

By Senator Richter

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1                   A bill to be entitled  
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; providing that  
9       actions making claims for certain previously resolved  
10      claims be deemed frivolous; providing for sanctions  
11      for such frivolous claims; revising provisions  
12      relating to production of certain records; providing  
13      for sanctions for claims that were solely the fault of  
14      the claimant or its agents; providing an exception;  
15      amending ss. 718.203 and 719.203, F.S.; conforming  
16      provisions to changes made by the act; providing an  
17      effective date.

18  
19   Be It Enacted by the Legislature of the State of Florida:

20  
21       Section 1. Section 558.001, Florida Statutes, is amended to  
22       read:

23       558.001 Legislative findings and declaration.—The  
24       Legislature finds that it is beneficial to have an alternative  
25       method to resolve construction disputes that would reduce the  
26       need for litigation as well as protect the rights of property  
27       owners. An effective alternative dispute resolution mechanism in  
28       certain construction defect matters should involve the claimant  
29       filing a notice of claim with the contractor, subcontractor,

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30 supplier, or design professional that the claimant asserts is  
31 responsible for the defect, and should provide the contractor,  
32 subcontractor, supplier, or design professional, and the insurer  
33 of the contractor, subcontractor, supplier, or design  
34 professional, with an opportunity to resolve the claim through  
35 confidential settlement negotiations without resort to further  
36 legal process.

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

39 558.002 Definitions.—As used in this chapter, the term:

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

50 Section 3. Subsections (1), (4), (8), (13), and (15) of  
51 section 558.004, Florida Statutes, are amended, and subsection  
52 (16) is added to that section, to read:

53 558.004 Notice and opportunity to repair.—

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

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

63 (b) The notice of claim must describe ~~the claim~~ in  
64 reasonable detail ~~sufficient to determine~~ the ~~general~~ nature of  
65 each alleged construction defect and, if known, a description of  
66 the damage or loss resulting from the defect, if known. The  
67 notice of claim must sufficiently identify the specific location  
68 of each alleged construction defect to enable the responding  
69 parties to locate all of the alleged construction defects  
70 without undue burden. The notice of claim must also identify the  
71 specific provisions of the building code, project plans, project  
72 drawings, project specifications, or other documentation,  
73 information, or authority that serve as the basis of the claim  
74 for each alleged construction defect. Failure to include such  
75 information in the notice of claim is prima facie evidence of a  
76 defective notice of claim.

77 (c) The claimant shall endeavor to serve the notice of  
78 claim within 15 days after discovery of an alleged defect, but  
79 the failure to serve notice of claim within 15 days does not bar  
80 the filing of an action, subject to s. 558.003. This subsection  
81 does not preclude a claimant from filing an action sooner than  
82 60 days, or 120 days as applicable, after service of written  
83 notice as expressly provided in subsection (6), subsection (7),  
84 or subsection (8).

85 (4) Within 15 days after service of a copy of the notice of  
86 claim pursuant to subsection (3), or within 30 days after  
87 service of the copy of the notice of claim involving an

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88 association representing more than 20 parcels, the contractor,  
89 subcontractor, supplier, or design professional must serve a  
90 written response to the person who served a copy of the notice  
91 of claim. The written response shall include a report, if any,  
92 of the scope of any inspection of the property, the findings and  
93 results of the inspection, a statement of whether the  
94 contractor, subcontractor, supplier, or design professional  
95 disputes the claim, whether he or she is willing to make repairs  
96 to the property ~~or whether such claim is disputed~~, a detailed  
97 description of any repairs that he or she is ~~they are~~ willing to  
98 make to remedy the alleged construction defect, ~~and~~ a timetable  
99 for the completion of such repairs, and whether he or she is  
100 willing to attempt to settle all or a portion of the claim  
101 through a monetary settlement offer and, if so, the amount of  
102 the monetary offer and a timetable for payment. This response  
103 may also be served on the initial claimant by the contractor.

104 (8) If the claimant timely and properly accepts the offer  
105 to repair an alleged construction defect, the claimant shall  
106 provide the offeror and the offeror's agents reasonable access  
107 to the claimant's property during normal working hours to  
108 perform the repair by the agreed-upon timetable as stated in the  
109 offer. If the offeror does not make the payment or repair the  
110 defect within the agreed time and in the agreed manner, except  
111 for reasonable delays beyond the control of the offeror,  
112 including, but not limited to, weather conditions, delivery of  
113 materials, claimant's actions, or issuance of any required  
114 permits, the claimant may, without further notice, proceed with  
115 an action against the offeror based upon the claim in the notice  
116 of claim. If the offeror makes payment or repairs the defect

