

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. 558.001, F.S.; revising legislative  
8           findings relating to a statutorily defined alternative  
9           method to resolve construction disputes; amending s.  
10          558.003, F.S.; providing applicability of certain  
11          requirements in order to bring a construction defect  
12          claim; providing an exception; amending s. 558.004,  
13          F.S.; requiring that a claimant submit a construction  
14          defect claim to the warranty provider before serving a  
15          notice of claim; providing requirements for a claimant  
16          and a warranty provider; providing that certain  
17          actions do not constitute an admission of liability  
18          and may not be admissible in an action; revising  
19          requirements for notices of claims; providing that a  
20          person who willfully includes a false statement in a  
21          notice of claim commits perjury; authorizing a person  
22          served with a copy of a notice of claim to perform a  
23          reasonable inspection of the property subject to the  
24          claim; requiring, instead of authorizing, a person  
25          served with a notice to serve a copy of the notice to

26 specified persons under certain circumstances;  
 27 prohibiting a claimant from filing an action relating  
 28 to an alleged construction defect in certain  
 29 circumstances; authorizing a claimant to request that  
 30 an independent qualified third party make repairs;  
 31 tolling the statute of limitations in certain  
 32 circumstances; requiring the exchange of certain  
 33 information within a specified time; amending s.  
 34 558.005, F.S.; requiring certain parties to opt in to,  
 35 rather than opt out of, certain requirements; revising  
 36 requirements for certain contracts made after a  
 37 specified date; providing applicability; creating s.  
 38 558.006, F.S.; requiring a claimant to notify a  
 39 mortgagee or an assignee within a specified timeframe  
 40 after service of the notice of a construction defect  
 41 claim; requiring a claimant to send a second notice  
 42 within a specified timeframe under certain  
 43 circumstances; providing an effective date.

44

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

46

47 Section 1. Section 553.84, Florida Statutes, is amended to  
 48 read:

49 553.84 Statutory civil action.—

50 (1) For purposes of this section, the term "material

51 violation" means a violation that exists within a completed  
52 building, structure, or facility which may reasonably result, or  
53 has resulted, in personal injury to a person or significant  
54 damage to the performance of a building or its system.

55 (2) Notwithstanding any other remedies available, any  
56 person or party, in an individual capacity or on behalf of a  
57 class of persons or parties, damaged as a result of a material  
58 violation of this part or the Florida Building Code, has a cause  
59 of action in any court of competent jurisdiction against the  
60 person or party who committed the violation. ~~‡~~ However, if the  
61 person or party obtains the required building permits and any  
62 local government or public agency with authority to enforce the  
63 Florida Building Code approves the plans, if the construction  
64 project passes all required inspections under the code, and if  
65 there is no personal injury or damage to property other than the  
66 property that is the subject of the permits, plans, and  
67 inspections, this section does not apply unless the violation  
68 resulted in significant damage to the property that is the  
69 subject of the permits, plans, and inspections or may reasonably  
70 result in personal injury to a person or significant damage to  
71 the performance of a building or its system ~~person or party knew~~  
72 ~~or should have known that the violation existed.~~

73 (3) (a) Before bringing a cause of action under this  
74 section, a person or party must submit a written claim for the  
75 alleged material violation under an existing applicable warranty

76 and provide access to the property for an inspection within 30  
77 days after serving a written warranty claim.

78 (b) If the warranty provider offers to repair the alleged  
79 material violation after an inspection, the person or party has  
80 30 days after the inspection to provide written authorization to  
81 proceed with the repair and allow access.

82 (c) If written authorization is not provided by the person  
83 or party to the warranty provider, the person or party is barred  
84 from filing a cause of action under this section. However, if  
85 the person or party provides written authorization and access to  
86 the property to repair the alleged material violation, the  
87 warranty provider has 120 days after the inspection to complete  
88 the repair of the alleged material violation or offer another  
89 remedy.

