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2015 Legislature

1  
2 An act relating to construction defect claims;  
3 amending s. 558.001, F.S.; revising legislative  
4 intent; amending s. 558.002, F.S.; revising the  
5 definition of the term "completion of a building or  
6 improvement"; amending s. 558.004, F.S.; providing  
7 additional requirements for a notice of claim;  
8 revising requirements for a response; revising  
9 provisions relating to production of certain records;  
10 amending ss. 718.203 and 719.203, F.S.; conforming  
11 provisions to changes made by the act; providing an  
12 effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16 Section 1. Section 558.001, Florida Statutes, is amended  
17 to read:

18 558.001 Legislative findings and declaration.—The  
19 Legislature finds that it is beneficial to have an alternative  
20 method to resolve construction disputes that would reduce the  
21 need for litigation as well as protect the rights of property  
22 owners. An effective alternative dispute resolution mechanism in  
23 certain construction defect matters should involve the claimant  
24 filing a notice of claim with the contractor, subcontractor,  
25 supplier, or design professional that the claimant asserts is  
26 responsible for the defect, and should provide the contractor,

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27 subcontractor, supplier, or design professional, and the insurer  
 28 of the contractor, subcontractor, supplier, or design  
 29 professional, with an opportunity to resolve the claim through  
 30 confidential settlement negotiations without resort to further  
 31 legal process.

32 Section 2. Subsection (4) of section 558.002, Florida  
 33 Statutes, is amended to read:

34 558.002 Definitions.—As used in this chapter, the term:

35 (4) "Completion of a building or improvement" means  
 36 issuance of a certificate of occupancy, whether temporary or  
 37 otherwise, that allows for occupancy or use of ~~for~~ the entire  
 38 building or improvement, or an ~~the~~ equivalent authorization ~~to~~  
 39 ~~occupy or use the improvement,~~ issued by the governmental body  
 40 having jurisdiction. ~~and,~~ In jurisdictions where no certificate  
 41 of occupancy or ~~the~~ equivalent authorization is issued, the term  
 42 means substantial completion of construction, finishing, and  
 43 equipping of the building or improvement according to the plans  
 44 and specifications.

45 Section 3. Subsections (1), (4), (13), and (15) of section  
 46 558.004, Florida Statutes, are amended to read:

47 558.004 Notice and opportunity to repair.—

48 (1) (a) In actions brought alleging a construction defect,  
 49 the claimant shall, at least 60 days before filing any action,  
 50 or at least 120 days before filing an action involving an  
 51 association representing more than 20 parcels, serve written  
 52 notice of claim on the contractor, subcontractor, supplier, or

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53 design professional, as applicable, which notice shall refer to  
54 this chapter. If the construction defect claim arises from work  
55 performed under a contract, the written notice of claim must be  
56 served on the person with whom the claimant contracted.

57 (b) The notice of claim must describe ~~the claim~~ in  
58 reasonable detail ~~sufficient to determine the general~~ nature of  
59 each alleged construction defect and, if known, a description of  
60 the damage or loss resulting from the defect, if known. Based  
61 upon at least a visual inspection by the claimant or its agents,  
62 the notice of claim must identify the location of each alleged  
63 construction defect sufficiently to enable the responding  
64 parties to locate the alleged defect without undue burden. The  
65 claimant has no obligation to perform destructive or other  
66 testing for purposes of this notice.

67 (c) The claimant shall endeavor to serve the notice of  
68 claim within 15 days after discovery of an alleged defect, but  
69 the failure to serve notice of claim within 15 days does not bar  
70 the filing of an action, subject to s. 558.003. This subsection  
71 does not preclude a claimant from filing an action sooner than  
72 60 days, or 120 days as applicable, after service of written  
73 notice as expressly provided in subsection (6), subsection (7),  
74 or subsection (8).

