

By Senator Passidomo

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1                   A bill to be entitled  
2           An act relating to construction; amending s. 95.11,  
3           F.S.; providing that a right of action founded on the  
4           design, planning, or construction of an improvement to  
5           real property does not pass to subsequent purchasers  
6           of the real property when purchased as-is; providing  
7           applicability; amending s. 558.004, F.S.; requiring a  
8           claimant and not the claimant's attorney or agent to  
9           sign the notice of claim; requiring a claimant to bear  
10          its own attorney fees under certain circumstances;  
11          providing that a notice of claim is invalid and  
12          insufficient under certain circumstances; requiring a  
13          claimant or his or her agent and any experts he or she  
14          retains to be present for an inspection to identify  
15          the location of the alleged construction defects;  
16          revising with whom a person served with certain notice  
17          is required to coordinate regarding inspections;  
18          requiring rather than authorizing a person served with  
19          notice to serve a copy of such notice to specified  
20          entities; requiring a claimant and not the claimant's  
21          attorney or agent to sign the notice of acceptance or  
22          rejection; specifying mediation requirements under  
23          certain circumstances before a claimant may reject a  
24          settlement offer; revising when a claimant's service  
25          of written notice of claim tolls the applicable  
26          statute of limitations and any bond surety; reenacting  
27          s. 627.441(2), F.S., relating to commercial general  
28          liability policies and coverage to contractors for  
29          completed operations, to incorporate the amendment

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30 made by the act to s. 95.11, F.S., in a reference  
31 thereto; providing an effective date.  
32

33 Be It Enacted by the Legislature of the State of Florida:  
34

35 Section 1. Paragraph (c) of subsection (3) of section  
36 95.11, Florida Statutes, is amended to read:

37 95.11 Limitations other than for the recovery of real  
38 property.—Actions other than for recovery of real property shall  
39 be commenced as follows:

40 (3) WITHIN FOUR YEARS.—

41 (c) An action founded on the design, planning, or  
42 construction of an improvement to real property, with the time  
43 running from the date of actual possession by the owner, the  
44 date of the issuance of a certificate of occupancy, the date of  
45 abandonment of construction if not completed, or the date of  
46 completion or termination of the contract between the  
47 professional engineer, registered architect, or licensed  
48 contractor and his or her employer, whichever date is latest;  
49 except that, when the action involves a latent defect, the time  
50 runs from the time the defect is discovered or should have been  
51 discovered with the exercise of due diligence. In any event, the  
52 action must be commenced within 10 years after the date of  
53 actual possession by the owner, the date of the issuance of a  
54 certificate of occupancy, the date of abandonment of  
55 construction if not completed, or the date of completion or  
56 termination of the contract between the professional engineer,  
57 registered architect, or licensed contractor and his or her  
58 employer, whichever date is latest. A right of action founded on

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59 the design, planning, or construction of an improvement to real  
60 property does not pass to subsequent purchasers of the real  
61 property if purchased as-is.

62 Section 2. The amendment made by this act to s.  
63 95.11(3)(c), Florida Statutes, applies to any action commenced  
64 on or after July 1, 2017, regardless of when the cause of action  
65 accrued, except that any action that would not have been barred  
66 on July 1, 2018, under s. 95.11(3)(c), Florida Statutes, before  
67 the amendment made by this act may be commenced before July 1,  
68 2018, and if it is not commenced by that date and would be  
69 barred by the amendment made by this act to s. 95.11(3)(c),  
70 Florida Statutes, it shall be barred.

