

Amendment No. sa1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Reform
2 Subcommittee

3 Representative Gregory offered the following:

4
5 **Substitute Amendment for Amendment (271521) by**
6 **Representative Andrade (with title amendment)**

7 Remove everything after the enacting clause and insert:
8 Section 1. Section 553.84, Florida Statutes, is amended to
9 read:

10 553.84 Statutory civil action.—

11 (1) For purposes of this section, the term "material
12 violation" means a violation that exists within a completed
13 building, structure, or facility which may reasonably result, or
14 has resulted, in personal injury to a person or significant
15 damage to the performance of a building or its system.

16 (2) Notwithstanding any other remedies available, any

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17 person or party, in an individual capacity or on behalf of a
18 class of persons or parties, damaged as a result of a material
19 violation of this part or the Florida Building Code, has a cause
20 of action in any court of competent jurisdiction against the
21 person or party who committed the violation. ~~+~~ However, if the
22 person or party obtains the required building permits and any
23 local government or public agency with authority to enforce the
24 Florida Building Code approves the plans, if the construction
25 project passes all required inspections under the code, and if
26 there is no personal injury or damage to property other than the
27 property that is the subject of the permits, plans, and
28 inspections, this section does not apply unless the violation
29 resulted in significant damage to the property that is the
30 subject of the permits, plans, and inspections or may reasonably
31 result in personal injury to a person or significant damage to
32 the performance of a building or its system ~~the person or party~~
33 ~~knew or should have known that the violation existed.~~

34 (3) (a) Prior to bringing a cause of action under this
35 section, a person or party must submit a written claim for the
36 alleged material violation under an existing applicable warranty
37 and provide access for an inspection within 30 days of serving a
38 written warranty claim.

39 (b) If the warranty provider offers to repair the alleged
40 material violation after inspection, then the person or party
41 shall have 30 days to provide written authorization to proceed

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42 with the repair and allow access.

43 (c) If no written authorization is provided by the person
44 or party to the warranty provider, then the person or party is
45 barred from filing a cause of action under this section.

46 However, if the person or party provides written authorization
47 and access to repair the alleged material violation, then the
48 warranty provider shall have 120 days from the inspection to
49 complete the repair of the alleged material violation or offer a
50 remedy.

51 (d) If the warranty provider denies the claim, does not
52 complete the repair, or the remedy offered is unsatisfactory to
53 the person or party, then a person or party may file a cause of
54 action under this section. Any offer or failure to offer a
55 repair of the alleged material violation or to compromise and
56 settle the claim by monetary payment or other remedy does not
57 constitute an admission of liability with respect to the defect
58 and is not admissible in an action brought under this section.

59 Section 2. Section 558.001, Florida Statutes, is amended
60 to read:

61 558.001 Legislative findings and declaration.—The
62 Legislature finds that it is beneficial to have a statutorily
63 defined ~~an~~ alternative method to resolve construction disputes
64 that would reduce the need for litigation as well as protect the
65 rights of property owners. An effective alternative dispute
66 resolution mechanism in certain construction defect matters

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67 should involve the claimant filing a notice of claim with the
68 contractor, subcontractor, supplier, or design professional that
69 the claimant asserts is responsible for the defect, and should
70 provide the contractor, subcontractor, supplier, or design
71 professional, and the insurer of the contractor, subcontractor,
72 supplier, or design professional, with an opportunity to resolve
73 the claim through confidential settlement negotiations without
74 resort to further legal process. If an agreement to provide
75 construction services does not incorporate the dispute
76 resolution mechanism provided in this chapter, or if the
77 responding parties do not voluntarily agree to participate in
78 the dispute resolution process, the Legislature finds that the
79 right of responding parties to contemplate and provide for the
80 method of dispute resolution they deem to be most beneficial to
81 their own unique circumstances should not be burdened by the
82 statutorily defined dispute resolution mechanism provided in
83 this chapter.

