

1 A bill to be entitled
2 An act relating to construction defect claims;
3 amending s. 558.004, F.S.; providing additional
4 requirements for notices of claim, inspections, and
5 notices of acceptance or rejection of settlement
6 offers; providing that an authorized representative of
7 a claimant may act on the behalf of the claimant if
8 the claimant is a business entity; prohibiting a
9 representative of the claimant from acting without the
10 claimant's knowledge if the claimant is an individual;
11 requiring, rather than authorizing, certain persons to
12 serve copies of notices of claim to certain
13 professionals; providing for mediation under certain
14 circumstances, subject to certain requirements;
15 revising provisions relating to tolling certain
16 statutes of limitations; providing an effective date.

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

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20 Section 1. Paragraph (a) of subsection (1) and subsections
21 (2), (3), (7), and (10) of section 558.004, Florida Statutes,
22 are amended to read:

23 558.004 Notice and opportunity to repair.—

24 (1) (a) In actions brought alleging a construction defect,
25 the claimant shall, at least 60 days before filing any action,

26 | or at least 120 days before filing an action involving an
27 | association representing more than 20 parcels, serve written
28 | notice of claim, personally signed by the claimant, on the
29 | contractor, subcontractor, supplier, or design professional, as
30 | applicable, which notice shall refer to this chapter. If the
31 | construction defect claim arises from work performed under a
32 | contract, the ~~written~~ notice of claim must be served on the
33 | person with whom the claimant contracted. For purposes of this
34 | section, if the claimant is a business entity, such as a
35 | corporation, limited liability company, partnership, limited
36 | partnership, proprietorship, firm, enterprise, franchise, or
37 | association, an authorized representative of the claimant may
38 | act on the behalf of the claimant. However, if a claimant is an
39 | individual, a representative of the claimant may not act without
40 | the claimant's knowledge.

41 | (2) Within 30 days after service of the notice of claim,
42 | or within 50 days after service of the notice of claim involving
43 | an association representing more than 20 parcels, the person
44 | served with the notice of claim under subsection (1) is entitled
45 | to perform a reasonable inspection of the property or of each
46 | unit subject to the claim to assess each alleged construction
47 | defect. An association's right to access property for either
48 | maintenance or repair includes the authority to grant access for
49 | the inspection. The claimant shall provide the person served
50 | with notice under subsection (1) and such person's contractors

51 or agents reasonable access to the property during normal
52 working hours to inspect the property to determine the nature
53 and cause of each alleged construction defect and the nature and
54 extent of any repairs or replacements necessary to remedy each
55 defect. The claimant and any consultants retained by the
56 claimant with respect to the claim must be physically present at
57 the inspection to identify the location of the alleged
58 construction defects. The person served with notice under
59 subsection (1) shall reasonably coordinate the timing and manner
60 of any and all inspections with the claimant to minimize the
61 number of inspections. The inspection may include destructive
62 testing by mutual agreement under the following reasonable terms
63 and conditions:

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

68 (b) The notice shall describe the destructive testing to
69 be performed, the person selected to do the testing, the
70 estimated anticipated damage and repairs to or restoration of
71 the property resulting from the testing, the estimated amount of
72 time necessary for the testing and to complete the repairs or
73 restoration, and the financial responsibility offered for
74 covering the costs of repairs or restoration.

75 (c) If the claimant promptly objects to the person

76 | selected to perform the destructive testing, the person served
77 | with notice under subsection (1) shall provide the claimant with
78 | a list of three qualified persons from which the claimant may
79 | select one such person to perform the testing. The person
80 | selected to perform the testing shall operate as an agent or
81 | subcontractor of the person served with notice under subsection
82 | (1) and shall communicate with, submit any reports to, and be
83 | solely responsible to the person served with notice.

84 | (d) The testing shall be done at a mutually agreeable
85 | time.

86 | (e) The claimant or a representative of the claimant may
87 | be present to observe the destructive testing.

