, subcontractor, supplier, or design professional, as applicable, which notice shall refer to this chapter. If the construction defect claim arises from work performed under a contract, the written notice of claim, personally signed by the claimant, must be served on the person with whom the claimant contracted.

(b) The notice of claim must describe in reasonable detail the nature of each alleged construction defect ~~and, if known,~~ the damage or loss resulting from the alleged defect, if known, including the cost to repair the alleged defect and any other monetary damages caused by the alleged defect, and the identity or report of any expert who inspected the damage or loss, as well as the documents relied on by such expert. Based upon at least a visual inspection by the claimant or its agents, the notice of claim must identify the location of each alleged

101 construction defect sufficiently to enable the responding
102 parties to locate the alleged defect without undue burden. The
103 time requirements in this chapter do not begin to run until the
104 claimant has satisfied the requirements in this section. The
105 claimant has no obligation to perform destructive or other
106 testing for purposes of this notice.

107 (c) The claimant shall endeavor to serve the notice of
108 claim within 15 days after discovery of an alleged defect, but
109 the failure to serve notice of claim within 15 days does not bar
110 the filing of an action, subject to s. 558.003. This subsection
111 does not preclude a claimant from filing an action sooner than
112 60 days, ~~or 120 days as applicable,~~ after service of written
113 notice as expressly provided in subsection (6), subsection (7),
114 or subsection (8).

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

118 (2) Within 30 days after service of the notice of claim, ~~or~~
119 ~~within 50 days after service of the notice of claim involving~~
120 ~~an association representing more than 20 parcels,~~ the person
121 served with the notice of claim under subsection (1) is entitled
122 to perform a reasonable inspection of the property or of each
123 unit subject to the claim to assess each alleged construction
124 defect. ~~An association's right to access property for either~~
125 ~~maintenance or repair includes the authority to grant access for~~

126 ~~the inspection.~~ The claimant shall provide the person served
127 with notice under subsection (1) and such person's contractors
128 or agents reasonable access to the property during normal
129 working hours to inspect the property to determine the nature
130 and cause of each alleged construction defect and the nature and
131 extent of any repairs or replacements necessary to remedy each
132 defect. The person served with notice under subsection (1) shall
133 reasonably coordinate the timing and manner of any and all
134 inspections with the claimant and any additional parties who are
135 served a copy of the notice of claim under subsection (3) to
136 minimize the number of inspections. The inspection may include
137 destructive testing by mutual agreement under the following
138 reasonable terms and conditions:

139 (a) If the person served with notice under subsection (1)
140 determines that destructive testing is necessary to determine
141 the nature and cause of the alleged defects, such person shall
142 notify the claimant in writing.

143 (b) The notice shall describe the destructive testing to
144 be performed, the person selected to do the testing, the
145 estimated anticipated damage and repairs to or restoration of
146 the property resulting from the testing, the estimated amount of
147 time necessary for the testing and to complete the repairs or
148 restoration, and the financial responsibility offered for
149 covering the costs of repairs or restoration.

150 (c) If the claimant promptly objects to the person

151 selected to perform the destructive testing, the person served
152 with notice under subsection (1) shall provide the claimant with
153 a list of three qualified persons from which the claimant may
154 select one such person to perform the testing. The person
155 selected to perform the testing shall operate as an agent or
156 subcontractor of the person served with notice under subsection
157 (1) and shall communicate with, submit any reports to, and be
158 solely responsible to the person served with notice.

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

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

163 (f) The destructive testing may ~~shall~~ not render the
164 property uninhabitable.

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

171
172 If the claimant refuses to agree and thereafter permit
173 reasonable destructive testing, the claimant has ~~shall have~~ no
174 claim for damages which could have been avoided or mitigated had
175 destructive testing been allowed when requested and had a

feasible remedy been promptly implemented.