84 Section 3. Section 558.003, Florida Statutes, is amended
85 to read:

86 558.003 Action; applicability and compliance.—

87 (1) Unless a responding party has entered into an
88 agreement which affirmatively incorporates the dispute
89 resolution mechanism provided in this chapter, or a responding
90 party has voluntarily agreed to participate in the dispute
91 resolution mechanism provided in this chapter, the provisions of

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92 s. 558.004 and s. 558.005 do not apply to a cause of action for
93 an alleged construction defect.

94 (2) A claimant may not file an action subject to this
95 chapter without first complying with the requirements of this
96 chapter. If a claimant files an action subject to this chapter
97 alleging a construction defect without first complying with the
98 requirements of this chapter, on timely motion by a party to the
99 action the court shall stay the action, without prejudice, and
100 the action may not proceed until the claimant has complied with
101 such requirements. The notice requirement is not intended to
102 interfere with an owner's ability to complete a project that has
103 not been substantially completed. The notice is not required for
104 a project that has not reached the stage of completion of the
105 building or improvement.

106 Section 4. Subsections (6) through (15) of section
107 558.004, Florida statutes, are renumbered (7) through (16),
108 respectively, subsections (1) through (4) and new subsection
109 (11) and (16) of that section are amended, subsection (6) is
110 added, to read:

111 558.004 Notice and opportunity to repair.—

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

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

121 (b)1. Prior to serving a notice of claim under this
122 chapter, a claimant must submit a written claim for the alleged
123 construction defect under an existing applicable warranty and
124 provide access for an inspection within 30 days of serving a
125 written warranty claim.

126 2. If the warranty provider offers to repair the alleged
127 construction defect after inspection, then the claimant shall
128 have 30 days to provide written authorization to proceed with
129 the repair and allow access.

130 3. If no written authorization is provided by the claimant
131 to the warranty provider, then the claimant is barred from
132 filing a cause of action under this chapter. However, if the
133 claimant provides written authorization and access to repair the
134 alleged construction defect, then the warranty provider shall
135 have 120 days from the inspection to complete the repair of the
136 alleged construction defect or offer a remedy.

137 4. If the warranty provider denies the claim, does not
138 complete the repair, or the remedy offered is unsatisfactory to
139 the claimant, then a claimant may serve a notice of claim under
140 this section. Any offer or failure to offer a repair of the
141 alleged construction defect or to compromise and settle the

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142 claim by monetary payment or other remedy does not constitute an
143 admission of liability with respect to the defect and is not
144 admissible in an action brought under this section.

145 (c) ~~(b)~~ The notice of claim must:

146 1. Describe in specific reasonable detail the nature of
147 each alleged construction defect. ~~and~~

148 2. If the alleged construction defect or evidence thereof
149 is visible, include at least one photograph of the alleged
150 defect or evidence thereof, any repair estimates or expert
151 reports obtained relating to the alleged defect, and a
152 description of, ~~if known,~~ the damage or loss resulting from the
153 alleged defect, if known.

154 3. Based upon at least a visual inspection by the claimant
155 or its agents, ~~the notice of claim must~~ identify the specific
156 location of each alleged construction defect sufficiently to
157 enable the responding parties to locate the alleged defect
158 without undue burden. The claimant has no obligation to perform
159 destructive or other testing for purposes of this notice.

160 4. Affirm that the claimant has personal knowledge of the
161 alleged construction defect.

162 5. Acknowledge that the claimant is aware of the penalties
163 for perjury imposed under chapter 837.

164 6. Be signed by the claimant and include the following
165 statement directly above the claimant's signature line in 18-
166 point uppercase and boldfaced type:

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167
168 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
169 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST
170 OF MY KNOWLEDGE AND BELIEF.

171
172 (d) A person who willfully includes a false statement in
173 the notice of claim under this section commits perjury and, upon
174 conviction, is subject to punishment as provided by law.