90 (d) If the warranty provider denies the claim, does not  
91 complete the repair, or the remedy offered is unsatisfactory to  
92 the person or party, the person or party may file a cause of  
93 action under this section. Any offer or failure to offer a  
94 repair of the alleged material violation or to compromise and  
95 settle the claim by monetary payment or some other remedy does  
96 not constitute an admission of liability with respect to the  
97 material violation and is not admissible in an action brought  
98 under this section.

99 Section 2. Section 558.001, Florida Statutes, is amended  
100 to read:

101           558.001 Legislative findings and declaration.—The  
102 Legislature finds that it is beneficial to have a statutorily  
103 defined ~~an~~ alternative method to resolve construction disputes  
104 that would reduce the need for litigation as well as protect the  
105 rights of property owners. An effective alternative dispute  
106 resolution mechanism in certain construction defect matters  
107 should involve the claimant filing a notice of claim with the  
108 contractor, subcontractor, supplier, or design professional that  
109 the claimant asserts is responsible for the defect, and should  
110 provide the contractor, subcontractor, supplier, or design  
111 professional, and the insurer of the contractor, subcontractor,  
112 supplier, or design professional, with an opportunity to resolve  
113 the claim through confidential settlement negotiations without  
114 resorting ~~resort~~ to further legal process. If an agreement to  
115 provide construction services does not incorporate the dispute  
116 resolution mechanism provided in this chapter, or if the  
117 responding parties do not voluntarily agree to participate in  
118 the dispute resolution mechanism provided in this chapter, the  
119 Legislature finds that the rights of the responding parties to  
120 contemplate and provide for the method of dispute resolution  
121 they deem to be most beneficial to their own unique  
122 circumstances should not be burdened by the statutorily defined  
123 dispute resolution mechanism provided in this chapter.

124           Section 3. Section 558.003, Florida Statutes, is amended  
125 to read:

126 558.003 Action; applicability and compliance.—

127 (1) Unless a responding party has entered into an  
128 agreement that affirmatively incorporates the dispute resolution  
129 mechanism provided in this chapter, or a responding party has  
130 voluntarily agreed to participate in the dispute resolution  
131 mechanism provided in this chapter, ss. 558.004 and 558.005 do  
132 not apply to a cause of action for an alleged construction  
133 defect.

134 (2) A claimant may not file an action subject to this  
135 chapter without first complying with the requirements of this  
136 chapter. If a claimant files an action subject to this chapter  
137 alleging a construction defect without first complying with the  
138 requirements of this chapter, on timely motion by a party to the  
139 action the court shall stay the action, without prejudice, and  
140 the action may not proceed until the claimant has complied with  
141 such requirements. The notice requirement is not intended to  
142 interfere with an owner's ability to complete a project that has  
143 not been substantially completed. The notice is not required for  
144 a project that has not reached the stage of completion of the  
145 building or improvement.

146 Section 4. Subsections (6) through (15) of section  
147 558.004, Florida Statutes, are renumbered as subsections (7)  
148 through (16), respectively, subsections (1) through (4) and  
149 present subsections (10) and (15) are amended, and a new  
150 subsection (6) is added to that section, to read:

151 558.004 Notice and opportunity to repair.-

152 (1) (a) In actions brought alleging a construction defect,  
 153 the claimant shall, at least 60 days before filing any action,  
 154 or at least 120 days before filing an action involving an  
 155 association representing more than 20 parcels, serve written  
 156 notice of claim on the contractor, subcontractor, supplier, or  
 157 design professional, as applicable, which notice shall refer to  
 158 this chapter. If the construction defect claim arises from work  
 159 performed under a contract, the ~~written~~ notice of claim must be  
 160 served on the person with whom the claimant contracted.

161 (b)1. Before serving a notice of claim under this chapter,  
 162 a claimant must submit a written claim for the alleged  
 163 construction defect under an existing applicable warranty and  
 164 provide access to the property for an inspection within 30 days  
 165 after serving a written warranty claim.

166 2. If the warranty provider offers to repair the alleged  
 167 construction defect after an inspection, the claimant has 30  
 168 days after the inspection to provide written authorization to  
 169 proceed with the repair and allow access to the property.

