

By the Committee on Regulated Industries; and Senator Richter

580-03238-15

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A bill to be entitled
An act relating to construction defect claims;
amending s. 558.001, F.S.; revising legislative
intent; amending s. 558.002, F.S.; revising the
definition of the term "completion of a building or
improvement"; amending s. 558.004, F.S.; providing
additional requirements for a notice of claim;
revising requirements for a response; revising
provisions relating to production of certain records;
amending ss. 718.203 and 719.203, F.S.; conforming
provisions to changes made by the act; providing an
effective date.

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

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 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 contractor,
subcontractor, supplier, or design professional, and the insurer
of the contractor, subcontractor, supplier, or design
professional, with an opportunity to resolve the claim through

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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
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

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each alleged construction defect and, if known, a description of
the damage or loss resulting from the defect, ~~if known~~. Based
upon at least a visual inspection by the claimant or its agents,
the notice of claim must identify the location of each alleged
construction defect sufficiently to enable the responding
parties to locate the alleged defect without undue burden. The
claimant has no obligation to perform destructive or other
testing for purposes of this notice.

(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 (8).

(4) Within 15 days after service of a copy of the notice of
claim pursuant to subsection (3), or within 30 days after
service of the copy of the notice of claim involving an
association representing more than 20 parcels, the contractor,
subcontractor, supplier, or design professional must serve a
written response to the person who served a copy of the notice
of claim. The written response must ~~shall~~ include a report, if
any, of the scope of any inspection of the property and, the
findings and results of the inspection. The written response
must include one or more of the offers or statements specified
in paragraphs (5)(a)-(e), as chosen by the responding
contractor, subcontractor, supplier, or design professional,
with all of the information required for that offer or

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~~statement, a statement of whether the contractor, subcontractor, supplier, or design professional is willing to make repairs to the property or whether such claim is disputed, a description of any repairs they are willing to make to remedy the alleged construction defect, and a timetable for the completion of such repairs. This response may also be served on the initial claimant by the contractor.~~

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

(15) Upon request, the claimant and any person served with notice pursuant to subsection (1) shall exchange, within 30 days after service of a written request, which request must cite this subsection and include an offer to pay the reasonable costs of reproduction, any design plans, specifications, and as-built plans; ~~any documents detailing the design drawings or specifications;~~ photographs and videos of the alleged construction defect identified in the notice of claim; ~~and~~ expert reports that describe any defect upon which the claim is

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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
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.

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

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