

Chapter 558

Notice and Opportunity to Cure Act

Florida Construction Certification Review Course
2018

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Chapter 558

Notice and Opportunity to Cure Act

- Purpose of 558
- Application of 558
- Compliance with 558
- Proper 558 Notice
- Procedures of 558
- Tolling the SOL by 558
- Limitations of 558
- Limitation of Liability
for Design Professionals

Purpose of 558

- Dispute resolution
“mechanism”
- 558 not a civil proceeding
- “Confidential settlement negotiations”

“Chapter 558 encourages settlement by providing a procedure to lead the parties to the waters of compromise; it does not make them drink.”

“The statute does not forfeit substantive rights as a penalty for noncompliance...”

-- *Hebden v. Roy Kunnerman Constr.*

Application of 558

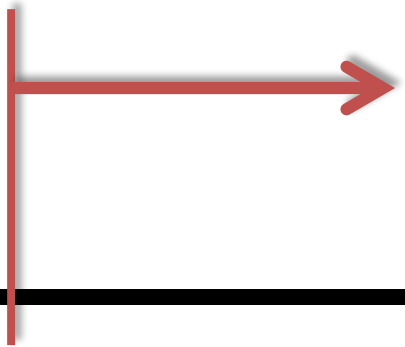
- When does 558 apply?
 - Contract for construction
 - Construction defect
 - Completion of the improvement

558 does not apply to alleged personal injuries arising out of alleged construction defects

Application of 558

Contract for Construction

All contracts
unless parties
OPT OUT



Oct. 1,
2009

Application of 558

Contract for Construction

- After Oct. 1, 2009:
 - Written opt out agreement
 - Note use of “potential defendant”

All contracts for improvements made after Oct. 1, 2009, unless the claimant and *potential defendant* have agreed in writing to opt out of the requirements of Chapter 558

Application of 558

Contract for Construction

- After Oct. 1, 2009:
 - Requirement for contractual statutory notice
 - No penalty for failure to include notice

