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1 A bill to be entitled
2 An act relating to construction defects; amending s.
3 553.84, F.S.; defining the term "material violation";
4 revising cause of action requirements for statutory
5 civil actions relating to certain violations;
6 providing requirements for bringing a cause of action;
7 amending s. 558.004, F.S.; requiring that a claimant
8 submit a construction defect claim to the warranty
9 provider before serving a notice of claim; providing
10 applicability; revising requirements for notices of
11 claims; providing that a person who willfully includes
12 a false statement in a notice of claim commits
13 perjury; authorizing a person served with a copy of a
14 notice of claim to perform a reasonable inspection of
15 the property subject to the claim; requiring, instead
16 of authorizing, a person served with a notice to serve
17 a copy of the notice to specified persons under
18 certain circumstances; creating s. 558.006, F.S.;
19 requiring a claimant to notify a mortgagee or an
20 assignee within a specified timeframe after a
21 settlement or judgment of a construction defect claim;
22 providing notice requirements; requiring a claimant to
23 update the notice within a specified timeframe under
24 certain circumstances; providing an effective date.
25

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

27 |

28 | Section 1. Section 553.84, Florida Statutes, is amended to
29 | read:

30 | 553.84 Statutory civil action.—

31 | (1) For purposes of this section, the term "material
32 | violation" means a violation that exists within a completed
33 | building, structure, or facility which may reasonably result, or
34 | has resulted, in physical harm to a person or significant damage
35 | to the performance of a building or a system.

36 | (2) Notwithstanding any other remedies available, any
37 | person or party, in an individual capacity or on behalf of a
38 | class of persons or parties, damaged as a result of a material
39 | violation of this part or the Florida Building Code, has a cause
40 | of action in any court of competent jurisdiction against the
41 | person or party who committed the violation.~~‡~~ However, if the
42 | person or party obtains the required building permits and any
43 | local government or public agency with authority to enforce the
44 | Florida Building Code approves the plans, if the construction
45 | project passes all required inspections under the code, and if
46 | there is no personal injury or damage to property other than the
47 | property that is the subject of the permits, plans, and
48 | inspections, this section does not apply unless the person or
49 | party knew or should have known that the violation existed.

50 | (3) A person or party may bring a cause of action under

51 this section only after the person or party has submitted a
52 claim for the alleged material violation under an applicable
53 warranty and the warranty provider denies the claim or offers a
54 remedy that is unsatisfactory to the person or party within the
55 time limits provided in the warranty.

56 Section 2. Subsections (1) through (4) and subsection (15)
57 of section 558.004, Florida Statutes, are amended to read:

58 558.004 Notice and opportunity to repair.—

59 (1) (a) In actions brought alleging a construction defect,
60 the claimant shall, at least 60 days before filing any action,
61 or at least 120 days before filing an action involving an
62 association representing more than 20 parcels, serve written
63 notice of claim on the contractor, subcontractor, supplier, or
64 design professional, as applicable, which notice shall refer to
65 this chapter. If the construction defect claim arises from work
66 performed under a contract, the ~~written~~ notice of claim must be
67 served on the person with whom the claimant contracted. However,
68 the notice of claim may be served only after the claimant
69 properly submits a claim for the alleged construction defect
70 under an applicable warranty and the warranty provider denies
71 the claim or offers a remedy that is unsatisfactory to the
72 claimant within the time limit provided in the warranty. This
73 chapter provides a notice process for a construction defect
74 claim that has been denied or not otherwise satisfied under an
75 applicable warranty.

76 (b) The notice of claim must:

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

79 2. If the alleged construction defect or evidence thereof
80 is visible, include at least one photograph of the alleged
81 defect or evidence thereof, any repair estimates or expert
82 reports obtained relating to the alleged defect, and a
83 description of, if known, the damage or loss resulting from the
84 alleged defect, if known.

85 3. Based upon at least a visual inspection by the claimant
86 or its agents, the notice of claim must identify the specific
87 location of each alleged construction defect sufficiently to
88 enable the responding parties to locate the alleged defect
89 without undue burden. The claimant has no obligation to perform
90 destructive or other testing for purposes of this notice.

91 4. Affirm that the claimant has personal knowledge of the
92 alleged construction defect.

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

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

98
99 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
100 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST

101 OF MY KNOWLEDGE AND BELIEF.

102

103 (c) A person who willfully includes a false statement in
104 the notice of claim under this section commits perjury and, upon
105 conviction, is subject to punishment as provided by law.

106 (d)~~(e)~~ The claimant shall endeavor to serve the notice of
107 claim within 15 days after discovery of an alleged construction
108 defect, but the failure to serve notice of claim within 15 days
109 does not bar the filing of an action, subject to s. 558.003.
110 This subsection does not preclude a claimant from filing an
111 action sooner than 60 days, or 120 days as applicable, after
112 service of written notice as expressly provided in subsection
113 (6), subsection (7), or subsection (8).

114 (e)~~(d)~~ A notice of claim served under ~~pursuant to~~ this
115 chapter shall not toll any statute of repose period under
116 chapter 95.