88 | (f) The destructive testing shall not render the property
89 | uninhabitable.

90 | (g) There shall be no construction lien rights under part
91 | I of chapter 713 for the destructive testing caused by a person
92 | served with notice under subsection (1) or for restoring the
93 | area destructively tested to the condition existing before ~~prior~~
94 | ~~to~~ testing, except to the extent the owner contracts for the
95 | destructive testing or restoration.

96 |
97 | If the claimant refuses to agree and thereafter permit
98 | reasonable destructive testing, the claimant shall have no claim
99 | for damages which could have been avoided or mitigated had
100 | destructive testing been allowed when requested and had a

101 feasible remedy been promptly implemented.

102 (3) Within 10 days after service of the notice of claim,
103 or within 30 days after service of the notice of claim involving
104 an association representing more than 20 parcels, the person
105 served with notice under subsection (1) must ~~may~~ serve a copy of
106 the notice of claim to each contractor, subcontractor, supplier,
107 or design professional whom it reasonably believes is
108 responsible for each defect specified in the notice of claim and
109 shall note the specific defect for which it believes the
110 particular contractor, subcontractor, supplier, or design
111 professional is responsible. The notice described in this
112 subsection may not be construed as an admission of any kind.
113 Each such contractor, subcontractor, supplier, and design
114 professional may inspect the property as provided in subsection
115 (2).

116 (7) (a) A claimant who receives a timely settlement offer
117 must accept or reject the offer by serving written notice of
118 such acceptance or rejection, personally signed by the claimant,
119 on the person making the offer within 45 days after receiving
120 the settlement offer. If a claimant initiates an action without
121 first accepting or rejecting the offer, the court shall stay the
122 action upon timely motion until the claimant complies with this
123 subsection.

124 (b)1. Before rejecting the offer, the claimant shall serve
125 a written demand for mediation on the person making the offer.

126 The demand must explain why the claimant considers the offer
127 inadequate. Unless mediation is waived in writing by the person
128 making the offer, the parties must, within 20 days after service
129 of the demand for mediation, mutually select an independent
130 certified mediator and subsequently meet with the mediator to
131 attempt to resolve the dispute. If the parties do not mutually
132 select, or are not able to agree on, an independent certified
133 mediator within the specified period, each party must select an
134 independent certified mediator, and the selected mediators must
135 then mutually select an independent certified mediator to
136 conduct the mediation.

137 2. The mediation must take place in the county in which
138 the subject real property is located, at a mutually convenient
139 date, time, and location to be selected by the mediator, unless
140 otherwise agreed to by the parties. The mediator may extend the
141 date of the meeting for good cause shown by either party or upon
142 stipulation of both parties. The person making the offer bears
143 the costs of mediation. Mediation must be conducted by a
144 certified circuit court mediator, pursuant to the applicable
145 mediation rules of practice and procedures for circuit courts
146 adopted by the Florida Supreme Court and pursuant to the
147 Mediation Confidentiality and Privilege Act, unless otherwise
148 agreed to by the parties. The time for serving written notice
149 under paragraph (a) is tolled until the waiver of mediation by
150 the person making the offer or until the mediator declares an

151 impasse, whichever occurs earlier.

152 (10) A claimant's service of the written notice of claim
153 under subsection (1) tolls the applicable statute of limitations
154 relating to any person covered by this chapter and any bond
155 surety until the later of:

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

158 (b) Thirty days after the mediation conducted pursuant to
159 paragraph (7) (b) is declared to be at an impasse by the
160 mediator;

161 (c) Thirty days after waiver of the mediation by the
162 person making the offer pursuant to paragraph (7) (b); or

163 (d) ~~(b)~~ Thirty days after the end of the repair period or
164 payment period stated in the offer, if the claimant has accepted
165 the offer. By stipulation of the parties, the period may be
166 extended and the statute of limitations is tolled during the
167 extension.

168 Section 2. This act shall take effect July 1, 2018.