

By Senator Gruters

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1                                   A bill to be entitled  
2       An act relating to construction defects; amending s.  
3       558.001, F.S.; revising legislative findings and  
4       intent; amending s. 558.002, F.S.; deleting and  
5       revising definitions; amending s. 558.003, F.S.;  
6       specifying that certain disclosures and documents must  
7       be provided before a claimant may file an action;  
8       amending s. 558.004, F.S.; deleting provisions related  
9       to an action involving an association; providing  
10      requirements for a notice of claim; revising the  
11      timeframes within which certain persons are required  
12      to serve a written response to a notice of claim;  
13      requiring claimants to serve a written notice of  
14      denial or failure to respond to certain parties;  
15      providing requirements for the repair of alleged  
16      construction defects; providing requirements for  
17      payments for such repairs; prohibiting certain persons  
18      from requiring advance payments for certain repairs;  
19      limiting liability for certain parties under certain  
20      circumstances; providing requirements for certain  
21      payments held in trust; creating s. 558.0045, F.S.;  
22      providing applicability; requiring parties to a  
23      construction defect claim to participate in certain  
24      mandatory nonbinding arbitration within a specified  
25      time; requiring an arbitrator who finds in favor of a  
26      claimant in a mandatory nonbinding arbitration to  
27      include specified information in the award;  
28      authorizing parties to agree to be bound by the  
29      arbitration award; authorizing any party who does not

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30 agree to be bound by an arbitration award to proceed  
31 with a civil action; requiring a jury verdict and  
32 final judgment in favor of the claimant in such civil  
33 action to include specified information in the award;  
34 providing construction; providing an effective date.  
35

36 Be It Enacted by the Legislature of the State of Florida:  
37

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

40 558.001 Legislative findings and declaration.—The  
41 Legislature finds that it is beneficial to have an effective and  
42 cost-efficient ~~alternative~~ method to resolve construction  
43 disputes that would reduce ~~the need for~~ litigation as well as  
44 protect the rights of property owners. An effective alternative  
45 dispute resolution mechanism in ~~certain~~ construction defect  
46 matters should involve the claimant, ~~filing a notice of claim~~  
47 ~~with~~ the contractor, subcontractor, supplier, or design  
48 professional that the claimant asserts is responsible for the  
49 defect, and should provide the claimant, contractor,  
50 subcontractor, supplier, or design professional, and the insurer  
51 of the claimant, contractor, subcontractor, supplier, or design  
52 professional, with an opportunity to resolve the claim through  
53 meaningful arbitration of claims ~~confidential settlement~~  
54 ~~negotiations~~ without resort to extended litigation ~~further legal~~  
55 ~~process~~. It is the intent of the Legislature to promote  
56 efficient resolution of claims and reduce litigation, and  
57 nothing in this chapter precludes resolution of claims through  
58 settlement negotiations.

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

61 558.002 Definitions.—As used in this chapter, the term:

62 (2) ~~“Association” has the same meaning as in s. 718.103(2),~~  
63 ~~s. 719.103(2), s. 720.301(9), or s. 723.075.~~

64 ~~(3)~~ “Claimant” means a property owner, including a  
65 subsequent purchaser ~~or association~~, who asserts a claim for  
66 damages against a contractor, subcontractor, supplier, or design  
67 professional concerning a construction defect or a subsequent  
68 owner who asserts a claim for indemnification for such damages.  
69 The term does not include a contractor, subcontractor, supplier,  
70 or design professional.

71 Section 3. Section 558.003, Florida Statutes, is amended to  
72 read:

73 558.003 Action; compliance.—A claimant may not file an  
74 action subject to this chapter without first complying with the  
75 requirements of this chapter. If a claimant files an action  
76 alleging a construction defect without first complying with the  
77 requirements of this chapter, including the requirements under  
78 s. 558.004 to provide certain disclosures and documents, on  
79 timely motion by a party to the action the court shall stay the  
80 action, without prejudice, and the action may not proceed until  
81 the claimant has complied with such requirements. The notice  
82 requirement is not intended to interfere with an owner’s ability  
83 to complete a project that has not been substantially completed.  
84 The notice is not required for a project that has not reached  
85 the stage of completion of the building or improvement.