170 3. If written authorization is not provided by the  
 171 claimant to the warranty provider, the claimant is barred from  
 172 filing a cause of action under this chapter. However, if the  
 173 claimant provides written authorization and access to the  
 174 property to repair the alleged construction defect, the warranty  
 175 provider has 120 days after the inspection to complete the

176 repair of the alleged construction defect or offer another  
 177 remedy.

178 4. If the warranty provider denies the claim, does not  
 179 complete the repair, or the remedy offered is unsatisfactory to  
 180 the claimant, the claimant may serve a notice of claim under  
 181 this section. Any offer or failure to offer a repair of the  
 182 alleged construction defect or to compromise and settle the  
 183 claim by monetary payment or some other remedy does not  
 184 constitute an admission of liability with respect to the  
 185 construction defect and is not admissible in an action brought  
 186 under this section.

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

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

190 2. If the alleged construction defect or evidence thereof  
 191 is visible, include at least one photograph of the alleged  
 192 defect or evidence thereof, any repair estimates or expert  
 193 reports obtained relating to the alleged defect, and a  
 194 description of, ~~if known,~~ the damage or loss resulting from the  
 195 alleged defect, if known.

196 3. Based upon at least a visual inspection by the claimant  
 197 or its agents, ~~the notice of claim must~~ identify the specific  
 198 location of each alleged construction defect sufficiently to  
 199 enable the responding parties to locate the alleged defect  
 200 without undue burden. The claimant has no obligation to perform

201 destructive or other testing for purposes of this notice.

202 4. Affirm that the claimant has personal knowledge of the  
 203 alleged construction defect.

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

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

209  
 210 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE  
 211 FOREGOING STATEMENT AND THE FACTS ALLEGED ARE TRUE TO THE BEST  
 212 OF MY KNOWLEDGE AND BELIEF.

213  
 214 (d) A person who willfully includes a false statement in  
 215 the notice of claim under this section commits perjury and, upon  
 216 conviction, is subject to punishment as provided by law.

217 (e) ~~(e)~~ The claimant shall endeavor to serve the notice of  
 218 claim within 15 days after discovery of an alleged construction  
 219 defect, but the failure to serve notice of claim within 15 days  
 220 does not bar the filing of an action, subject to s. 558.003.  
 221 This subsection does not preclude a claimant from filing an  
 222 action sooner than 60 days, or 120 days as applicable, after  
 223 service of written notice as expressly provided in subsection  
 224 (7) ~~(6)~~, subsection (8) ~~(7)~~, or subsection (9) ~~(8)~~.

225 (f) ~~(d)~~ A notice of claim served under ~~pursuant to~~ this

226 chapter shall not toll any statute of repose period under  
227 chapter 95.

228 (2) Within 30 days after service of the notice of claim,  
229 or within 50 days after service of the notice of claim involving  
230 an association representing more than 20 parcels, a the person  
231 served with the notice of claim under subsection (1), or a copy  
232 thereof under subsection (3), may ~~is entitled to~~ perform a  
233 reasonable inspection of the property or of each unit subject to  
234 the claim to assess each alleged construction defect. An  
235 association's right to access property for either maintenance or  
236 repair includes the authority to grant access for the  
237 inspection. The claimant shall provide the person served with  
238 notice under subsection (1), or a copy thereof under subsection  
239 (3), and such person's contractors or agents reasonable access  
240 to the property during normal working hours to inspect the  
241 property to determine the nature and cause of each alleged  
242 construction defect and the nature and extent of any repairs or  
243 replacements necessary to remedy each defect. The person served  
244 with notice under subsection (1), or a copy thereof under  
245 subsection (3), shall reasonably coordinate the timing and  
246 manner of any and all inspections with the claimant to minimize  
247 the number of inspections. The inspection may include  
248 destructive testing by mutual agreement under the following  
249 reasonable terms and conditions:

250 (a) If the person served with notice under subsection (1)

251 determines that destructive testing is necessary to determine  
252 the nature and cause of the alleged defects, the ~~such~~ person  
253 must ~~shall~~ notify the claimant in writing.