71 Section 3. Paragraphs (a) and (b) of subsection (1) and  
72 subsections (2), (3), (7), and (10) of section 558.004, Florida  
73 Statutes, are amended to read:

74 558.004 Notice and opportunity to repair.—

75 (1) (a) In actions brought alleging a construction defect,  
76 the claimant shall, at least 60 days before filing any action,  
77 or at least 120 days before filing an action involving an  
78 association representing more than 20 parcels, serve written  
79 notice of claim on the contractor, subcontractor, supplier, or  
80 design professional, as applicable, which notice shall refer to  
81 this chapter. The notice of claim must be signed by the  
82 claimant, not by the claimant's attorney or agent. If the  
83 construction defect claim arises from work performed under a  
84 contract, the ~~written~~ notice of claim must be served on the  
85 person with whom the claimant contracted. Unless such a contract  
86 exists and entitles the claimant to recover attorney fees, the  
87 claimant must bear its own attorney fees and may not recover

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88 such fees under this chapter.

89 (b) The notice of claim must describe in reasonable detail  
90 the nature of each alleged construction defect and, if known,  
91 the damage or loss resulting from the defect. Based upon at  
92 least a visual inspection by the claimant or its agents, the  
93 notice of claim must identify the location of each alleged  
94 construction defect sufficiently to enable the responding  
95 parties to locate the alleged defect without undue burden. The  
96 claimant has no obligation to perform destructive or other  
97 testing for purposes of this notice. A notice of claim that  
98 fails to satisfy the requirements of this paragraph and  
99 paragraph (a) is invalid and is insufficient for the claimant to  
100 commence the process described in this chapter.

101 (2) Within 30 days after service of the notice of claim, or  
102 within 50 days after service of the notice of claim involving an  
103 association representing more than 20 parcels, the person served  
104 with the notice of claim under subsection (1) is entitled to  
105 perform a reasonable inspection of the property or of each unit  
106 subject to the claim to assess each alleged construction defect.  
107 An association's right to access property for either maintenance  
108 or repair includes the authority to grant access for the  
109 inspection. The claimant shall provide the person served with  
110 notice under subsection (1) and such person's contractors or  
111 agents reasonable access to the property during normal working  
112 hours to inspect the property to determine the nature and cause  
113 of each alleged construction defect and the nature and extent of  
114 any repairs or replacements necessary to remedy each defect. The  
115 claimant or his or her agent and any experts he or she has  
116 retained with respect to the claim must be present for the

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117 inspection to identify the location of the alleged construction  
118 defects. The person served with notice under subsection (1)  
119 shall reasonably coordinate the timing and manner of any and all  
120 inspections with the claimant and all parties served with a copy  
121 of the notice of claim under subsection (3) in order to minimize  
122 the number of inspections. The inspection may include  
123 destructive testing by mutual agreement under the following  
124 reasonable terms and conditions:

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

129 (b) The notice shall describe the destructive testing to be  
130 performed, the person selected to do the testing, the estimated  
131 anticipated damage and repairs to or restoration of the property  
132 resulting from the testing, the estimated amount of time  
133 necessary for the testing and to complete the repairs or  
134 restoration, and the financial responsibility offered for  
135 covering the costs of repairs or restoration.

136 (c) If the claimant promptly objects to the person selected  
137 to perform the destructive testing, the person served with  
138 notice under subsection (1) shall provide the claimant with a  
139 list of three qualified persons from which the claimant may  
140 select one such person to perform the testing. The person  
141 selected to perform the testing shall operate as an agent or  
142 subcontractor of the person served with notice under subsection  
143 (1) and shall communicate with, submit any reports to, and be  
144 solely responsible to the person served with notice.

145 (d) The testing shall be done at a mutually agreeable time.

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

148 (f) The destructive testing shall not render the property  
149 uninhabitable.

150 (g) There shall be no construction lien rights under part I  
151 of chapter 713 for the destructive testing caused by a person  
152 served with notice under subsection (1) or for restoring the  
153 area destructively tested to the condition existing prior to  
154 testing, except to the extent the owner contracts for the  
155 destructive testing or restoration.

156  
157 If the claimant refuses to agree and thereafter permit  
158 reasonable destructive testing, the claimant shall have no claim  
159 for damages which could have been avoided or mitigated had  
160 destructive testing been allowed when requested and had a  
161 feasible remedy been promptly implemented.

