

26 | to the performance of a building or its systems.

27 | (2) Notwithstanding any other remedies available, any
 28 | person or party, in an individual capacity or on behalf of a
 29 | class of persons or parties, damaged as a result of a material
 30 | violation of this part or the Florida Building Code, has a cause
 31 | of action in any court of competent jurisdiction against the
 32 | person or party who committed the violation; however, if the
 33 | person or party obtains the required building permits and any
 34 | local government or public agency with authority to enforce the
 35 | Florida Building Code approves the plans, and if the
 36 | construction project passes all required inspections under the
 37 | Florida Building Code, ~~and if there is no personal injury or~~
 38 | ~~damage to property other than the property that is the subject~~
 39 | ~~of the permits, plans, and inspections,~~ this section does not
 40 | apply.

41 | (3) A cause of action pled under this section must cite to
 42 | the specific provisions of this part or the Florida Building
 43 | Code allegedly violated, must explain how each provision was
 44 | allegedly violated, and is subject to dismissal for failing to
 45 | do so unless the person or party knew or should have known that
 46 | the violation existed.

47 | Section 2. Paragraph (b) of subsection (1) and subsections
 48 | (2) and (7) of section 558.004, Florida Statutes, are amended to
 49 | read:

50 | 558.004 Notice and opportunity to repair.-

51 (1)

52 (b) The notice of claim must be made under oath by the
53 claimant and must describe in specific ~~reasonable~~ detail the
54 nature of each alleged construction defect, the name and contact
55 information of any consultants retained by the claimant or on
56 the claimant's behalf to inspect the defect, and, if known, the
57 damage or loss resulting from the defect, including the alleged
58 cost of repairing the defect and any other damages alleged to
59 have been suffered as a result of the defect. The notice of
60 claim must specifically identify, as applicable, the allegedly
61 defective materials, products, or components and the applicable
62 code provisions, professional standards of care for design, or
63 accepted trade standards for the construction or remodeling
64 allegedly violated and must explain how each cited code
65 provision or standard was violated. Based upon at least a visual
66 inspection by the claimant or its agents, the notice of claim
67 must identify the specific location of each alleged construction
68 defect sufficiently to enable the responding parties to locate
69 the alleged defect without undue burden. If requested, the
70 claimant must allow the person served with the notice of claim
71 under this subsection the opportunity to inspect all maintenance
72 records for the subject property. The claimant has no obligation
73 to perform destructive or other testing for purposes of this
74 notice.

75 (2) Within 30 days after service of the notice of claim,

76 | or within 50 days after service of the notice of claim involving
77 | an association representing more than 20 parcels, the person
78 | served with the notice of claim under subsection (1) is entitled
79 | to perform a reasonable inspection of the property or of each
80 | unit subject to the claim to assess each alleged construction
81 | defect. An association's right to access property for either
82 | maintenance or repair includes the authority to grant access for
83 | the inspection. The claimant shall provide the person served
84 | with notice under subsection (1) and such person's contractors
85 | or agents reasonable access to the property during normal
86 | working hours to inspect the property to determine the nature
87 | and cause of each alleged construction defect and the nature and
88 | extent of any repairs or replacements necessary to remedy each
89 | defect. The person served with notice under subsection (1) shall
90 | reasonably coordinate the timing and manner of any and all
91 | inspections with the claimant to minimize the number of
92 | inspections. If the claimant fails to grant the person served
93 | with the notice under subsection (1) the opportunity to conduct
94 | a reasonable inspection of the property with the alleged defect
95 | during the timeframe established in this section, the claimant
96 | does not have a claim for damages that could have been avoided
97 | or mitigated had an inspection taken place. The inspection may
98 | include destructive testing by mutual agreement under the
99 | following reasonable terms and conditions:

100 | (a) If the person served with notice under subsection (1)

101 determines that destructive testing is necessary to determine
102 the nature and cause of the alleged defects, such person shall
103 notify the claimant in writing.

104 (b) The notice shall describe the destructive testing to
105 be performed, the person selected to do the testing, the
106 estimated anticipated damage and repairs to or restoration of
107 the property resulting from the testing, the estimated amount of
108 time necessary for the testing and to complete the repairs or
109 restoration, and the financial responsibility offered for
110 covering the costs of repairs or restoration.

111 (c) If the claimant promptly objects to the person
112 selected to perform the destructive testing, the person served
113 with notice under subsection (1) shall provide the claimant with
114 a list of three qualified persons from which the claimant may
115 select one such person to perform the testing. The person
116 selected to perform the testing shall operate as an agent or
117 subcontractor of the person served with notice under subsection
118 (1) and shall communicate with, submit any reports to, and be
119 solely responsible to the person served with notice.

120 (d) The testing shall be done at a mutually agreeable
121 time.

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

124 (f) The destructive testing shall not render the property
125 uninhabitable.

126 (g) There shall be no construction lien rights under part
 127 I of chapter 713 for the destructive testing caused by a person
 128 served with notice under subsection (1) or for restoring the
 129 area destructively tested to the condition existing prior to
 130 testing, except to the extent the owner contracts for the
 131 destructive testing or restoration.

132
 133 If the claimant refuses to agree and thereafter permit
 134 reasonable destructive testing, the claimant shall have no claim
 135 for damages which could have been avoided or mitigated had
 136 destructive testing been allowed when requested and had a
 137 feasible remedy been promptly implemented.

138 (7) A claimant who receives a timely settlement offer must
 139 accept or reject the offer by serving written notice of such
 140 acceptance or rejection, signed by the claimant, on the person
 141 making the offer within 45 days after receiving the settlement
 142 offer. If a claimant initiates an action without first accepting
 143 or rejecting the offer, the court shall stay the action upon
 144 timely motion until the claimant complies with this subsection.

145 Section 3. For the purpose of incorporating the amendment
 146 made by this act to section 553.84, Florida Statutes, in a
 147 reference thereto, subsection (5) of section 558.002, Florida
 148 Statutes, is reenacted to read:

149 558.002 Definitions.—As used in this chapter, the term:

150 (5) "Construction defect" means a deficiency in, or a

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151 deficiency arising out of, the design, specifications,
152 surveying, planning, supervision, observation of construction,
153 or construction, repair, alteration, or remodeling of real
154 property resulting from:

155 (a) Defective material, products, or components used in
156 the construction or remodeling;

157 (b) A violation of the applicable codes in effect at the
158 time of construction or remodeling which gives rise to a cause
159 of action pursuant to s. 553.84;

160 (c) A failure of the design of real property to meet the
161 applicable professional standards of care at the time of
162 governmental approval; or

163 (d) A failure to construct or remodel real property in
164 accordance with accepted trade standards for good and
165 workmanlike construction at the time of construction.

166 Section 4. This act shall take effect July 1, 2020.