254 (b) The notice describes ~~shall describe~~ the destructive  
255 testing to be performed, the person selected to do the testing,  
256 the estimated ~~anticipated~~ damage and repairs to or restoration  
257 of the property resulting from the testing, the estimated amount  
258 of time necessary for the testing and to complete the repairs or  
259 restoration, and the financial responsibility offered for  
260 covering the costs of repairs or restoration.

261 (c) If the claimant promptly objects to the person  
262 selected to perform the destructive testing, the person served  
263 with notice under subsection (1) must ~~shall~~ provide the claimant  
264 with a list of three qualified persons from which the claimant  
265 may select one such person to perform the testing. The person  
266 selected to perform the testing operates ~~shall operate~~ as an  
267 agent or subcontractor of the person served with notice under  
268 subsection (1) and shall communicate with, submit any reports  
269 to, and be solely responsible to the person served with notice.

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

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

274 (f) The destructive testing may ~~shall~~ not render the  
275 property uninhabitable.

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

282  
283 If the claimant refuses to agree and thereafter permit  
284 reasonable destructive testing, the claimant has ~~shall have~~ no  
285 claim for damages which could have been avoided or mitigated had  
286 destructive testing been allowed when requested and had a  
287 feasible remedy been promptly implemented.

288 (3) Within 10 days after service of the notice of claim,  
289 or within 30 days after service of the notice of claim involving  
290 an association representing more than 20 parcels, the person  
291 served with notice under subsection (1) must ~~may~~ serve a copy of  
292 the notice of claim to each contractor, subcontractor, supplier,  
293 or design professional whom it reasonably believes is  
294 responsible for each defect specified in the notice of claim and  
295 shall note the specific defect for which it believes the  
296 particular contractor, subcontractor, supplier, or design  
297 professional is responsible. The notice described in this  
298 subsection may not be construed as an admission of any kind.  
299 Each such contractor, subcontractor, supplier, and design  
300 professional may inspect the property as provided in subsection

301 (2) .

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

315 (6) A claimant may not file any action relating to the  
 316 alleged construction defect if the person served with notice  
 317 under subsection (1) offers to remedy the alleged construction  
 318 defect at no cost to the claimant and the claimant either  
 319 rejects the offer or fails to respond to the offer within 45  
 320 days after receiving it.

321 (a) A claimant may require the person served with the  
 322 notice under subsection (1) to have an independent qualified  
 323 third party make the repairs. The claimant may not deny access  
 324 to the property to an independent qualified third party hired by  
 325 the person served with notice under subsection (1).

326        (b) A claimant is not barred from filing an action under  
327 this chapter or to accept another offer to repair if the  
328 claimant determines that the repairs are unsatisfactory.

329        (c) If a claimant accepts an offer to repair, such  
330 acceptance tolls the applicable statute of limitations relating  
331 to any person covered by this chapter and any bond surety until  
332 90 days after the claimant accepts the offer.

333        (11)-(10) A claimant's service of a notice of claim for the  
334 alleged construction defect under an existing applicable  
335 warranty or the written notice of claim under subsection (1)  
336 tolls the applicable statute of limitations relating to any  
337 person covered by this chapter and any bond surety until the  
338 later of:

339        (a) Ninety days, or 120 days, as applicable, after service  
340 of a notice of claim for the alleged construction defect under  
341 an existing applicable warranty or the written ~~the~~ notice of  
342 claim pursuant to subsection (1); or

343        (b) Thirty days after the end of the repair period or  
344 payment period stated in the offer, if the claimant has accepted  
345 the offer. By stipulation of the parties, the period may be  
346 extended and the statute of limitations is tolled during the  
347 extension.