175 (e) ~~(e)~~ The claimant shall endeavor to serve the notice of
176 claim within 15 days after discovery of an alleged construction
177 defect, but the failure to serve notice of claim within 15 days
178 does not bar the filing of an action, subject to s. 558.003.
179 This subsection does not preclude a claimant from filing an
180 action sooner than 60 days, or 120 days as applicable, after
181 service of written notice as expressly provided in subsection
182 (7) ~~(6)~~, subsection (8) ~~(7)~~, or subsection (9) ~~(8)~~.

183 (f) ~~(d)~~ A notice of claim served under ~~pursuant to~~ this
184 chapter shall not toll any statute of repose period under
185 chapter 95.

186 (2) Within 30 days after service of the notice of claim,
187 or within 50 days after service of the notice of claim involving
188 an association representing more than 20 parcels, a ~~the~~ person
189 served with the notice of claim under subsection (1), or a copy
190 thereof under subsection (3), may ~~is entitled to~~ perform a
191 reasonable inspection of the property or of each unit subject to

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192 the claim to assess each alleged construction defect. An
193 association's right to access property for either maintenance or
194 repair includes the authority to grant access for the
195 inspection. The claimant shall provide the person served with
196 notice under subsection (1), or a copy thereof under subsection
197 (3), and such person's contractors or agents reasonable access
198 to the property during normal working hours to inspect the
199 property to determine the nature and cause of each alleged
200 construction defect and the nature and extent of any repairs or
201 replacements necessary to remedy each defect. The person served
202 with notice under subsection (1), or a copy thereof under
203 subsection (3), shall reasonably coordinate the timing and
204 manner of any and all inspections with the claimant to minimize
205 the number of inspections. The inspection may include
206 destructive testing by mutual agreement under the following
207 reasonable terms and conditions:

208 (a) If the person served with notice under subsection (1)
209 determines that destructive testing is necessary to determine
210 the nature and cause of the alleged defects, the ~~such~~ person
211 must ~~shall~~ notify the claimant in writing.

212 (b) The notice describes ~~shall describe~~ the destructive
213 testing to be performed, the person selected to do the testing,
214 the estimated ~~anticipated~~ damage and repairs to or restoration
215 of the property resulting from the testing, the estimated amount
216 of time necessary for the testing and to complete the repairs or

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217 restoration, and the financial responsibility offered for
218 covering the costs of repairs or restoration.

219 (c) If the claimant promptly objects to the person
220 selected to perform the destructive testing, the person served
221 with notice under subsection (1) must ~~shall~~ provide the claimant
222 with a list of three qualified persons from which the claimant
223 may select one such person to perform the testing. The person
224 selected to perform the testing operates ~~shall operate~~ as an
225 agent or subcontractor of the person served with notice under
226 subsection (1) and shall communicate with, submit any reports
227 to, and be solely responsible to the person served with notice.

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

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

232 (f) The destructive testing may ~~shall~~ not render the
233 property uninhabitable.

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

240

241 If the claimant refuses to agree and thereafter permit

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242 reasonable destructive testing, the claimant has ~~shall have~~ no
243 claim for damages which could have been avoided or mitigated had
244 destructive testing been allowed when requested and had a
245 feasible remedy been promptly implemented.

246 (3) Within 10 days after service of the notice of claim,
247 or within 30 days after service of the notice of claim involving
248 an association representing more than 20 parcels, the person
249 served with notice under subsection (1) must ~~may~~ serve a copy of
250 the notice of claim to each contractor, subcontractor, supplier,
251 or design professional whom it reasonably believes is
252 responsible for each defect specified in the notice of claim and
253 shall note the specific defect for which it believes the
254 particular contractor, subcontractor, supplier, or design
255 professional is responsible. The notice described in this
256 subsection may not be construed as an admission of any kind.
257 Each such contractor, subcontractor, supplier, and design
258 professional may inspect the property as provided in subsection
259 (2).

