



## Construction Defects: “Notice to Cure”<sup>1</sup>

In 2003, the Florida Legislature enacted chapter 558, Florida Statutes, to provide a mechanism to require residential property owners to give contractors, subcontractors, suppliers, or design professionals notice and a right to cure a construction defect before legal action can be taken on the matter. Chapter 558, Florida Statutes, may be obtained from [www.flsenate.gov/statutes](http://www.flsenate.gov/statutes) on the Internet.

Operation of this law is *not* automatic—you must take affirmative steps before this mechanism is useful to you in preventing the disruption and expense of immediate or questionable litigation. Below is a general description and overview of the required steps. Please consult the law and your attorney to ensure a complete understanding of all the provisions of this law. As a contractor in the state of Florida:

1. Your contract must contain the exact notice specified in section 558.005(2), Florida Statutes.
2. If you receive a “notice of claim” (governed by section 558.004, Florida Statutes), you have 30 days (50 days for an association representing more than 20 residential parcels) within which to perform a reasonable inspection of the dwelling or units subject to the claim to assess the alleged defect(s). Access is to be reasonable and allowed during normal

working hours. The inspection may include destructive testing by mutual agreement of the property owner(s) and you and it is subject to the terms and conditions spelled out in section 558.004(2)(a) through (f), Florida Statutes.

3. You have 10 days (30 days for an association representing more than 20 residential parcels) to forward a copy of the notice of claim to each contractor, subcontractor, supplier, or design professional that you reasonably believe is responsible for each defect spelled out in the notice of claim. For each, you must note the specific defect applicable. (If you are one who is receiving a forwarded copy of a notice of claim, you then have the same opportunity to inspect as spelled out above.)
4. If you are one who is receiving a forwarded copy of a notice of claim, you have 15 days (30 days for an association representing more than 20 residential parcels) from receipt of the copy to provide a written response (report of the scope of any inspection, the inspection findings and results, a statement of whether you are willing to make repairs or whether the claim is disputed, description of any repairs you are willing to make, and timetable to complete the repairs) to the person or entity who sent you the forwarded copy.

<sup>1</sup>*DISCLAIMER – This piece is intended to give the reader only general factual information current at the time of publication. This piece is **not** a substitute for professional advice and should not be used for guidance or decisions related to a specific design or construction project. This piece is not intended to reflect the opinion of any of the entities, agencies or organizations identified in the materials and, if any opinions appear, are those of the individual author and should not be relied upon in any event. Applicable to 2004 Florida Building Code.*

5. You have 45 days (75 days for an association representing more than 20 residential parcels) after receiving the notice of claim to serve the claimant with a written response (served to the attention of the person who signed the notice of claim) providing either a detailed written offer to remedy the alleged defect, a written offer to compromise and monetarily settle the claim (including a timetable for payment), a written offer compromise and settle through a combination of repairs and money, a written statement that you dispute the claim and will not remedy the defect or compromise and settle the claim, or a written statement detailing handling or an offer by an insurance company. Please see section 558.004(5), Florida Statutes, for more specific details on these options.

If you fail to timely respond to a notice of claim, dispute the claim, refuse to remedy the alleged defect, or refuse to compromise and settle the claim, the property owner may, without any further notice, file a legal action.

### **Cautions:**

- This mechanism does not prevent a property owner from making any necessary emergency repairs. See section 558.004(9), Florida Statutes.
- A claimant may include one or multiple alleged defects in one notice of claim, and a notice of claim may be amended to include more or newly discovered items as they become known to the property owner.
- This mechanism does not impact any law or provision relating to insurance or any other contract requirement.
- If your contract contains a provision relating to arbitration, the provisions of the Construction Defects Law control over that.
- Both you and the property owner have a duty to share all available discoverable

evidence (consult your attorney for what this encompasses) relating to the construction defect(s) during this process. Failure to share evidence may subject you to court sanctions if the matter proceeds to litigation.

### **Other Resources:**

The Florida Bar: 850-561-5600 / [www.flabar.org](http://www.flabar.org)

Your local bar association (listing generally found in the business section under your city or county name in your local telephone book)

### **Don't know where to go for an answer to a specific question?**

Contact: Building A Safer Florida, Inc. 1-850-222-2772 or [www.buildingasaferflorida.org](http://www.buildingasaferflorida.org)

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