

Committee Substitute for
Committee Substitute for Senate Bill No. 1286

An act relating to construction defects; providing legislative findings and declaration; providing definitions; providing for the dismissal of dwelling actions under certain circumstances; providing for notice and opportunity to repair; providing prerequisites to bring an action based on alleged construction defects; providing for inspections; providing evidentiary presumptions; providing for tolling a statute of limitations; providing for certain notifications to the purchaser at the time of sale; providing severability; providing an effective date.

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

Section 1. Legislative findings and declaration.—The Legislature finds that an effective alternative dispute resolution mechanism in certain construction defect matters should involve the claimant filing a notice of claim with the contractor, subcontractor, supplier, or design professional that the claimant asserts is responsible for the defect, and should provide the contractor, subcontractor, supplier, or design professional with an opportunity to resolve the claim without resort to further legal process.

Section 2. Definitions.—As used in this act, the term:

(1) “Action” means any civil action or arbitration proceeding for damages or indemnity asserting a claim for damage to or loss of a dwelling or personal property caused by an alleged construction defect, but does not include any civil action or arbitration proceeding asserting a claim for alleged personal injuries arising out of an alleged construction defect.

(2) “Association” has the same meaning as in section 718.103(2), section 719.103(2), section 720.301(7), or section 723.025, Florida Statutes.

(3) “Claimant” means a homeowner, including a subsequent purchaser, tenant, or association, who asserts a claim against a contractor, subcontractor, supplier, or design professional concerning a construction defect. The term does not include a contractor, subcontractor, supplier, or design professional.

(4) “Construction defect” means a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction or remodeling of a dwelling resulting from:

(a) Defective material, products, or components used in the construction or remodeling;

(b) A violation of the applicable codes in effect at the time of construction or remodeling;

(c) A failure of the design of a dwelling to meet the applicable professional standards of care at the time of governmental approval; or

(d) A failure to construct or remodel a dwelling in accordance with accepted trade standards for good and workmanlike construction at the time of construction.

(5) “Contractor” means any person, firm, partnership, corporation, association, or other organization that is legally engaged in the business of designing, developing, constructing, manufacturing, selling, or remodeling dwellings or attachments thereto.

(6) “Design professionals” means a person licensed in this state as an architect, interior designer, landscape architect, engineer, or surveyor.

(7) “Dwelling” means a single-family house, manufactured or modular home, duplex, or unit in a multifamily residential building designed for residential use and includes common areas and improvements that are owned or maintained by an association or by members of an association, and includes the systems, other components, and improvements that are part of the structure at the time of completion of construction.

(8) “Service” means personal service or delivery by certified mail to the last known address of the addressee.

(9) “Subcontractor” means a contractor who performs work on behalf of another contractor in the construction or remodeling of a dwelling.

(10) “Supplier” means a person who provides materials, equipment, or other supplies for the construction or remodeling of a dwelling.

Section 3. Action; abatement.—If a claimant files an action without first complying with the requirements of this act, on motion by a party to the action the court shall abate the action, without prejudice, and the action may not proceed until the claimant has complied with such requirements.

Section 4. Notice and opportunity to repair.—

(1) In actions brought against a contractor, subcontractor, supplier, or design professional related to an alleged construction defect, the claimant shall, no later than 60 days before filing an action, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable. The notice of claim must describe the claim in reasonable detail sufficient to determine the general nature of each alleged defect and a description of the damage or loss resulting from the defect, if known. The claimant shall endeavor to serve the notice of claim within 15 days after discovery of an alleged defect, but the failure to serve notice of claim within 15 days does not bar the filing of an action, subject to section 3.

(2) Within 5 business days after service of the notice of claim, the contractor, subcontractor, supplier, or design professional may inspect the dwelling to assess each alleged construction defect. The claimant shall provide the contractor, subcontractor, supplier, or design professional and its contractors or agents reasonable access to the dwelling during normal working hours to inspect the dwelling to determine the nature and cause of each alleged construction defect and the nature and extent of any repairs or

replacements necessary to remedy each defect. The inspection may include destructive testing by mutual agreement. Prior to performing any destructive testing, the person who desires to perform the testing shall notify the claimant in writing of the type of testing to be performed, the anticipated damage to the dwelling which will be caused by the testing, and the anticipated repairs that will be necessary to repair any damage caused by the testing. The person performing the testing is responsible for repairing any damage to the dwelling caused by the testing.

(3) Within 10 days after service of the notice of claim, the contractor, subcontractor, supplier, and design professional must forward a copy of the notice of claim to each subcontractor, supplier, or design professional who it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular subcontractor, supplier, or design professional is responsible. Each such subcontractor, supplier, and design professional may inspect the dwelling as provided in subsection (2) within 5 business days after receiving a copy of the notice.

(4) Within 5 business day after receiving a copy of the notice of claim, the subcontractor, supplier, or design professional must serve a written response to the contractor, subcontractor, supplier, or design professional who served a copy of the notice of claim. The written response shall include a report of the scope of any inspection of the dwelling the findings and results of the inspection, a statement of whether the subcontractor, supplier, or design professional is willing to make repairs to the dwelling or whether he or she disputes the claim, a description of any repairs he or she is willing to make to remedy the alleged construction defect, and a timetable for the completion of such repairs.

