

By Senator Hutson

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A bill to be entitled
An act relating to construction defect claims;
amending s. 95.11, F.S.; revising the limitations
period for certain actions founded on the design,
planning, or construction of an improvement on real
property; amending s. 558.004, F.S.; requiring a
claimant to include the reasons for rejecting an offer
in a notice rejecting a settlement offer to remedy a
construction defect; authorizing the person served
with a notice rejecting a settlement offer to make a
supplemental offer within a specified timeframe;
providing notice requirements for a claimant who
rejects a supplemental offer; requiring the court to
stay an action if a claimant initiates an action
without first accepting or rejecting a supplemental
offer; limiting entitlement to attorney fees if a
claimant rejects certain settlement offers to fully
repair an alleged construction defect; requiring a
claimant who accepts a certain offer to enter into a
contract to complete repairs to remedy an alleged
construction defect; requiring the offeror or insurer
to pay the contractor or contractors directly for the
repairs; prohibiting an offeror or insurer from
requiring a claimant to advance payment for repairs;
requiring that the repairs be completed within a
specified timeframe; creating s. 558.0045, F.S.;
requiring a court to appoint an expert to examine
certain alleged construction defects and to prepare an
examination report, under certain circumstances;

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requiring that the report contain specified information; requiring the parties to compensate the expert; prohibiting the expert from being employed to make repairs or from recommending contractors to make repairs; creating s. 558.0046, F.S.; requiring a claimant to repair a construction defect if the claimant receives compensation for an alleged construction defect from specified persons; providing that a claimant is liable for damages resulting from failure to disclose a construction defect to a purchaser of a property; creating s. 558.006, F.S.; requiring a claimant to serve certain notices relating to construction defects on the mortgagee or assignee of the relevant real property within a specified timeframe under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of

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abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; ~~except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion of the contract or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.~~ However, counterclaims, cross-claims, and third-party claims that arise out of the conduct, transaction, or occurrence set out or attempted to be set out in a pleading may be commenced up to 1 year after the pleading to which such claims relate is served, even if such claims would otherwise be time barred. With respect to actions founded on the design, planning, or construction of an improvement to real property, if such construction is performed pursuant to a duly issued building permit and if a local enforcement agency, state enforcement agency, or special inspector, as those terms are defined in s. 553.71, has issued a final certificate of occupancy or certificate of completion, then as to the construction which is within the scope of such building permit and certificate, the correction of defects to completed work or repair of completed work, whether performed under warranty or otherwise, does not extend the period of time

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within which an action must be commenced. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

Section 2. Present subsections (8) through (15) of section 558.004, Florida Statutes, are redesignated as subsections (9) through (16), respectively, a new subsection (8) is added to that section, and paragraph (c) of subsection (1) and subsection (7) of that section are amended, to read:

558.004 Notice and opportunity to repair.—

(1)

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

(7) (a) A claimant who receives a timely settlement offer must accept or reject the offer by serving written notice of such acceptance or rejection on the person making the offer within 45 days after receiving the settlement offer.

(b) If the claimant rejects the settlement offer, the claimant must include the reasons for rejecting the offer in the notice rejecting the offer. If the claimant believes that the settlement offer omitted reference to any portion of the claim or was unreasonable in any manner, the claimant must include in

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the notice the items that the claimant believes were omitted and state in detail all known reasons why the claimant believes the settlement offer is unreasonable.

(c) Upon receipt of a claimant's notice of rejection and the reasons for such rejection, the person served with the rejection, within 15 days after receipt of the notice, may make a supplemental offer of repair or monetary payment, or both, to the claimant.

(d) If the claimant rejects a supplemental offer to repair the construction defect or to settle the claim by monetary payment or a combination of both, the claimant must serve written notice of the claimant's rejection on the person making the supplemental offer. The notice must include all known reasons for the claimant's rejection of the supplemental settlement offer.

(e) If a claimant initiates an action without first accepting or rejecting the offer or supplemental offer, the court shall stay the action upon timely motion until the claimant complies with this subsection.

(8)(a) If the claimant rejects a timely settlement offer or supplemental offer provided to remedy the alleged construction defect at no cost to the claimant, in any action brought for that defect, the claimant may not recover attorney fees from the offeror on any basis unless the claimant proves by a preponderance of the evidence that, at the time of the offer, additional repairs beyond those offered were necessary to remedy the defect. This paragraph does not apply to any claim for attorney fees based on a contract between the claimant and the offeror.