86 Section 4. Subsections (9) through (15) of section 558.004,  
87 Florida Statutes, are redesignated as subsections (10) through

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88 (16), respectively, a new subsection (9) is added to that  
89 section, and subsections (1) through (6) and present subsection  
90 (10) of that section are amended, to read:

91 558.004 Notice and opportunity to repair.-

92 (1) (a) In actions brought alleging a construction defect,  
93 the claimant shall, at least 60 days before filing any action,  
94 ~~or at least 120 days before filing an action involving an~~  
95 ~~association representing more than 20 parcels,~~ serve written  
96 notice of claim, personally signed by the claimant, on the  
97 contractor, subcontractor, supplier, or design professional, as  
98 applicable, which notice shall refer to this chapter. If the  
99 construction defect claim arises from work performed under a  
100 contract, the written notice of claim, personally signed by the  
101 claimant, must be served on the person with whom the claimant  
102 contracted.

103 (b) The notice of claim must describe in reasonable detail  
104 the nature of each alleged construction defect; ~~and, if known,~~  
105 the damage or loss resulting from the alleged defect, if known,  
106 including the cost to repair the alleged defect and any other  
107 monetary damages caused by the alleged defect; and the identity  
108 or report of any expert who inspected the damage or loss, as  
109 well as the documents relied on by such expert. Based upon at  
110 least a visual inspection by the claimant or its agents, the  
111 notice of claim must identify the location of each alleged  
112 construction defect sufficiently to enable the responding  
113 parties to locate the alleged defect without undue burden. The  
114 time requirements in this chapter do not begin to run until the  
115 claimant has satisfied the requirements in this section. The  
116 claimant has no obligation to perform destructive or other

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117 testing for purposes of this notice.

118 (c) The claimant shall endeavor to serve the notice of  
119 claim within 15 days after discovery of an alleged defect, but  
120 the failure to serve notice of claim within 15 days does not bar  
121 the filing of an action, subject to s. 558.003. This subsection  
122 does not preclude a claimant from filing an action sooner than  
123 60 days, ~~or 120 days as applicable,~~ after service of written  
124 notice as expressly provided in subsection (6), subsection (7),  
125 or subsection (8).

126 (d) A notice of claim served under ~~pursuant to~~ this chapter  
127 does shall not toll any statute of repose period under chapter  
128 95.

129 (2) Within 30 days after service of the notice of claim, ~~or~~  
130 ~~within 50 days after service of the notice of claim involving an~~  
131 ~~association representing more than 20 parcels,~~ the person served  
132 with the notice of claim under subsection (1) is entitled to  
133 perform a reasonable inspection of the property or of each unit  
134 subject to the claim to assess each alleged construction defect.  
135 ~~An association's right to access property for either maintenance~~  
136 ~~or repair includes the authority to grant access for the~~  
137 ~~inspection.~~ The claimant shall provide the person served with  
138 notice under subsection (1) and such person's contractors or  
139 agents reasonable access to the property during normal working  
140 hours to inspect the property to determine the nature and cause  
141 of each alleged construction defect and the nature and extent of  
142 any repairs or replacements necessary to remedy each defect. The  
143 person served with notice under subsection (1) shall reasonably  
144 coordinate the timing and manner of any and all inspections with  
145 the claimant and any additional parties who are served a copy of

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146 the notice of claim under subsection (3) to minimize the number  
147 of inspections. The inspection may include destructive testing  
148 by mutual agreement under the following reasonable terms and  
149 conditions:

150 (a) If the person served with notice under subsection (1)  
151 determines that destructive testing is necessary to determine  
152 the nature and cause of the alleged defects, such person shall  
153 notify the claimant in writing.