**ANY CLAIMS FOR
CONSTRUCTION DEFECTS
ARE SUBJECT TO THE
NOTICE AND CURE
PROVISIONS OF CHAPTER
558, FLORIDA STATUTES**

Application of 558

Contract for Construction

All contracts
provided the
written agreement
includes
STATUTORY
NOTICE

All contracts
unless parties
OPT OUT

Oct. 1,
2006

Oct. 1,
2009

Application of 558

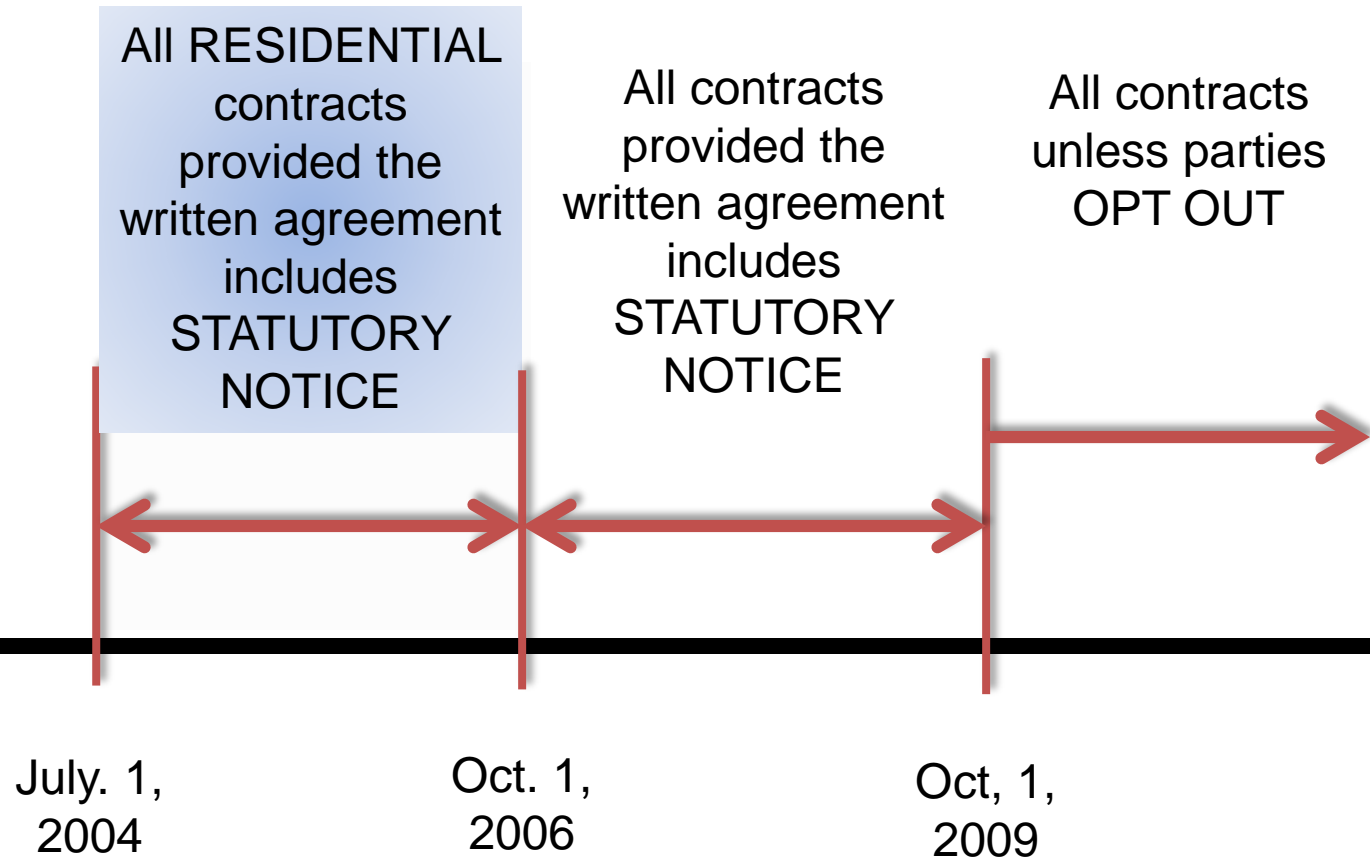
Contract for Construction

- Notice Between Oct. 1, 2006 and Sept. 30 2009:

CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

Application of 558

Contract for Construction



Application of 558

Contract for Construction

- Notice Between Oct. 1, 2006 and Sept. 30 2009:

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- Notice Between July 1, 2004 and Sept. 30, 2006:

CHAPTER 558, FLORIDA STATUTES, CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY BRING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT **IN YOUR HOME**. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE, REFERRING TO CHAPTER 558, OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTERESTS.

Application of 558

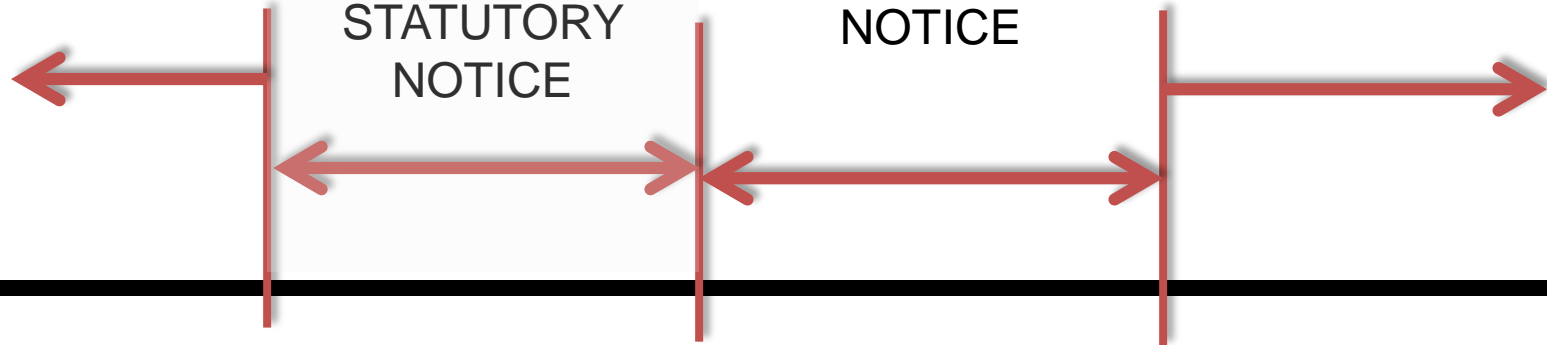
Contract for Construction

All contracts for which an action has accrued but not yet commenced

All RESIDENTIAL contracts provided the written agreement includes STATUTORY NOTICE

All contracts provided the written agreement includes STATUTORY NOTICE

All contracts unless parties OPT OUT



July. 1,
2004

Oct. 1,
2006

Oct. 1,
2009

Application of 558

Construction Defect

Construction Defect

- Design
- Specification
- Surveying
- Planning
- Supervision
- Observation
- Construction
- Repair
- Alteration
- Remodeling

On Real Property

- Improved land
- Improvements on the land
- Fixtures in the improvements
- Manufactured housing
- Mobile homes

Real property does not include public transportation projects

Resulting From

- Defective products
- Violation of code
- Design falling below S.O.C.
- Construction falling below accepted trade standards

Application of 558

Completion of Building or Improvement

- Defined to mean:

The governmental body having jurisdiction over the project issues a certificate that allows for occupancy or use of the entire building

OR

There is substantial completion of the building or improvement according to the plans and specifications, if the governmental body having jurisdiction over the project does not issue certificates of occupancy

Application of 558

Completion of Building or Improvement

- Where a certificate is issued:
 - Definition includes a temporary certificate of occupancy or use...
 - ...of the “entire building”
 - Note that temporary use is a 2015 change

What about a temporary certificate that allows partial use of a building in a phased project?

