

CHAPTER 2015-165

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 87

An act relating to construction defect claims; amending s. 558.001, F.S.; revising legislative intent; amending s. 558.002, F.S.; revising the definition of the term “completion of a building or improvement”; amending s. 558.004, F.S.; providing additional requirements for a notice of claim; revising requirements for a response; revising provisions relating to production of certain records; amending ss. 718.203 and 719.203, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 558.001, Florida Statutes, is amended to read:

558.001 Legislative findings and declaration.—The Legislature finds that it is beneficial to have an alternative method to resolve construction disputes that would reduce the need for litigation as well as protect the rights of property owners. 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, and the insurer of the contractor, subcontractor, supplier, or design professional, with an opportunity to resolve the claim through confidential settlement negotiations without resort to further legal process.

Section 2. Subsection (4) of section 558.002, Florida Statutes, is amended to read:

558.002 Definitions.—As used in this chapter, the term:

(4) “Completion of a building or improvement” means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of ~~for the entire building or improvement, or an the equivalent authorization to occupy or use the improvement,~~ issued by the governmental body having jurisdiction, and, in jurisdictions where no certificate of occupancy or the equivalent authorization is issued, the term means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

Section 3. Subsections (1), (4), (13), and (15) of section 558.004, Florida Statutes, are amended to read:

558.004 Notice and opportunity to repair.—

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

(b) The notice of claim must describe ~~the claim~~ in reasonable detail ~~sufficient to determine the general nature of each alleged construction defect and, if known, a description of the damage or loss resulting from the defect, if known.~~ Based upon at least a visual inspection by the claimant or its agents, the notice of claim must identify the location of each alleged construction defect sufficiently to enable the responding parties to locate the alleged defect without undue burden. The claimant has no obligation to perform destructive or other testing for purposes of this notice.

(c) 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 s. 558.003. This subsection does not preclude a claimant from filing an action sooner than 60 days, or 120 days as applicable, after service of written notice as expressly provided in subsection (6), subsection (7), or subsection (8).

(4) Within 15 days after service of a copy of the notice of claim pursuant to subsection (3), or within 30 days after service of the copy of the notice of claim involving an association representing more than 20 parcels, the contractor, subcontractor, supplier, or design professional must serve a written response to the person who served a copy of the notice of claim. The written response ~~must shall~~ include a report, if any, of the scope of any inspection of the property ~~and, the findings and results of the inspection.~~ The written response must include one or more of the offers or statements specified in paragraphs (5)(a)-(e), as chosen by the responding contractor, subcontractor, supplier, or design professional, with all of the information required for that offer or statement, a statement of whether the contractor, subcontractor, supplier, or design professional is willing to make repairs to the property or whether such claim is disputed, a description of any repairs they are willing to make to remedy the alleged construction defect, and a timetable for the completion of such repairs. This response may also be served on the initial claimant by the contractor.

(13) This section does not relieve the person who is served a notice of claim under subsection (1) from complying with all contractual provisions of any liability insurance policy as a condition precedent to coverage for any claim under this section. However, notwithstanding the foregoing or any contractual provision, the providing of a copy of such notice to the person's insurer, if applicable, shall not constitute a claim for insurance purposes unless the terms of the policy specify otherwise. Nothing in this section shall be construed to impair technical notice provisions or requirements of the

liability policy or alter, amend, or change existing Florida law relating to rights between insureds and insurers except as otherwise specifically provided herein.

(15) Upon request, the claimant and any person served with notice pursuant to subsection (1) shall exchange, within 30 days after service of a written request, which request must cite this subsection and include an offer to pay the reasonable costs of reproduction, any design plans, specifications, and as-built plans; ~~any documents detailing the design drawings or specifications; photographs and, videos of the alleged construction defect identified in the notice of claim, and expert reports that describe any defect upon which the claim is made; subcontracts; and purchase orders for the work that is claimed defective or any part of such materials; and maintenance records and other documents related to the discovery, investigation, causation, and extent of the alleged defect identified in the notice of claim and any resulting damages. A party may assert any claim of privilege recognized under the laws of this state with respect to any of the disclosure obligations specified in this chapter.~~ In the event of subsequent litigation, any party who failed to provide the requested materials shall be subject to such sanctions as the court may impose for a discovery violation. Expert reports exchanged between the parties may not be used in any subsequent litigation for any purpose, unless the expert, or a person affiliated with the expert, testifies as a witness or the report is used or relied upon by an expert who testifies on behalf of the party for whom the report was prepared.

Section 4. Subsection (3) of section 718.203, Florida Statutes, is amended to read:

718.203 Warranties.—

(3) “Completion of a building or improvement” means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of ~~for~~ the entire building or improvement, or an the equivalent authorization issued by the governmental body having jurisdiction, ~~and~~ In jurisdictions where no certificate of occupancy or equivalent authorization is issued, the term it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

Section 5. Subsection (3) of section 719.203, Florida Statutes, is amended to read:

719.203 Warranties.—

(3) “Completion of a building or improvement” means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of ~~for~~ the entire building or improvement, or an the equivalent authorization issued by the governmental body having jurisdiction, ~~and~~ In jurisdictions where no certificate of occupancy or equivalent

authorization is issued, the term ~~it~~ means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

Section 6. This act shall take effect October 1, 2015.

Approved by the Governor June 16, 2015.

Filed in Office Secretary of State June 16, 2015.