

House File 678

H-1105

1 Amend House File 678 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. 686.1 Definitions.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Action*" means any civil action or arbitration proceeding
8 for damages or indemnity asserting a claim for injury to
9 property, real or personal, arising out of the unsafe or
10 defective condition of an improvement to real property based on
11 tort, breach of contract, or express or implied warranty.

12 2. "*Association*" means an entity or homeowners association
13 created for the purposes of managing the operations of a
14 community as set forth in a declaration of covenants or
15 declaration of submission of property to horizontal property
16 regime filed of record in the county that the property is
17 located.

18 3. "*Claimant*" means a private owner, a subsequent private
19 owner, or an association, who asserts a claim in a class action
20 for damages against a general contractor or subcontractor
21 concerning a construction defect. "*Claimant*" shall not include
22 a public corporation as defined in section 573.1.

23 4. "*Construction defect*" means an alleged or actual unsafe
24 or defective condition of an improvement to real property.

25 5. "*General contractor*" means a person who does work or
26 furnishes materials by contract, express or implied, with an
27 owner.

28 6. "*Owner*" means the legal or equitable titleholder of
29 record to real property or the holder of a leasehold interest.

30 7. "*Serve*", "*served*", or "*service*" means delivery by
31 certified mail with a United States postal service record
32 of evidence of delivery or attempted delivery to the last
33 known address of the addressee, by hand delivery with written
34 evidence of delivery, or by delivery by any courier with
35 written evidence of delivery.

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1 8. "Subcontractor" means a person furnishing material
2 or performing labor upon any building, erection, or other
3 improvement to land, except those having contracts directly
4 with the owner.

5 Sec. 2. NEW SECTION. 686.2 Action — compliance.

6 1. A claimant shall not file an action without first
7 complying with the requirements of this chapter. If a claimant
8 files an action alleging a construction defect without first
9 complying with the requirements of this chapter, on timely
10 motion by a party to the action, the court shall stay the
11 action, without prejudice, and the action shall not proceed
12 until the claimant has complied with the requirements.

13 2. An action filed prior to the expiration of the
14 statute of limitations set forth in section 614.1, which is
15 stayed pursuant to this section and for which the statute of
16 limitations runs during the time the claimant is complying with
17 this statute, shall not be deemed barred by the applicable
18 statute of limitation for the pending action if the claimant
19 complies with the requirements of this chapter and the action
20 is otherwise allowed to proceed.

21 Sec. 3. NEW SECTION. 686.3 Notice and opportunity to
22 repair.

23 1. Prior to commencing an action alleging a construction
24 defect, the claimant shall, at least one hundred twenty days
25 before filing an action, serve written notice of claim on the
26 general contractor and subcontractor. The notice of claim
27 shall refer to this chapter and must describe the claim in
28 reasonable detail sufficient to determine the general nature of
29 each alleged construction defect, a description of the damage
30 or loss resulting from the defect, if known, and any work or
31 inspections completed to determine the cause of the damage
32 or loss or correct the construction defect. This subsection
33 does not preclude a claimant from filing an action sooner than
34 one hundred twenty days, after service of written notice as
35 expressly provided in subsection 6, 7, or 8.

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1 2. *a.* Within sixty days after service of the notice
2 of claim, the person served with the notice of claim under
3 subsection 1 is entitled to perform a reasonable inspection
4 of the property or of each unit subject to the claim to
5 assess each alleged construction defect. The claimant shall
6 provide the person served with notice under subsection 1 and
7 the person's general contractors, subcontractors, or agents
8 reasonable access to the property during normal working hours
9 to inspect the property to determine the nature and cause of
10 each alleged construction defect and the nature and extent
11 of any repairs or replacements necessary to remedy each
12 construction defect. The person served with notice under
13 subsection 1 shall reasonably coordinate the timing and manner
14 of any and all inspections with the claimant to minimize the
15 number of inspections. The inspection may include reasonable
16 destructive testing by mutual agreement under the following
17 terms and conditions:

18 (1) If the person served with notice under subsection 1
19 determines that destructive testing is necessary to determine
20 the nature and cause of the alleged construction defects, the
21 person shall notify the claimant in writing.

22 (2) The notice shall describe the destructive testing
23 to be performed, the person selected to do the testing, the
24 estimated anticipated damage and repairs to or restoration of
25 the property resulting from the testing, the estimated amount
26 of time necessary for the testing and to complete the repairs
27 or restoration, and the financial responsibility offered for
28 covering the costs of repairs or restoration.

29 (3) The testing shall be done at a mutually agreeable time.

30 (4) The claimant or a representative of the claimant may be
31 present to observe the destructive testing.

32 *b.* If the claimant refuses to agree and permit reasonable
33 destructive testing, the claimant shall have no claim for
34 damages which could have been avoided or mitigated had
35 destructive testing been allowed when requested and had a

1 feasible remedy been promptly implemented.

2 3. The general contractor or subcontractor may serve a
3 copy of the notice of claim to each subcontractor or general
4 contractor whom the general contractor or subcontractor
5 reasonably believes is responsible for a construction defect
6 specified in the notice of claim and shall note the specific
7 construction defect for which the subcontractor or general
8 contractor is alleged to be responsible. The notice described
9 in this subsection shall not be construed as an admission of
10 any kind. A general contractor or subcontractor may inspect
11 the property in the manner described in subsection 2.

12 4. Within thirty days after service of the notice of
13 claim pursuant to subsection 3, the general contractor or
14 subcontractor must serve a written response to the general
15 contractor or subcontractor who served the notice of claim.
16 The written response shall include a report, if any, of
17 the scope of any inspection of the property, the findings
18 and results of the inspection, a statement of whether the
19 subcontractor or general contractor is willing to make repairs
20 to the property or whether the claim is disputed, a description
21 of any repairs the subcontractor or general contractor is
22 willing to make to remedy the alleged construction defect, and
23 a timetable for the completion of the repairs. This response
24 may also be served on the initial claimant by the general
25 contractor or subcontractor.