117 (2) Within 30 days after service of the notice of claim,
118 or within 50 days after service of the notice of claim involving
119 an association representing more than 20 parcels, a ~~the~~ person
120 served with the notice of claim under subsection (1), or a copy
121 thereof under subsection (3), may ~~is entitled to~~ perform a
122 reasonable inspection of the property or of each unit subject to
123 the claim to assess each alleged construction defect. An
124 association's right to access property for either maintenance or
125 repair includes the authority to grant access for the

126 inspection. The claimant shall provide the person served with
 127 notice under subsection (1), or a copy thereof under subsection
 128 (3), and such person's contractors or agents reasonable access
 129 to the property during normal working hours to inspect the
 130 property to determine the nature and cause of each alleged
 131 construction defect and the nature and extent of any repairs or
 132 replacements necessary to remedy each defect. The person served
 133 with notice under subsection (1), or a copy thereof under
 134 subsection (3), shall reasonably coordinate the timing and
 135 manner of any and all inspections with the claimant to minimize
 136 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, the ~~such~~ person
 142 must ~~shall~~ notify the claimant in writing.

143 (b) The notice describes ~~shall describe~~ the destructive
 144 testing to be performed, the person selected to do the testing,
 145 the estimated ~~anticipated~~ damage and repairs to or restoration
 146 of the property resulting from the testing, the estimated amount
 147 of 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) must ~~shall~~ provide the claimant
153 with a list of three qualified persons from which the claimant
154 may select one such person to perform the testing. The person
155 selected to perform the testing operates ~~shall operate~~ as an
156 agent or subcontractor of the person served with notice under
157 subsection (1) and shall communicate with, submit any reports
158 to, and be 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.

171
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

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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 may not be construed as an admission of any kind.
188 Each such contractor, subcontractor, supplier, and design
189 professional may inspect the property as provided in subsection
190 (2).

191 (4) Within 15 days after service of a copy of the notice
192 of claim under ~~pursuant to~~ subsection (3), or within 30 days
193 after service of the copy of the notice of claim involving an
194 association representing more than 20 parcels, the contractor,
195 subcontractor, supplier, or design professional must serve a
196 written response to the person who served a copy of the notice
197 of claim. The written response must include a report, if any, of
198 the scope of any inspection of the property and the findings and
199 results of the inspection. The written response must include one
200 or more of the offers or statements specified in paragraphs

201 (5) (a)-(e), as chosen by the responding contractor,
 202 subcontractor, supplier, or design professional, with all of the
 203 information required for that offer or statement.

204 (15) Upon request, the claimant and any person served with
 205 notice under ~~pursuant to~~ subsection (1) shall exchange, within
 206 30 days after service of a written request that cites this
 207 subsection and includes, ~~which request must cite this subsection~~
 208 ~~and include~~ an offer to pay the reasonable costs of
 209 reproduction, any design plans, specifications, and as-built
 210 plans; videos and additional photographs ~~and videos~~ of the
 211 alleged construction defect identified in the notice of claim;
 212 expert reports not already provided which ~~that~~ describe any
 213 defect upon which the claim is made; subcontracts; purchase
 214 orders for the work that is claimed defective or any part of
 215 such materials; and maintenance records and other documents
 216 related to the discovery, investigation, causation, and extent
 217 of the alleged defect identified in the notice of claim and any
 218 resulting damages. A party may assert any claim of privilege
 219 recognized under the laws of the ~~this~~ state with respect to any
 220 of the disclosure obligations specified in this chapter. In the
 221 event of subsequent litigation, any party who fails ~~failed~~ to
 222 provide the requested materials is ~~shall be~~ subject to such
 223 sanctions as the court may impose for a discovery violation.
 224 Expert reports exchanged between the parties may not be used in
 225 any subsequent litigation for any purpose, unless the expert, or

226 a person affiliated with the expert, testifies as a witness or
227 the report is used or relied upon by an expert who testifies on
228 behalf of the party for whom the report was prepared.

229 Section 3. Section 558.006, Florida Statutes, is created
230 to read:

231 558.006 Notice to mortgagee or assignee.-

232 (1) If a notice of claim alleging a construction defect
233 under this chapter results in a monetary settlement or judgment
234 in favor of the claimant, and a mortgagee or an assignee has a
235 security interest in the real property subject to the claim, the
236 claimant must, within 90 days after the resolution of the claim,
237 notify the mortgagee or assignee, in writing, all of the
238 following:

239 (a) The specific nature of the defect.

240 (b) The outcome of the claim, including the amount of any
241 monetary settlement reached or judgment awarded.

242 (c) Whether the defect has been repaired and a description
243 of any repairs made or, if repairs have not yet begun, the
244 anticipated date on which the repairs will begin.

245 (2) If repairs relating to the defect are completed after
246 the claimant notifies the mortgagee or assignee as required
247 under subsection (1), the claimant must update the notice within
248 30 days after completion of the repairs.

249 Section 4. This act shall take effect July 1, 2021.