154 (b) The notice shall describe the destructive testing to be  
155 performed, the person selected to do the testing, the estimated  
156 anticipated damage and repairs to or restoration of the property  
157 resulting from the testing, the estimated amount of time  
158 necessary for the testing and to complete the repairs or  
159 restoration, and the financial responsibility offered for  
160 covering the costs of repairs or restoration.

161 (c) If the claimant promptly objects to the person selected  
162 to perform the destructive testing, the person served with  
163 notice under subsection (1) shall provide the claimant with a  
164 list of three qualified persons from which the claimant may  
165 select one such person to perform the testing. The person  
166 selected to perform the testing shall operate as an agent or  
167 subcontractor of the person served with notice under subsection  
168 (1) and shall communicate with, submit any reports to, and be  
169 solely responsible to the person served with notice.

170 (d) The testing must ~~shall~~ be done at a mutually agreeable  
171 time.

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

174 (f) The destructive testing may ~~shall~~ not render the

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175 property uninhabitable.

176 (g) There are ~~shall be~~ no construction lien rights under  
177 part I of chapter 713 for the destructive testing caused by a  
178 person served with notice under subsection (1) or for restoring  
179 the area destructively tested to the condition existing before  
180 ~~prior to~~ testing, except to the extent the owner contracts for  
181 the destructive testing or restoration.

182

183 If the claimant refuses to agree and thereafter permit  
184 reasonable destructive testing, the claimant has ~~shall have~~ no  
185 claim for damages which could have been avoided or mitigated had  
186 destructive testing been allowed when requested and had a  
187 feasible remedy been promptly implemented.

188 (3) Within 10 days after service of the notice of claim, ~~or~~  
189 ~~within 30 days after service of the notice of claim involving an~~  
190 ~~association representing more than 20 parcels,~~ the person served  
191 with notice under subsection (1) must ~~may~~ serve a copy of the  
192 notice of claim to each contractor, subcontractor, supplier, or  
193 design professional whom it reasonably believes is responsible  
194 for each defect specified in the notice of claim and shall note  
195 the specific defect for which it believes the particular  
196 contractor, subcontractor, supplier, or design professional is  
197 responsible. The notice described in this subsection must  
198 describe in detail the nature of each alleged construction  
199 defect; the damage or loss resulting from the alleged defect, if  
200 known, including the cost to repair the alleged defect and any  
201 other monetary damages caused by the alleged defect; and the  
202 identity or report of any expert who inspected the damage or  
203 loss, as well as the documents relied on by such expert. Such

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204 notice may not be construed as an admission of any kind. Each  
205 such contractor, subcontractor, supplier, and design  
206 professional may inspect the property as provided in subsection  
207 (2).

208 (4) Within 45 ~~15~~ days after service of a copy of the notice  
209 of claim under ~~pursuant to~~ subsection (3), ~~or within 30 days~~  
210 ~~after service of the copy of the notice of claim involving an~~  
211 ~~association representing more than 20 parcels~~, the contractor,  
212 subcontractor, supplier, or design professional must serve a  
213 written response to the person who served a copy of the notice  
214 of claim. The written response must include a report, if any, of  
215 the scope of any inspection of the property and the findings and  
216 results of the inspection. The written response must include one  
217 or more of the offers or statements specified in paragraphs  
218 (5) (a)-(e), as chosen by the responding contractor,  
219 subcontractor, supplier, or design professional, with all of the  
220 information required for that offer or statement.

