

By Senator Passidomo

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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.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
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

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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, or  
42 within 50 days after service of the notice of claim involving an  
43 association representing more than 20 parcels, the person served  
44 with the notice of claim under subsection (1) is entitled to  
45 perform a reasonable inspection of the property or of each unit  
46 subject to the claim to assess each alleged construction defect.  
47 An association's right to access property for either maintenance  
48 or repair includes the authority to grant access for the  
49 inspection. The claimant shall provide the person served with  
50 notice under subsection (1) and such person's contractors or  
51 agents reasonable access to the property during normal working  
52 hours to inspect the property to determine the nature and cause  
53 of each alleged construction defect and the nature and extent of  
54 any repairs or replacements necessary to remedy each defect. The  
55 claimant and any consultants retained by the claimant with  
56 respect to the claim must be physically present at the  
57 inspection to identify the location of the alleged construction  
58 defects. The person served with notice under subsection (1)

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59 shall reasonably coordinate the timing and manner of any and all  
60 inspections with the claimant to minimize the number of  
61 inspections. The inspection may include destructive testing by  
62 mutual agreement under the following reasonable terms and  
63 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 be  
69 performed, the person selected to do the testing, the estimated  
70 anticipated damage and repairs to or restoration of the property  
71 resulting from the testing, the estimated amount of time  
72 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 selected  
76 to perform the destructive testing, the person served with  
77 notice under subsection (1) shall provide the claimant with a  
78 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 time.

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

87 (f) The destructive testing shall not render the property

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88 uninhabitable.

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

95  
96 If the claimant refuses to agree and thereafter permit  
97 reasonable destructive testing, the claimant shall have no claim  
98 for damages which could have been avoided or mitigated had  
99 destructive testing been allowed when requested and had a  
100 feasible remedy been promptly implemented.

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

114 (7) (a) A claimant who receives a timely settlement offer  
115 must accept or reject the offer by serving written notice of  
116 such acceptance or rejection, personally signed by the claimant,

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117 on the person making the offer within 45 days after receiving  
118 the settlement offer. If a claimant initiates an action without  
119 first accepting or rejecting the offer, the court shall stay the  
120 action upon timely motion until the claimant complies with this  
121 subsection.

122 (b)1. Upon rejecting the offer, the claimant shall serve a  
123 written demand for mediation on the person making the offer. The  
124 demand must explain why the claimant considers the offer  
125 inadequate. Unless mediation is waived in writing by the person  
126 making the offer, the parties must, within 20 days after service  
127 of the demand for mediation, mutually select an independent  
128 certified mediator and subsequently meet with the mediator to  
129 attempt to resolve the dispute. If the parties do not mutually  
130 select, or are not able to agree on, an independent certified  
131 mediator within the specified period, each party must select an  
132 independent certified mediator, and the selected mediators must  
133 then mutually select an independent certified mediator to  
134 conduct the mediation.

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

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146 agreed to by the parties. The time for serving written notice  
147 under paragraph (a) is tolled until the waiver of mediation by  
148 the person making the offer or until the mediator declares an  
149 impasse, whichever occurs earlier.

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

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

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

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

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

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