

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.

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

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

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

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

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

76 558.004, Florida Statutes, are renumbered as subsections (10)  
77 through (16), respectively, subsections (1) through (6) and  
78 present subsection (10) are amended, and a new subsection (9) is  
79 added to that section, to read:

80 558.004 Notice and opportunity to repair.-

81 (1) (a) In actions brought alleging a construction defect,  
82 the claimant shall, at least 60 days before filing any action,  
83 ~~or at least 120 days before filing an action involving an~~  
84 ~~association representing more than 20 parcels,~~ serve written  
85 notice of claim, personally signed by the claimant, on the  
86 contractor, subcontractor, supplier, or design professional, as  
87 applicable, which notice shall refer to this chapter. If the  
88 construction defect claim arises from work performed under a  
89 contract, the written notice of claim, personally signed by the  
90 claimant, must be served on the person with whom the claimant  
91 contracted.

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

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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

176 feasible remedy been promptly implemented.

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

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



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

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

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

223 (b) A written offer to compromise and settle the claim by  
224 monetary payment, that will not obligate the person's insurer,  
225 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

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

260 (9)(a) A contractor, subcontractor, supplier, or design  
261 professional who served a written response to a claimant under  
262 subsection (5) which included a written offer to repair is only  
263 required to make payment on a judgment, order, decision,  
264 verdict, finding, or settlement after the claimant enters into a  
265 contract for the performance of repairs. Such contract may be  
266 for an amount that is less than the judgment, order, decision,  
267 verdict, finding, or settlement. If the contract for the  
268 performance of repairs is less than the judgment, order,  
269 decision, verdict, finding, or settlement, such judgment, order,  
270 decision, verdict, finding, or settlement is reduced to full  
271 contract price, and after the contracted work is completed, the  
272 judgment, order, decision, verdict, finding, or settlement is  
273 satisfied. A contractor, subcontractor, supplier, or design  
274 professional may not be required to pay more than the amount of  
275 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 indemnitee 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 indemnitee with  
374 regard to the work of other construction parties or trades.

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