260 (4) Within 15 days after service of a copy of the notice
261 of claim under ~~pursuant to~~ subsection (3), or within 30 days
262 after service of the copy of the notice of claim involving an
263 association representing more than 20 parcels, the contractor,
264 subcontractor, supplier, or design professional must serve a
265 written response to the person who served a copy of the notice
266 of claim. The written response must include a report, if any, of

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267 the scope of any inspection of the property and the findings and
268 results of the inspection. The written response must include one
269 or more of the offers or statements specified in paragraphs
270 (5) (a)-(e), as chosen by the responding contractor,
271 subcontractor, supplier, or design professional, with all of the
272 information required for that offer or statement.

273 (6) A claimant may not file any action relating to the
274 alleged construction defect if the responding party served with
275 the notice under subsection (1) offers to remedy the alleged
276 construction defect at no cost to the claimant and the claimant
277 either rejects the offer, or fails to respond to the offer
278 within 45 days of receiving it.

279 (a) The claimant may require the person served with the
280 notice to have an independent qualified third party make the
281 repairs. The claimant may not deny access to the property to an
282 independent qualified third party hired by the person served
283 with the notice.

284 (b) A claimant is not barred from filing an action subject
285 to this chapter or to accept another offer to repair, if the
286 claimant determines the repairs are unsatisfactory.

287 (c) If a claimant accepts an offer to repair, it tolls the
288 applicable statute of limitations relating to any person covered
289 by this chapter, and any bond surety, until 90 days after the
290 claimant accepts the offer.

291 (11)-(10) A claimant's service of a notice of claim for the

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292 alleged construction defect under an existing applicable
293 warranty or the written notice of claim under subsection (1)
294 tolls the applicable statute of limitations relating to any
295 person covered by this chapter and any bond surety until the
296 later of:

297 (a) Ninety days, or 120 days, as applicable, after service
298 of a notice of claim for the alleged construction defect under
299 an existing applicable warranty or the written the notice of
300 claim pursuant to subsection (1); or

301 (b) Thirty days after the end of the repair period or
302 payment period stated in the offer, if the claimant has accepted
303 the offer. By stipulation of the parties, the period may be
304 extended and the statute of limitations is tolled during the
305 extension.

306 ~~(16)(15)~~ Upon request, the claimant and any person served
307 with notice under ~~pursuant to~~ subsection (1) shall exchange,
308 within 30 days after service of a written request that cites
309 this subsection and includes, ~~which request must cite this~~
310 ~~subsection and include~~ an offer to pay the reasonable costs of
311 reproduction, any design plans, specifications, and as-built
312 plans; videos and additional photographs ~~and videos~~ of the
313 alleged construction defect identified in the notice of claim;
314 expert reports not already provided which ~~that~~ describe any
315 defect upon which the claim is made; subcontracts; purchase
316 orders for the work that is claimed defective or any part of

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317 such materials; and maintenance records and other documents
318 related to the discovery, investigation, causation, and extent
319 of the alleged defect identified in the notice of claim and any
320 resulting damages. A party may assert any claim of privilege
321 recognized under the laws of the ~~this~~ state with respect to any
322 of the disclosure obligations specified in this chapter. In the
323 event of subsequent litigation, any party who fails ~~failed~~ to
324 provide the requested materials is ~~shall be~~ subject to such
325 sanctions as the court may impose for a discovery violation.
326 Expert reports exchanged between the parties may not be used in
327 any subsequent litigation for any purpose, unless the expert, or
328 a person affiliated with the expert, testifies as a witness or
329 the report is used or relied upon by an expert who testifies on
330 behalf of the party for whom the report was prepared.

331 Section 5. Subsections (1), (5), and (6) of section
332 558.005, Florida Statutes, are amended to read:

333 558.005 Contract provisions; application.-

334 (1) Unless a claimant and a potential defendant have
335 agreed in writing to opt in to ~~out of~~ the requirements of this
336 section, the dispute resolution mechanism provided in ~~provisions~~
337 ~~of~~ this chapter shall not apply to any claim for legal relief
338 for which the agreement to make the improvement was made after
339 October 1, 2021 ~~2009~~, and for which the basis of the claim is a
340 construction defect that has arisen after completion of a
341 building or improvement.