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117 within the agreed time and in the agreed manner, the claimant is  
118 barred from proceeding with an action for the claim described in  
119 the notice of claim or as otherwise provided in the accepted  
120 settlement offer. If the claimant proceeds with an action that  
121 includes any claim previously resolved by the payment of money,  
122 by making repairs, or by a combination thereof in accordance  
123 with this chapter, the associated portion of such action shall  
124 be deemed frivolous, the associated portion of such action shall  
125 be stricken, and, upon motion filed by the person served with  
126 the action, the court shall award monetary sanctions against the  
127 claimant for costs incurred by the person served with the action  
128 relating to the claim, including attorney fees, in conjunction  
129 with defending against the frivolous claim.

130 (13) This section does not relieve the person who is served  
131 a notice of claim under subsection (1) from complying with all  
132 contractual provisions of any liability insurance policy as a  
133 condition precedent to coverage for any claim under this  
134 section. However, notwithstanding the foregoing or any  
135 contractual provision, the providing of a copy of such notice to  
136 the person's insurer, if applicable, shall not constitute a  
137 claim for insurance purposes unless provided for under the terms  
138 of the policy. Nothing in this section shall be construed to  
139 impair technical notice provisions or requirements of the  
140 liability policy or alter, amend, or change existing Florida law  
141 relating to rights between insureds and insurers except as  
142 otherwise specifically provided herein.

143 (15) Upon request, the claimant and any person served with  
144 notice pursuant to subsection (1) shall exchange, within 30 days  
145 after service of a written request, which request must cite this

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146 subsection and include an offer to pay the reasonable costs of  
147 reproduction and related fees, any design plans, specifications,  
148 and as-built plans; ~~any documents detailing the design drawings~~  
149 ~~or specifications~~; photographs and videos of the alleged  
150 construction defect identified in the notice of claim, and  
151 nonprivileged expert reports that describe any defect upon which  
152 the claim is made; subcontracts; ~~and~~ purchase orders for the  
153 work that is claimed defective or any part of such materials;  
154 and the claimant's maintenance records and other documents  
155 related to the discovery, investigation, causation, and extent  
156 of the alleged defect identified in the notice of claim and any  
157 damages resulting therefrom. In the event of subsequent  
158 litigation, any party who failed to provide the requested  
159 materials shall be subject to such sanctions as the court may  
160 impose for a discovery violation. Expert reports exchanged  
161 between the parties may not be used in any subsequent litigation  
162 for any purpose, unless the expert, or a person affiliated with  
163 the expert, testifies as a witness or the report is used or  
164 relied upon by an expert who testifies on behalf of the party  
165 for whom the report was prepared.

166 (16) Upon motion filed by the person served with a notice  
167 of claim, the court shall award monetary sanctions for costs  
168 incurred by such person with respect to an alleged construction  
169 defect identified in the notice of claim that was solely the  
170 fault of the claimant or its agents, including costs of  
171 inspection, investigation, testing, related costs, and attorney  
172 fees, upon a finding by the court that the claimant or the  
173 claimant's attorney knew or should have known that the claimed  
174 defect when initially presented was not supported by the

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175 material facts necessary to establish the claim in accordance  
176 with this chapter or would not be supported by the application  
177 of then-existing law to those material facts. However, monetary  
178 sanctions may not be awarded against the claimant's attorney  
179 under this subsection if he or she acted in good faith, based on  
180 the representations of his or her client, as to the existence of  
181 those material facts.

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

184 718.203 Warranties.—

185 (3) "Completion of a building or improvement" means  
186 issuance of a certificate of occupancy, whether temporary or  
187 otherwise, that allows for occupancy or use of ~~for~~ the entire  
188 building or improvement, or an ~~the~~ equivalent authorization  
189 issued by the governmental body having jurisdiction. ~~and~~ In  
190 jurisdictions where no certificate of occupancy or equivalent  
191 authorization is issued, the term ~~it~~ means substantial  
192 completion of construction, finishing, and equipping of the  
193 building or improvement according to the plans and  
194 specifications.

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

197 719.203 Warranties.—

198 (3) "Completion of a building or improvement" means  
199 issuance of a certificate of occupancy, whether temporary or  
200 otherwise, that allows for occupancy or use of ~~for~~ the entire  
201 building or improvement, or an ~~the~~ equivalent authorization  
202 issued by the governmental body having jurisdiction. ~~and~~ In  
203 jurisdictions where no certificate of occupancy or equivalent

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204 authorization is issued, the term ~~it~~ means substantial  
205 completion of construction, finishing, and equipping of the  
206 building or improvement according to the plans and  
207 specifications.

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