75 (4) Within 15 days after service of a copy of the notice  
76 of claim pursuant to subsection (3), or within 30 days after  
77 service of the copy of the notice of claim involving an  
78 association representing more than 20 parcels, the contractor,

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79 subcontractor, supplier, or design professional must serve a  
80 written response to the person who served a copy of the notice  
81 of claim. The written response must ~~shall~~ include a report, if  
82 any, of the scope of any inspection of the property and, the  
83 findings and results of the inspection. The written response  
84 must include one or more of the offers or statements specified  
85 in paragraphs (5) (a)-(e), as chosen by the responding  
86 contractor, subcontractor, supplier, or design professional,  
87 with all of the information required for that offer or  
88 statement, ~~a statement of whether the contractor, subcontractor,~~  
89 ~~supplier, or design professional is willing to make repairs to~~  
90 ~~the property or whether such claim is disputed, a description of~~  
91 ~~any repairs they are willing to make to remedy the alleged~~  
92 ~~construction defect, and a timetable for the completion of such~~  
93 ~~repairs. This response may also be served on the initial~~  
94 ~~claimant by the contractor.~~

95 (13) This section does not relieve the person who is  
96 served a notice of claim under subsection (1) from complying  
97 with all contractual provisions of any liability insurance  
98 policy as a condition precedent to coverage for any claim under  
99 this section. However, notwithstanding the foregoing or any  
100 contractual provision, the providing of a copy of such notice to  
101 the person's insurer, if applicable, shall not constitute a  
102 claim for insurance purposes unless the terms of the policy  
103 specify otherwise. Nothing in this section shall be construed to  
104 impair technical notice provisions or requirements of the

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105 liability policy or alter, amend, or change existing Florida law  
 106 relating to rights between insureds and insurers except as  
 107 otherwise specifically provided herein.

108 (15) Upon request, the claimant and any person served with  
 109 notice pursuant to subsection (1) shall exchange, within 30 days  
 110 after service of a written request, which request must cite this  
 111 subsection and include an offer to pay the reasonable costs of  
 112 reproduction, any design plans, specifications, and as-built  
 113 plans; ~~any documents detailing the design drawings or~~  
 114 ~~specifications;~~ photographs and videos of the alleged  
 115 construction defect identified in the notice of claim; ~~and~~  
 116 expert reports that describe any defect upon which the claim is  
 117 made; subcontracts; ~~and~~ purchase orders for the work that is  
 118 claimed defective or any part of such materials; and maintenance  
 119 records and other documents related to the discovery,  
 120 investigation, causation, and extent of the alleged defect  
 121 identified in the notice of claim and any resulting damages. A  
 122 party may assert any claim of privilege recognized under the  
 123 laws of this state with respect to any of the disclosure  
 124 obligations specified in this chapter. In the event of  
 125 subsequent litigation, any party who failed to provide the  
 126 requested materials shall be subject to such sanctions as the  
 127 court may impose for a discovery violation. Expert reports  
 128 exchanged between the parties may not be used in any subsequent  
 129 litigation for any purpose, unless the expert, or a person  
 130 affiliated with the expert, testifies as a witness or the report

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131 is used or relied upon by an expert who testifies on behalf of  
 132 the party for whom the report was prepared.

133 Section 4. Subsection (3) of section 718.203, Florida  
 134 Statutes, is amended to read:

135 718.203 Warranties.—

136 (3) "Completion of a building or improvement" means  
 137 issuance of a certificate of occupancy, whether temporary or  
 138 otherwise, that allows for occupancy or use of ~~for~~ the entire  
 139 building or improvement, or an ~~the~~ equivalent authorization  
 140 issued by the governmental body having jurisdiction. ~~and~~ In  
 141 jurisdictions where no certificate of occupancy or equivalent  
 142 authorization is issued, the term ~~it~~ means substantial  
 143 completion of construction, finishing, and equipping of the  
 144 building or improvement according to the plans and  
 145 specifications.

146 Section 5. Subsection (3) of section 719.203, Florida  
 147 Statutes, is amended to read:

148 719.203 Warranties.—

149 (3) "Completion of a building or improvement" means  
 150 issuance of a certificate of occupancy, whether temporary or  
 151 otherwise, that allows for occupancy or use of ~~for~~ the entire  
 152 building or improvement, or an ~~the~~ equivalent authorization  
 153 issued by the governmental body having jurisdiction. ~~and~~ In  
 154 jurisdictions where no certificate of occupancy or equivalent  
 155 authorization is issued, the term ~~it~~ means substantial  
 156 completion of construction, finishing, and equipping of the

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157 | building or improvement according to the plans and  
158 | specifications.

159 |       Section 6. This act shall take effect October 1, 2015.