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342 (5) Notwithstanding the notice requirements of this
343 section for contracts entered into on or after October 1, 2021
344 ~~2006~~, this chapter applies to all actions accruing before
345 October July 1, 2021 2004, but not yet commenced as of October
346 July 1, 2021 2004, and failure to include such notice
347 requirements in a contract entered into before October July 1,
348 2021 2004, does not operate to bar the procedures of this
349 chapter from applying to all such actions.

350 (6) Notwithstanding s. 558.003, ~~unless the parties agree~~
351 ~~that this chapter does not apply~~, after October 1, 2021 2009,
352 for the dispute resolution mechanism provided this chapter to
353 apply, any written contract for improvement of real property
354 entered into between an owner and a contractor, or between an
355 owner and a design professional, must contain substantially the
356 following notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARISING
357 FROM THIS CONTRACT ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS
358 OF CHAPTER 558, FLORIDA STATUTES." The failure to include in the
359 contract the notice provided in this subsection does not
360 prohibit subject the contracting owner, contractor, or design
361 professional from opting in to the dispute resolution mechanism
362 provided in this chapter to any penalty. The purpose of the
363 contractual notice is to promote awareness of the desire of the
364 parties to utilize the dispute resolution mechanism provided in
365 this chapter procedure, not to be a penalty.

366 Section 6. Section 558.006, Florida Statutes, is created

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367 to read:

368 558.006 Notice to mortgagee or assignee.-

369 (1) If a notice of claim alleging a construction defect
370 under this chapter is made with respect to real property to
371 which a mortgagee or an assignee has a security interest in the
372 real property, the claimant must, within 30 days after service
373 of the notice of the claim on the contractor, subcontractor,
374 supplier, or design professional, serve the mortgagee or
375 assignee with a copy of the notice of claim, via certified mail
376 return receipt requested.

377 (2) If repairs relating to the defect are completed after
378 the claimant notifies the mortgagee or assignee as required
379 under subsection (1), or if any settlement, partial settlement,
380 arbitration award, or judgment is obtained by the claimant, the
381 claimant must provide an additional notice to the mortgagee or
382 assignee within 60 days after the completion of the repairs, or
383 any settlement, partial settlement, arbitration award, or
384 judgement, whichever is later, via certified mail return receipt
385 requested.

386 Section 7. This act shall take effect July 1, 2021.

387

388

389 **T I T L E A M E N D M E N T**

390 Remove everything before the enacting clause and insert:

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391 An act relating to construction defects; amending s.
392 553.84, F.S.; defining the term "material violation";
393 revising cause of action requirements for statutory
394 civil actions relating to certain violations;
395 providing requirements for bringing a cause of action;
396 amending s. 558.001, F.S.; amending Legislative
397 findings and declaration; amending s. 558.003, F.S.;
398 requiring parties to agree to enter into certain
399 statutory dispute resolution; amending s. 558.004,
400 F.S.; requiring that a claimant submit a construction
401 defect claim to the warranty provider before serving a
402 notice of claim; providing applicability; revising
403 requirements for notices of claims; providing that a
404 person who willfully includes a false statement in a
405 notice of claim commits perjury; authorizing a person
406 served with a copy of a notice of claim to perform a
407 reasonable inspection of the property subject to the
408 claim; requiring, instead of authorizing, a person
409 served with a notice to serve a copy of the notice to
410 specified persons under certain circumstances;
411 prohibiting a person from filing an action in certain
412 circumstances; tolling a statute of limitations in
413 certain circumstances; amending s. 558.005, F.S.;
414 requiring parties to agree to enter into certain
415 statutory disputes; creating s. 558.006, F.S.;

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416 requiring a claimant to notify a mortgagee or an
417 assignee within a specified timeframe after a filing a
418 construction defect claim; providing notice
419 requirements; requiring a claimant to update the
420 notice within a specified timeframe under certain
421 circumstances; providing an effective date.