

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

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

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

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

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

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

(d) 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 construction defect claim under chapter 558 relating to the

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

(3) SINGLE AGENT RELATIONSHIP.—

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

1. Dealing honestly and fairly;

2. Loyalty;

3. Confidentiality;

4. Obedience;

5. Full disclosure;

6. Accounting for all funds;

7. Skill, care, and diligence in the transaction;

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

9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made.

(c) Contents of disclosure.—

73 1. Single agent duties disclosure.—The notice required
74 under subparagraph (b)1. must include the following information
75 in the following form:

76 SINGLE AGENT NOTICE

77 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
78 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.

79 As a single agent, ...(insert name of Real Estate Entity
80 and its Associates)... owe to you the following duties:

- 81 1. Dealing honestly and fairly;
- 82 2. Loyalty;
- 83 3. Confidentiality;
- 84 4. Obedience;
- 85 5. Full disclosure;
- 86 6. Accounting for all funds;
- 87 7. Skill, care, and diligence in the transaction;
- 88 8. Presenting all offers and counteroffers in a timely
89 manner, unless a party has previously directed the licensee
90 otherwise in writing; and
- 91 9. Disclosing all known facts that materially affect the
92 value of residential real property and are not readily
93 observable, including whether the seller or an association
94 acting on the seller's behalf has made a construction defect
95 claim under chapter 558 relating to the property, the outcome of
96 the claim, and what, if any, repairs were made.

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.....

Date

Signature

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

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

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

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

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

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

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

(4) NO BROKERAGE RELATIONSHIP.—

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

1. Dealing honestly and fairly;

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

3. Accounting for all funds entrusted to the licensee.

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

NO BROKERAGE RELATIONSHIP NOTICE

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

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

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1. Dealing honestly and fairly;

2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer, including whether the seller or an association acting on the seller's behalf has made a construction defect claim under chapter 558 relating to the property, the outcome of the claim, and what, if any, repairs were made.

3. Accounting for all funds entrusted to the licensee.

...(Date)...

...(Signature)...

Section 2. Subsections (1) through (4) and subsection (15) of section 558.004, Florida Statutes, are amended 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 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 must be served on the person with whom the claimant contracted. However, a notice of claim may not be served under this chapter unless the claimant has first properly submitted a claim for the alleged construction defect under any applicable warranty, and

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

(b) The notice of claim must:

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

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

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

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

5. Acknowledge that the claimant is aware of the real
estate disclosure obligation under s. 558.006 and of the
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:

223
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.

227
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

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

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

558.0045 Construction defect litigation; special requirements.—

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

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

(a) Repairing or replacing the defective work.

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

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

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

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

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

(2) The specific nature of the alleged defect.

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

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

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

558.007 Notice to mortgagee or assignee.—

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

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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.