221 (5) Within 45 days after service of the notice of claim, ~~or~~  
222 ~~within 75 days after service of a copy of the notice of claim~~  
223 ~~involving an association representing more than 20 parcels~~, the  
224 person who was served the notice under subsection (1) must serve  
225 a written response to the claimant. The response shall be served  
226 to the attention of the person who signed the notice of claim,  
227 unless otherwise designated in the notice of claim. The written  
228 response must provide:

229 (a) A written offer to remedy the alleged construction  
230 defect at no cost to the claimant, a detailed description of the  
231 proposed repairs necessary to remedy the defect, and a timetable  
232 for the completion of such repairs;

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233 (b) A written offer to compromise and settle the claim by  
234 monetary payment, that will not obligate the person's insurer,  
235 and a timetable for making payment;

236 (c) A written offer to compromise and settle the claim by a  
237 combination of repairs and monetary payment, that will not  
238 obligate the person's insurer, that includes a detailed  
239 description of the proposed repairs and a timetable for the  
240 completion of such repairs and making payment;

241 (d) A written statement that the person disputes the claim  
242 and will not remedy the defect or compromise and settle the  
243 claim; or

244 (e) A written statement that a monetary payment, including  
245 insurance proceeds, if any, will be determined by the person's  
246 insurer within 30 days after notification to the insurer by  
247 means of serving the claim, which service shall occur at the  
248 same time the claimant is notified of this settlement option,  
249 which the claimant may accept or reject. A written statement  
250 under this paragraph may also include an offer under paragraph  
251 (c), but such offer shall be contingent upon the claimant also  
252 accepting the determination of the insurer whether to make any  
253 monetary payment in addition thereto. If the insurer for the  
254 person served with the claim makes no response within the 30  
255 days following service, then the claimant shall be deemed to  
256 have met all conditions precedent to commencing an action.

257 (6) If the person served with a notice of claim under  
258 ~~pursuant to~~ subsection (1) disputes the claim and will neither  
259 remedy the defect nor compromise and settle the claim, or does  
260 not respond to the claimant's notice of claim within the time  
261 provided in subsection (5), the claimant shall serve a written

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262 notice of such denial or failure to respond to all parties and  
263 may, without further notice, proceed with an action against that  
264 person for the claim described in the notice of claim. Nothing  
265 in this chapter shall be construed to preclude a partial  
266 settlement or compromise of the claim as agreed to by the  
267 parties and, in that event, the claimant may, without further  
268 notice, proceed with an action on the unresolved portions of the  
269 claim.

270 (9) (a) A contractor, subcontractor, supplier, or design  
271 professional who serves a written response to a claimant under  
272 subsection (5) which includes a written offer to repair is  
273 required to make payment on a judgment, order, decision,  
274 verdict, finding, or settlement only after the claimant enters  
275 into a contract for the performance of repairs. Such contract  
276 may be for an amount that is less than the judgment, order,  
277 decision, verdict, finding, or settlement. If the contract for  
278 the performance of repairs is less than the judgment, order,  
279 decision, verdict, finding, or settlement, such judgment, order,  
280 decision, verdict, finding, or settlement is reduced to full  
281 contract price, and after the contracted work is completed, the  
282 judgment, order, decision, verdict, finding, or settlement is  
283 satisfied. A contractor, subcontractor, supplier, or design  
284 professional may not be required to pay more than the amount of  
285 the judgment, order, decision, verdict, finding, or settlement.

286 (b) A claimant must enter into a contract for the  
287 performance of repairs within 90 days after the judgment, order,  
288 decision, verdict, finding, or settlement.

289 (c) After the claimant enters into a contract for the  
290 performance of repairs, the contractor, subcontractor, supplier,

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291 or design professional shall pay:

292 1. The full contract price as determined under paragraph  
293 (a) to the party performing such repairs. If the contractor,  
294 subcontractor, supplier, or design professional pays the full  
295 contract price before the repair work is completed, the party  
296 performing such repairs must hold such payment in trust pending  
297 the claimant's written approval for the release of funds; or

298 2. A percentage of the full contract price necessary to  
299 begin such repairs. Thereafter, the contractor, subcontractor,  
300 supplier, or design professional shall make payments to the  
301 party performing the repairs as the work is performed and the  
302 expenses are incurred.

303 (d) The contractor, subcontractor, supplier, or design  
304 professional may not require the claimant to make an advance  
305 payment for the repair work.