348        (16)-(15) Upon request, the claimant and any person served  
349 with notice under ~~pursuant to~~ subsection (1) shall exchange,  
350 within 30 days after service of a written request that cites

351 this subsection and includes, ~~which request must cite this~~  
352 ~~subsection and include~~ an offer to pay the reasonable costs of  
353 reproduction, any design plans, specifications, and as-built  
354 plans; videos and additional photographs ~~and videos~~ of the  
355 alleged construction defect identified in the notice of claim;  
356 expert reports not already provided which ~~that~~ describe any  
357 defect upon which the claim is made; subcontracts; purchase  
358 orders for the work that is claimed defective or any part of  
359 such materials; and maintenance records and other documents  
360 related to the discovery, investigation, causation, and extent  
361 of the alleged defect identified in the notice of claim and any  
362 resulting damages. A party may assert any claim of privilege  
363 recognized under the laws of the ~~this~~ state with respect to any  
364 of the disclosure obligations specified in this chapter. In the  
365 event of subsequent litigation, any party who fails ~~failed~~ to  
366 provide the requested materials is ~~shall be~~ subject to such  
367 sanctions as the court may impose for a discovery violation.  
368 Expert reports exchanged between the parties may not be used in  
369 any subsequent litigation for any purpose, unless the expert, or  
370 a person affiliated with the expert, testifies as a witness or  
371 the report is used or relied upon by an expert who testifies on  
372 behalf of the party for whom the report was prepared.

373 Section 5. Subsections (1), (5), and (6) of section  
374 558.005, Florida Statutes, are amended to read:

375 558.005 Contract provisions; application.-

376 (1) Unless a claimant and a potential defendant have  
377 agreed in writing to opt in to ~~out of~~ the requirements of this  
378 section, the dispute resolution mechanism provided in provisions  
379 ~~of~~ this chapter shall not apply to any claim for legal relief  
380 for which the agreement to make the improvement was made after  
381 October 1, 2021 ~~2009~~, and for which the basis of the claim is a  
382 construction defect that has arisen after completion of a  
383 building or improvement.

384 (5) Notwithstanding the notice requirements of this  
385 section for contracts entered into on or after October 1, 2021  
386 ~~2006~~, this chapter applies to all actions accruing before  
387 October 1, 2021 ~~July 1, 2004~~, but not yet commenced as of  
388 October 1, 2021 ~~July 1, 2004~~, and failure to include such notice  
389 requirements in a contract entered into before October 1, 2021  
390 ~~July 1, 2004~~, does not operate to bar the procedures of this  
391 chapter from applying to all such actions.

392 (6) Notwithstanding s. 558.003, ~~unless the parties agree~~  
393 ~~that this chapter does not apply~~, after October 1, 2021 ~~2009~~,  
394 for the dispute resolution mechanism provided in this chapter to  
395 apply, any written contract for improvement of real property  
396 entered into between an owner and a contractor, or between an  
397 owner and a design professional, must contain substantially the  
398 following notice: "ANY CLAIMS FOR CONSTRUCTION DEFECTS ARISING  
399 FROM THIS CONTRACT ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS  
400 OF CHAPTER 558, FLORIDA STATUTES." The failure to include in the

401 contract the notice provided in this subsection does not  
402 prohibit ~~subject~~ the contracting owner, contractor, or design  
403 professional from opting in to the dispute resolution mechanism  
404 provided in this chapter ~~to any penalty~~. The purpose of the  
405 contractual notice is to promote awareness of the desire of the  
406 parties to use the dispute resolution mechanism provided in this  
407 chapter ~~procedure~~, not to be a penalty.

408 Section 6. Section 558.006, Florida Statutes, is created  
409 to read:

410 558.006 Notice to mortgagee or assignee.-

411 (1) If a notice of claim alleging a construction defect  
412 under this chapter is made with respect to real property to  
413 which a mortgagee or an assignee has a security interest in the  
414 real property, the claimant must, within 30 days after service  
415 of the notice of the claim on the contractor, subcontractor,  
416 supplier, or design professional, serve the mortgagee or  
417 assignee with a copy of the notice of claim, by certified mail,  
418 return receipt requested.

419 (2) If repairs relating to the defect are completed after  
420 the claimant notifies the mortgagee or assignee as required  
421 under subsection (1), or if any settlement, partial settlement,  
422 arbitration award, or judgment is obtained by the claimant, the  
423 claimant must provide an additional notice to the mortgagee or  
424 assignee within 60 days after completion of the repairs or any  
425 settlement, partial settlement, arbitration award, or judgment,

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426 | whichever is later, by certified mail, return receipt requested.

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