(3) Within 10 days after service of the notice of claim, ~~or within 30 days after service of the notice of claim involving an association representing more than 20 parcels,~~ the person served with notice under subsection (1) must ~~may~~ serve a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular contractor, subcontractor, supplier, or design professional is responsible. The notice described in this subsection must describe in detail the nature of each alleged construction defect, the damage or loss resulting from the alleged defect, if known, including the cost to repair the alleged defect and any other monetary damages caused by the alleged defect, and the identity or report of any expert who inspected the damage or loss, as well as the documents relied on by such expert. Such notice may not be construed as an admission of any kind. Each such contractor, subcontractor, supplier, and design professional may inspect the property as provided in subsection (2).

(4) Within 45 ~~15~~ days after service of a copy of the notice of claim under ~~pursuant to~~ subsection (3), ~~or within 30 days after service of the copy of the notice of claim involving an association representing more than 20 parcels,~~ the

contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response must include a report, if any, of the scope of any inspection of the property and the findings and results of the inspection. The written response must include one or more of the offers or statements specified in paragraphs (5)(a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement.

(5) Within 45 days after service of the notice of claim~~7~~
~~or within 75 days after service of a copy of the notice of claim~~
~~involving an association representing more than 20 parcels~~, the person who was served the notice under subsection (1) must serve a written response to the claimant. The response shall be served to the attention of the person who signed the notice of claim, unless otherwise designated in the notice of claim. The written response must provide:

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

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

226 (c) A written offer to compromise and settle the claim by
227 a combination of repairs and monetary payment, that will not
228 obligate the person's insurer, that includes a detailed
229 description of the proposed repairs and a timetable for the
230 completion of such repairs and making payment;

231 (d) A written statement that the person disputes the claim
232 and will not remedy the defect or compromise and settle the
233 claim; or

234 (e) A written statement that a monetary payment, including
235 insurance proceeds, if any, will be determined by the person's
236 insurer within 30 days after notification to the insurer by
237 means of serving the claim, which service shall occur at the
238 same time the claimant is notified of this settlement option,
239 which the claimant may accept or reject. A written statement
240 under this paragraph may also include an offer under paragraph
241 (c), but such offer shall be contingent upon the claimant also
242 accepting the determination of the insurer whether to make any
243 monetary payment in addition thereto. If the insurer for the
244 person served with the claim makes no response within the 30
245 days following service, then the claimant shall be deemed to
246 have met all conditions precedent to commencing an action.

247 (6) If the person served with a notice of claim under
248 ~~pursuant to~~ subsection (1) disputes the claim and will neither
249 remedy the defect nor compromise and settle the claim, or does
250 not respond to the claimant's notice of claim within the time

provided in subsection (5), the claimant shall serve a written notice of such denial or failure to respond to all parties and may, without further notice, proceed with an action against that person for the claim described in the notice of claim. Nothing in this chapter shall be construed to preclude a partial settlement or compromise of the claim as agreed to by the parties and, in that event, the claimant may, without further notice, proceed with an action on the unresolved portions of the claim.

(9)(a) A contractor, subcontractor, supplier, or design professional who served a written response to a claimant under subsection (5) which included a written offer to repair is only required to make payment on a judgment, order, decision, verdict, finding, or settlement after the claimant enters into a contract for the performance of repairs. Such contract may be for an amount that is less than the judgment, order, decision, verdict, finding, or settlement. If the contract for the performance of repairs is less than the judgment, order, decision, verdict, finding, or settlement, such judgment, order, decision, verdict, finding, or settlement is reduced to full contract price, and after the contracted work is completed, the judgment, order, decision, verdict, finding, or settlement is satisfied. A contractor, subcontractor, supplier, or design professional may not be required to pay more than the amount of the judgment, order, decision, verdict, finding, or settlement.

276 (b) A claimant must enter into a contract for the
277 performance of repairs within 90 days after the judgment, order,
278 decision, verdict, finding, or settlement.

279 (c) After the claimant enters into a contract for the
280 performance of repairs, the contractor, subcontractor, supplier,
281 or design professional shall pay:

282 1. The full contract price as determined under paragraph
283 (a) to the party performing such repairs. If the contractor,
284 subcontractor, supplier, or design professional pays the full
285 contract price before the repair work is completed, the party
286 performing such repairs must hold such payment in trust pending
287 the claimant's written approval for the release of funds; or

288 2. A percentage of the full contract price necessary to
289 begin such repairs. Thereafter, the contractor, subcontractor,
290 supplier, or design professional shall make payments to the
291 party performing the repairs as the work is performed and the
292 expenses are incurred.