306 (e) A contractor, subcontractor, supplier, or design  
307 professional making payments to a party performing repairs under  
308 this subsection is not liable for the repair work that is  
309 performed or for making proper payments under chapter 713.

310 (f) If payments are held in trust under subparagraph (c)1.,  
311 the party performing the repairs may not release the last 10  
312 percent of the payment until he or she executes a signed  
313 affidavit attesting that the contracted work is completed and  
314 was performed without set-off or reduction and serves such  
315 affidavit on the claimant and the contractor, subcontractor,  
316 supplier, or design professional in accordance with s. 713.18.

317 (11)-(10) A claimant's service of the written notice of  
318 claim under subsection (1) tolls the applicable statute of  
319 limitations relating to any person covered by this chapter and

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320 any bond surety until the later of:

321 (a) ~~Ninety days, or 120 days, as applicable,~~ after service  
322 of the notice of claim pursuant to subsection (1); or

323 (b) Thirty days after the end of the repair period or  
324 payment period stated in the offer, if the claimant has accepted  
325 the offer. By stipulation of the parties, the period may be  
326 extended and the statute of limitations is tolled during the  
327 extension.

328 Section 5. Section 558.0045, Florida Statutes, is created  
329 to read:

330 558.0045 Construction defect litigation; special  
331 requirements.—

332 (1) Notwithstanding s. 558.005, this section applies to all  
333 actions involving construction defects, including civil suits  
334 and arbitrations.

335 (2) In any action involving construction defects, the  
336 parties shall participate in mandatory nonbinding arbitration,  
337 conducted in accordance with chapter 682. Mandatory nonbinding  
338 arbitration shall occur after all parties have been joined in  
339 the action, but no later than 180 days after the civil suit is  
340 filed. However, if a party is joined in the action after 180  
341 days, such party must still participate in mandatory nonbinding  
342 arbitration as set forth in this section.

343 (3) If the arbitrator finds in favor of a claimant, the  
344 arbitrator shall include in the award a detailed description of  
345 the nature of the defect and the monetary amount awarded against  
346 each party separately, including all of the following:

347 (a) The monetary amount of the award attributable to  
348 repairing or replacing the party's defective work.

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349       (b) The monetary amount of the award attributable to  
350 repairing or replacing other nondefective property damaged by  
351 the party's defective work.

352       (c) The monetary amount of the award attributable to other  
353 damages being awarded against the party.

354       (4) Any party to the arbitration proceeding may agree in  
355 writing, either before or up to 30 days after the arbitration  
356 award is entered, to be bound by the arbitration award. Any  
357 party who does not agree to be bound by the arbitration award  
358 may proceed with a civil action on the unresolved portions of  
359 the claim.

360       (5) For any party who does not agree to be bound by the  
361 arbitration award and who proceeds to trial in the action, the  
362 jury verdict and final judgment shall include a detailed  
363 description of the nature of the defect and the monetary amount  
364 awarded against each party separately, including all of the  
365 following:

366       (a) The monetary amount of the award attributable to  
367 repairing or replacing the party's defective work.

368       (b) The monetary amount of the award attributable to  
369 repairing or replacing other nondefective property damaged by  
370 the party's defective work.

371       (c) The monetary amount of the award attributable to other  
372 damages being awarded against the party.

373       (6) This section does not preclude a partial settlement or  
374 compromise of the claim as agreed to by the parties, either  
375 before or after the arbitration.

376       (7) This section does not affect the rights and duties of  
377 insureds and insurance carriers under their policies. However,

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378 any defense, with or without a reservation of rights, provided  
379 by a carrier to a party asserting additional insured status or  
380 indemnatee status in proceedings under this chapter and in any  
381 subsequent civil proceeding shall only be as to the scope of  
382 work of the named insured of the carrier. Such defense shall not  
383 extend to defending the additional insured or indemnatee with  
384 regard to the work of other construction parties or trades.

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