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146 (b) If a claimant accepts an offer made pursuant to
147 paragraph (5)(b), paragraph (5)(c), or paragraph (5)(e) or a
148 supplemental offer made pursuant to paragraph (7)(c), the
149 claimant must, within 90 days after the acceptance, enter into a
150 contract with one or more appropriately licensed contractors to
151 complete the repairs necessary to remedy the alleged
152 construction defect. The offeror or insurer shall pay directly
153 to the contractor or contractors, from the accepted monetary
154 payment, the amounts necessary to begin and to continue the
155 repairs as the work is performed and expenses are incurred. The
156 offeror or insurer may not require the claimant to advance
157 payment for the repairs. The repairs must be completed within 12
158 months after the claimant enters into the contract for repairs,
159 absent mutual agreement between the offeror or insurer and the
160 claimant.

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

163 558.0045 Construction defect actions; attorney fees and
164 costs.—

165 (1) In a civil action alleging a construction defect, the
166 court shall appoint an engineer, a contractor, a building code
167 inspector, or another expert having experience in the type of
168 construction that is the basis of the claimant's claim to
169 examine the alleged defect or, if repairs have been made, any
170 evidence of the alleged defect. However, the court may not
171 appoint an expert if all of the parties object or if the court
172 finds that the costs of an expert outweigh any potential
173 benefits to the resolution of the action. If an expert is
174 appointed, the expert must coordinate and communicate with the

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parties as directed by the court. Within 15 days after conducting the examination, or as otherwise determined by the court, the expert shall submit a written report to the court for its consideration and to the parties which contains the expert's findings. The report must do all of the following:

(a) Describe how the expert conducted the examination of the alleged defect.

(b) Identify persons present at the site of the improvement while the expert conducted the examination.

(c) Include photographs or other documentation of the alleged defect including any relevant test results.

(d) State whether the damages claimed by the claimant are more likely than not the result of a construction defect, another identified cause, or a construction defect and another identified cause.

(e) Address other matters related to the alleged defect as directed by the court.

(2) If the expert concludes that the damages are wholly or partially the result of a construction defect, the report must state the actions necessary to repair the defect and any repairs related to the defect, provide an estimate of the reasonable cost of repairs, and state the anticipated time needed for repairs under the current market conditions for construction services and materials.

(3) The parties shall compensate the expert, but the prevailing party is entitled to reimbursement from the nonprevailing party.

(4) An expert appointed by the court under this section may not be employed to repair the alleged defect or recommend

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204 contractors to repair the defect.

205 Section 4. Section 558.0046, Florida Statutes, is created
206 to read:

207 558.0046 Duty to repair construction defect.—If a claimant
208 receives compensation for an alleged construction defect from a
209 contractor, a subcontractor, a supplier, a design professional,
210 or an insurer, the claimant must repair the defect. A claimant
211 who receives compensation and fails to fully repair the defect
212 is liable to a purchaser of the property for any damages
213 resulting from the failure to disclose the defect.

214 Section 5. Section 558.006, Florida Statutes, is created to
215 read:

216 558.006 Notice to mortgagee or assignee.—

217 (1) If a notice of claim alleging a construction defect is
218 made with respect to real property to which a mortgagee or an
219 assignee has a security interest, the claimant must, within 30
220 days after service of the notice of claim on the contractor,
221 subcontractor, supplier, or design professional, provide the
222 mortgagee or assignee with a copy of the notice of claim, by
223 certified mail, return receipt requested.

224 (2) If repairs relating to the defect are completed after
225 the claimant notifies the mortgagee or assignee as required
226 under subsection (1), or if any settlement, partial settlement,
227 arbitration award, or judgment is obtained by the claimant, the
228 claimant must provide an additional notice to the mortgagee or
229 assignee within 60 days after completion of the repairs or any
230 settlement, partial settlement, arbitration award, or judgment,
231 whichever is later, by certified mail, return receipt requested.

232 Section 6. (1) The amendments by this act to s.

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233 95.11(3)(c), Florida Statutes, apply to any action commenced on
234 or after July 1, 2022, regardless of when the cause of action
235 accrued. However, any action that would not have been barred
236 under s. 95.11(3)(c), Florida Statutes, before the amendments
237 made by this act to that section may be commenced before July 1,
238 2023. If such action is not commenced by July 1, 2023, and is
239 barred by the amendments made by this act to s. 95.11(3)(c),
240 Florida Statutes, the action is barred.

241 (2) Sections 2 through 5 of this act apply to compensation
242 for construction defects received on or after July 1, 2022, and
243 to civil actions and proceedings for a construction defect which
244 are initiated on or after July 1, 2022.

245 Section 7. This act shall take effect July 1, 2022.