

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:
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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

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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.