162 (3) Within 10 days after service of the notice of claim, or  
163 within 30 days after service of the notice of claim involving an  
164 association representing more than 20 parcels, the person served  
165 with notice under subsection (1) shall ~~may~~ serve a copy of the  
166 notice of claim to each contractor, subcontractor, supplier, or  
167 design professional whom it reasonably believes is responsible  
168 for each defect specified in the notice of claim and shall note  
169 the specific defect for which it believes the particular  
170 contractor, subcontractor, supplier, or design professional is  
171 responsible. The notice described in this subsection may not be  
172 construed as an admission of any kind. Each such contractor,  
173 subcontractor, supplier, and design professional may inspect the  
174 property as provided in subsection (2).

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175           (7) (a) A claimant who receives a timely settlement offer  
176 must accept or reject the offer by serving written notice of  
177 such acceptance or rejection on the person making the offer  
178 within 45 days after receiving the settlement offer. The notice  
179 of acceptance or rejection must be signed by the claimant, not  
180 by the claimant's attorney or agent. If a claimant initiates an  
181 action without first accepting or rejecting the offer, the court  
182 shall stay the action upon timely motion until the claimant  
183 complies with this subsection.

184           (b) Before rejecting the offer, the claimant must serve a  
185 written demand for mediation on the person making the offer,  
186 explaining why the claimant considers the offer inadequate.  
187 Unless mediation is waived in writing by the person making the  
188 offer, the parties must, within 20 days after service of the  
189 demand for mediation, mutually select an independent certified  
190 mediator and meet with the mediator for the purpose of  
191 attempting to resolve the dispute. The meeting must take place  
192 in the county in which the subject real property is located, at  
193 a mutually convenient date, time, and location to be selected by  
194 the mediator, unless otherwise agreed by the parties. The  
195 mediator may extend the date of the meeting for good cause shown  
196 by either party or upon stipulation of both parties. The person  
197 making the offer shall bear the costs of mediation, unless the  
198 parties are unable to mutually select a mediator, in which case  
199 each party shall select and bear the cost of its own mediator  
200 and split any other mediation costs. Mediation will be conducted  
201 by a certified circuit court mediator, pursuant to the mediation  
202 rules of practice and procedures for circuit court adopted by  
203 the Florida Supreme Court and pursuant to ss. 44.401-44.406,

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204 unless otherwise agreed by the parties. The time for serving  
205 written notice under paragraph (a) is tolled until the mediation  
206 is concluded or terminated, or an impasse is declared.

207 (10) A claimant's service of the ~~written~~ notice of claim  
208 satisfying the requirements of ~~under~~ subsection (1) tolls the  
209 applicable statute of limitations relating to any person covered  
210 by this chapter and any bond surety until the later of:

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

213 (b) Thirty days after the mediation pursuant to paragraph  
214 (7) (b) is concluded or terminated, or an impasse is declared; or

215 (c) ~~(b)~~ Thirty days after the end of the repair period or  
216 payment period stated in the offer, if the claimant has accepted  
217 the offer. By stipulation of the parties, the period may be  
218 extended and the statute of limitations is tolled during the  
219 extension.

220

221 However, a claimant's service of a notice of claim under  
222 subsection (1) shall not toll any applicable statute of repose  
223 relating to any person covered by this chapter or any bond  
224 surety.

225 Section 4. For the purpose of incorporating the amendment  
226 made by this act to section 95.11, Florida Statutes, in a  
227 reference thereto, subsection (2) of section 627.441, Florida  
228 Statutes, is reenacted to read:

229 627.441 Commercial general liability policies; coverage to  
230 contractors for completed operations.-

231 (2) A liability insurer must offer coverage at an  
232 appropriate additional premium for liability arising out of



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233 current or completed operations under an owner-controlled  
234 insurance program for any period beyond the period for which the  
235 program provides liability coverage, as specified in s.  
236 255.0517(2)(b). The period of such coverage must be sufficient  
237 to protect against liability arising out of an action brought  
238 within the time limits provided in s. 95.11(3)(c).

239 Section 5. This act shall take effect July 1, 2017.