293 (d) The contractor, subcontractor, supplier, or design
294 professional may not require the claimant to make an advance
295 payment for the repair work.

296 (e) A contractor, subcontractor, supplier, or design
297 professional making payments to a party performing repairs under
298 this subsection is not liable for the repair work that is
299 performed or for making proper payments under chapter 713.

300 (f) If payments are held in trust under subparagraph

301 (c)1., the party performing the repairs may not release the last
302 10 percent of the payment until he or she executes a signed
303 affidavit attesting that the contracted work is completed and
304 was performed without set-off or reduction and serves such
305 affidavit on the claimant and the contractor, subcontractor,
306 supplier, or design professional in accordance with s. 713.18.

307 (11)-(10) A claimant's service of the written notice of
308 claim under subsection (1) tolls the applicable statute of
309 limitations relating to any person covered by this chapter and
310 any bond surety until the later of:

311 (a) Ninety days, ~~or 120 days, as applicable,~~ after service
312 of the notice of claim pursuant to subsection (1); or

313 (b) Thirty days after the end of the repair period or
314 payment period stated in the offer, if the claimant has accepted
315 the offer. By stipulation of the parties, the period may be
316 extended and the statute of limitations is tolled during the
317 extension.

318 Section 5. Section 558.0045, Florida Statutes, is created
319 to read:

320 558.0045 Construction defect litigation; special
321 requirements.—

322 (1) Notwithstanding s. 558.005, this section applies to
323 all actions involving construction defects, including civil
324 suits and arbitrations.

325 (2) In any action involving construction defects, the

326 parties shall participate in mandatory nonbinding arbitration,
327 conducted in accordance with chapter 682. Mandatory arbitration
328 shall occur after all parties have been joined in the action,
329 but no later than 180 days after the civil suit is filed.

330 However, if a party is joined in the action after 180 days, such
331 party must still participate in mandatory nonbinding arbitration
332 as set forth in this section.

333 (3) If the arbitrator finds in favor of a claimant, the
334 arbitrator shall include in the award a detailed description of
335 the nature of the defect and the monetary amount awarded against
336 each party separately, including all of the following:

337 (a) The monetary amount of the award attributable to
338 repairing or replacing the party's defective work.

339 (b) The monetary amount of the award attributable to
340 repairing or replacing other nondefective property damaged by
341 the party's defective work.

342 (c) The monetary amount of the award attributable to other
343 damages being awarded against the party.

344 (4) Any party to the arbitration proceeding may agree in
345 writing, either before or up to 30 days after the arbitration
346 award is entered, to be bound by the arbitration award. Any
347 party who does not agree to be bound by the arbitration award
348 may proceed with the civil action on the unresolved portions of
349 the claim.

350 (5) For any party who does not agree to be bound by the

351 arbitration award and who proceeds to trial in the action, the
352 jury verdict and final judgment shall include a detailed
353 description of the nature of the defect and the monetary amount
354 awarded against each party separately, including all of the
355 following:

356 (a) The monetary amount of the award attributable to
357 repairing or replacing the party's defective work.

358 (b) The monetary amount of the award attributable to
359 repairing or replacing other nondefective property damaged by
360 the party's defective work.

361 (c) The monetary amount of the award attributable to other
362 damages being awarded against the party.

363 (6) This section does not preclude a partial settlement or
364 compromise of the claim as agreed to by the parties, either
365 before or after the arbitration.

366 (7) This section does not affect the rights and duties of
367 insureds and insurance carriers under their policies. However,
368 any defense, with or without a reservation of rights, provided
369 by a carrier to a party asserting additional insured status or
370 indemnatee status in proceedings under this chapter, and in any
371 subsequent civil proceeding, shall only be as to the scope of
372 work of the named insured of the carrier. Such defense shall not
373 extend to defending the additional insured or indemnatee with
374 regard to the work of other construction parties or trades.

375 Section 6. This act shall take effect July 1, 2020.