



## MEMO

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### CONSTRUCTION DEFECTS AND NOTICE TO REPAIR FLORIDA STATUTE §558.004

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Florida Statute § 558.004 specifies certain notice requirements that must be followed before a claimant can file suit alleging a construction defect

#### DEFINITIONS

1. **558.002(5)** Defines a “**contractor**” as “any person. . . that is legally engaged in the business of designing, **developing**, constructing, manufacturing, repairing, or remodeling **dwelling**s or attachments thereto.”
2. **558.002(7)** Defines a “**dwelling**” as “a single-family house, manufactured or modular home, duplex, triplex, quadruplex, or other multifamily unit in a multifamily residential building designed for residential use in which title to each individual unit is transferred to the owner under a condominium. . . system. . . “
3. **558.002(8)** Defines “**service**” as “delivery by certified mail, return receipt requested, to the last known address of the addressee.

#### NOTICE REQUIREMENTS

4. **558.004(1)** In actions alleging a construction defect, the claimant shall **at least 60 days before filing an action** involving a single-family home . . . . ., **serve written notice of claim** on the contractor as applicable, which notice shall refer to this chapter.
  - a. 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 written notice of claim must describe each alleged construction defect and provide a description of the damage (if known).
5. **558.004(2)** **Within 30 days** after receipt of notice of the claim involving a single family home . . . . ., the person receiving the notice of claim is entitled to:

- a. **Perform a reasonable inspection of the dwelling to assess each alleged construction defect.** The claimant shall provide the person receiving notice and such person's 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.
  - i. Allows party to perform destructive testing, under certain conditions listed in the statute.
6. **558.004(3)** **Within 10 days** after receipt of the notice of the claim involving a single family home ....., the person receiving notice may:
  - a. Forward a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional whom it reasonably believes is responsible for reach defect specified in the notice of claim and shall note the defect the in which that contractor, subcontractor, supplier, or design professional is responsible (and then they have a right to inspect the dwelling pursuant to subsection (2)).
7. **558.004(5)** **Within 45 days** after receipt of notice of claim involving a single family home et al. ...., the person who received notice under subsection (1) must:
  - a. ***Serve a written response to the Claimant.*** The written response must provide:
    - i. A written offer to remedy the alleged construction defect, a description of the repairs necessary, and a timetable for the completion of such repairs'
    - ii. A written offer to settle the claim by monetary payment and a timetable for making payment;
    - iii. A written offer to settle the claim by a combination of repairs and monetary payment, description of the proposed repairs, and a timetable for completing the repairs and making the payment.
    - iv. A written statement that the person disputes the claim and will not remedy the defect of settle the claim; or
    - v. A written statement that a monetary payment, including insurance proceeds, will be determined by the person's insurer within 30 days after notification to the insurer by means of forwarding the claim,

which notification shall occur at the same time the claimant is notified of this settlement option, which the claimant can accept or reject.

8. **558.004(6)** If the person receiving a notice of claim pursuant to subsection (1) 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 proceed with an action against the person for the claim described in the notice of claim.
9. **558.004(7)** A claimant who receives a timely settlement must accept or reject the offer by serving written notice of such acceptance or rejection on the person making the offer within 45 days after receiving the settlement offer.
10. **558.004(8)** If the offeror does not make the payment or repair the defect within the agreed time and in the agreed manner, except for reasonable delays beyond the control of the offeror, the claimant may proceed with an action against the offeror based upon the claim in the notice of claim.
11. **558.004(9)** This Section Does Not Prohibit Or Limit The Claimant From Making Any Necessary Emergency Repairs To The Dwelling As Are Required To Protect The Health, Safety And Welfare Of The Claimant.
12. **558.003** A claimant may not file an action without first complying with the requirements of this chapter. If a claimant files an action alleging a construction defect without first complying with the requirements of this chapter, on timely 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.