(5) Within 25 days after receiving the notice of claim, each contractor, subcontractor, supplier, or design professional must serve a written response to the claimant. The written response must provide:

(a) A written offer to remedy the alleged construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a detailed description of the repairs necessary to remedy the defect, and a timetable for the completion of such repairs;

(b) A written offer to compromise and settle the claim by monetary payment to be paid within 30 days after the claimant's acceptance of the offer;
or

(c) A written statement that the contractor, subcontractor, supplier, or design professional disputes the claim and will not remedy the defect or compromise and settle the claim.

(6) If the contractor, subcontractor, supplier, or design professional offers to remedy the alleged construction defect or compromise and settle the claim by monetary payment, the written response must contain a statement that the claimant shall be deemed to have accepted the offer if, within 15 days, or 45 days for an association, after service to the written response, the

claimant does not serve a written rejection of the offer on the contractor, subcontractor, supplier, or design professional.

(7) If the contractor, subcontractor, supplier, or design professional disputes the claim and will neither remedy the defect nor compromise and settle the claim, or does not respond to the claimant's notice of claim within the time provided in subsection (5), the claimant may, without further notice, proceed with an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim.

(8) A claimant who rejects a settlement offer made by the contractor, subcontractor, supplier, or design professional must serve written notice of such rejection on the contractor, subcontractor, supplier, or design professional within 15 days, or 45 days for an association, after service of the settlement offer. The claimant's rejection must contain the settlement offer with the word "rejected" printed on it. After service of the rejection, the claimant may proceed with an action against the contractor, subcontractor, supplier, or design professional for the claims in the notice of claim without further notice.

(9) If the claimant accepts the offer of a contractor, subcontractor, supplier, or design professional and the contractor, subcontractor, supplier, or design professional does not make the payment or repair the defect within the agreed time and in the agreed manner, the claimant may, without further notice, proceed with an action against the contractor, subcontractor, supplier, or design professional for the claim in the notice of claim. If a claimant accepts a contractor, subcontractor, supplier, or design professional's offer and the contractor, subcontractor, supplier, or design professional makes payment or repairs the defect within the agreed time and in the agreed manner, the claimant is barred from proceeding with an action against the contractor, subcontractor, supplier, or design professional for the claim described in the notice of claim.

(10) If the claimant accepts the offer of a contractor, subcontractor, supplier, or design professional to repair an alleged construction defect, the claimant shall provide the contractor, subcontractor, supplier, or design professional and its contractors or other agents reasonable access to the claimant's dwelling during normal working hours to perform the repair by the agreed-upon timetable as stated in the offer.

(11) The failure of a claimant or a contractor, subcontractor, supplier, or design professional to follow the procedures in this section is admissible in an action. However, this section does not prohibit or limit the claimant from making any necessary emergency repairs to the dwelling. In addition, the offer of a contractor, subcontractor, supplier, or design professional to remedy an alleged construction defect or to compromise and settle the claim by monetary payment does not constitute an admission of liability with respect to the defect.

(12) A claimant's written notice of claim under subsection (1) tolls the applicable statute of limitations until the later of:

(a) Sixty days after the contractor, subcontractor, supplier, or design professional receives the notice; or

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

(13) The procedures in this section apply to each alleged construction defect. However, a claimant may include multiple defects in one notice of claim.

(14) Sections 1 through 3 of this act do not:

(a) Bar or limit any rights, including the right of specific performance to the extent such right would be available in the absence of this act, any causes of action, or any theories on which liability may be based, except as specifically provided in this act;

(b) Bar or limit any defense, or create any new defense, except as specifically provided in this act; or

(c) Create any new rights, causes of action, or theories on which liability may be based.

(15) To the extent that an arbitration clause in a contract for the sale, design, construction, or remodeling of a dwelling conflicts with this section, this section shall control.

Section 5. Contract of sale; provisions.—

(1) Upon entering into a contract for the sale, design, construction, or remodeling of a dwelling, the contractor, subcontractor, supplier, or design professional shall provide notice to the owner of the dwelling of the contractor, subcontractor, supplier, or design professional's right to offer to cure construction defects or pay to settle alleged construction defects before a claimant may commence an action against the contractor, subcontractor, supplier, or design professional. Such notice must be conspicuous and may be included as part of the contract.

(2) The notice required by subsection (1) must be in substantially the following form:

FLORIDA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST A CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR DESIGN PROFESSIONAL A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR AND ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND

MAKE AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR OR ANY SUBCONTRACTORS, SUPPLIERS, OR DESIGN PROFESSIONALS. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER FLORIDA LAW.

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 7. This act shall take effect upon becoming a law and shall apply to all actions accruing on or after the effective date.

Approved by the Governor May 27, 2003.

Filed in Office Secretary of State May 27, 2003.