26 5. Within seventy-five days after service of the notice of
27 claim, the person who was served the notice under subsection 1
28 shall serve a written response to the claimant. The response
29 shall be served to the attention of the person who signed the
30 notice of claim, unless otherwise designated in the notice
31 of claim. The written response must provide for one of the
32 following:

33 a. A written offer to remedy the alleged construction defect
34 at no cost to the claimant, a description of the proposed
35 repairs necessary to remedy the construction defect, and a

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1 timetable for the completion of such repairs.

2 *b.* A written offer to compromise and settle the claim by
3 monetary payment, that will not obligate the person's insurer,
4 and a timetable for making payment.

5 *c.* A written offer to compromise and settle the claim by
6 a combination of repairs and monetary payment that will not
7 obligate the person's insurer, and which includes a detailed
8 description of the proposed repairs and a timetable for the
9 completion of such repairs and making payment.

10 *d.* A written statement that the person disputes the claim
11 and will not remedy the construction defect or compromise and
12 settle the claim.

13 *e.* A written offer of a monetary payment, including
14 insurance proceeds, to be determined by the person and the
15 person's insurer, which the claimant may accept or reject.

16 6. If the person served with a notice of claim pursuant
17 to subsection 1 disputes the claim and will neither remedy
18 the construction defect nor compromise and settle the claim,
19 or does not respond to the claimant's notice of claim within
20 the time provided in subsection 5, the claimant may, without
21 further notice, proceed with an action against that person for
22 the claim described in the notice of claim. Nothing in this
23 chapter shall be construed to preclude a partial settlement or
24 compromise of the claim as agreed to by the parties and, in
25 that event, the claimant may, without further notice, proceed
26 with an action on the unresolved portions of the claim.

27 7. A claimant who receives a timely settlement offer shall
28 accept or reject the offer by serving written notice of such
29 acceptance or rejection on the person making the offer within
30 forty-five days after receiving the settlement offer. If
31 a claimant initiates an action without first accepting or
32 rejecting the offer, the court shall stay the action upon
33 timely motion until the claimant complies with this subsection.

34 8. If the claimant timely and properly accepts the offer
35 to repair an alleged construction defect, the claimant shall

1 provide the offeror and the offeror's agents reasonable access
2 to the claimant's property during normal working hours to
3 perform the repair by the agreed-upon timetable as stated
4 in the offer. If the offeror does not make the payment or
5 repair the construction defect within the agreed time and in
6 the agreed manner, except for reasonable delays beyond the
7 control of the offeror, including but not limited to weather
8 conditions, delivery of materials, claimant's actions, or
9 issuance of any required permits, the claimant may, without
10 further notice, proceed with an action against the offeror
11 based upon the claim in the notice of claim. If the offeror
12 makes payment or repairs to the defect within the agreed
13 time and in the agreed manner, the claimant is barred from
14 proceeding with an action for the claim described in the notice
15 of claim or as otherwise provided in the accepted settlement
16 offer.

17 9. This section does not prohibit or limit a claimant from
18 making any necessary emergency repairs to the property as are
19 required to protect the health, safety, and welfare of any
20 person.

21 10. Any offer or failure to offer, pursuant to subsection 5,
22 to remedy a construction defect or to compromise and settle the
23 claim by monetary payment does not constitute an admission of
24 liability with respect to the defect and is not admissible in
25 an action that is subject to this chapter.

26 11. This section does not relieve the person who is served
27 a notice of claim under subsection 1 from complying with all
28 contractual provisions of any liability insurance policy as
29 a condition precedent to coverage for any claim under this
30 section.

31 **Sec. 4. NEW SECTION. 686.4 Multiple construction defects.**

32 The procedures in this chapter apply to each construction
33 defect. However, a claimant may include multiple defects in
34 one notice of claim. A claimant may amend the initial list of
35 construction defects to identify additional or new construction

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1 defects as the defects become known to the claimant. The court
2 shall allow the action to proceed to trial only as to alleged
3 construction defects that were noticed and for which the
4 claimant has complied with this chapter and as to construction
5 defects reasonably related to, or caused by, the construction
6 defects previously noticed. Nothing in this section shall
7 preclude subsequent or further actions.

8 **Sec. 5. NEW SECTION. 686.5 Limitations of chapter.**

9 This chapter does not do any of the following:

10 1. Bar or limit any rights, including the right of specific
11 performance to the extent such right would be available in the
12 absence of this chapter, any causes of action, or any theories
13 on which liability may be based, except as specifically
14 provided in this chapter.

15 2. Bar or limit any defense, or create any new defense,
16 except as specifically provided in this chapter.

17 3. Create any new rights, causes of action, or theories on
18 which liability may be based.

19 **Sec. 6. NEW SECTION. 686.6 Effect of arbitration clauses.**

20 To the extent that an arbitration clause in a contract for
21 the sale, design, or construction of real property conflicts
22 with this chapter, this chapter shall control.

23 **Sec. 7. NEW SECTION. 686.7 Application.**

24 1. This chapter applies to construction defects in new
25 construction. This chapter does not apply to construction
26 defects in renovations or remodels.

27 2. This chapter only applies to actions brought pursuant to
28 a class action.

29 **Sec. 8. EFFECTIVE DATE.** This Act, being deemed of immediate
30 importance, takes effect upon enactment.

31 **Sec. 9. APPLICABILITY.** This Act applies to actions for
32 which litigation has not commenced prior to the effective date
33 of this Act.>

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