Compliance with 558

- Compliance not required if there is no completion of the building or improvement
- Claimant's action stayed until compliance
- Compliance not required to those unlicensed
- Compliance required for each and all defects

Notice not intended to interfere with owner's ability to complete a project that has not been substantially completed

Compliance with 558

- Multiple Claims
- Subsequent Claims
 - Initial list may be amended as defects become known

The court shall allow the action to proceed to trial only as to alleged defects that were noticed and for which the claimant has complied with 558 and as to defects reasonably related to, or caused by, the defects previously noticed

Proper 558 Notice

Form and Content

Oct. 1, 2016



■ Previous Requirements

- Describe claim in reasonable detail sufficient to determine the general nature of each defect
- Describe damage or loss resulting from the defect, if known

Current Requirements

- Based on visual inspection
- Describe nature of each defect in reasonable detail
- Identify location of each defect sufficiently to locate it without undue burden

Proper 558 Notice

Form and Content

- Service Requirements
 - Certified mail
 - Hand delivery
 - Courier

Evidence of delivery is key

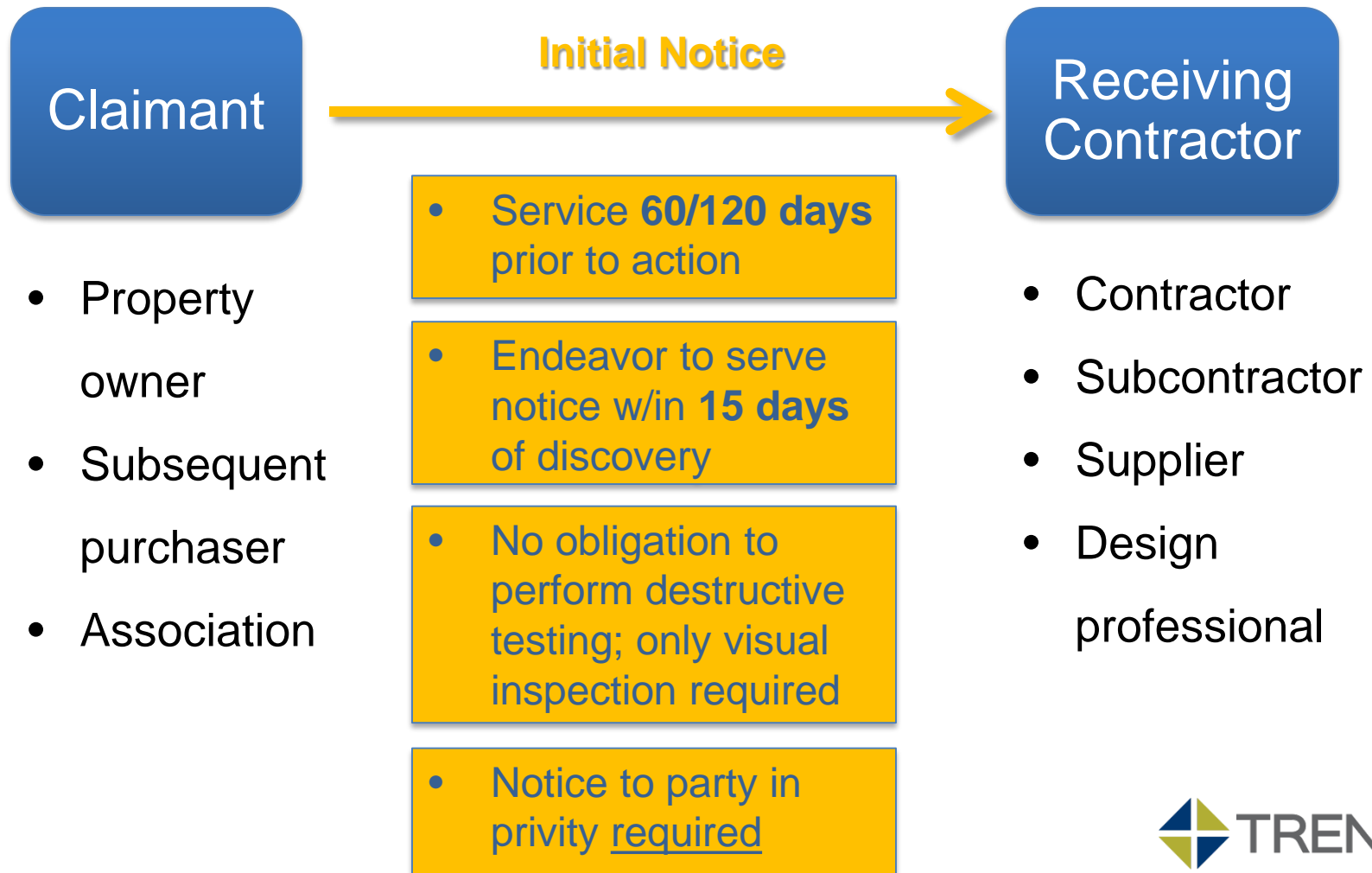
Procedures of 558

- 558 Notices
 - Initial Notice
 - Downstream Notice
- Inspection
 - Destructive Testing
- 558 Responses
- 558 Discovery

Note: 558 controls to the extent an arbitration clause in a contract for the sale, design, construction, or remodeling of real property conflicts with it

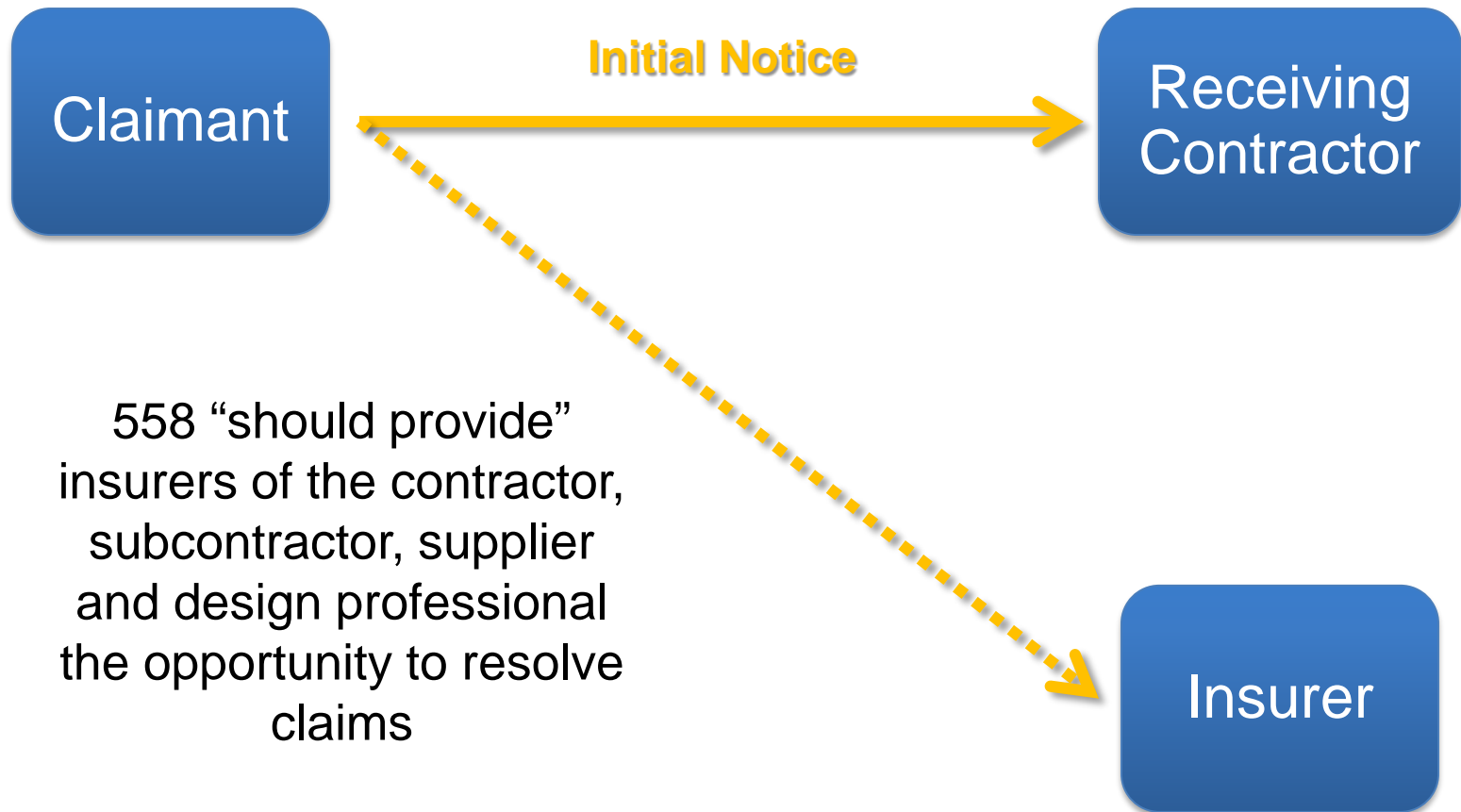
Procedures of 558

558 Notice of Claim



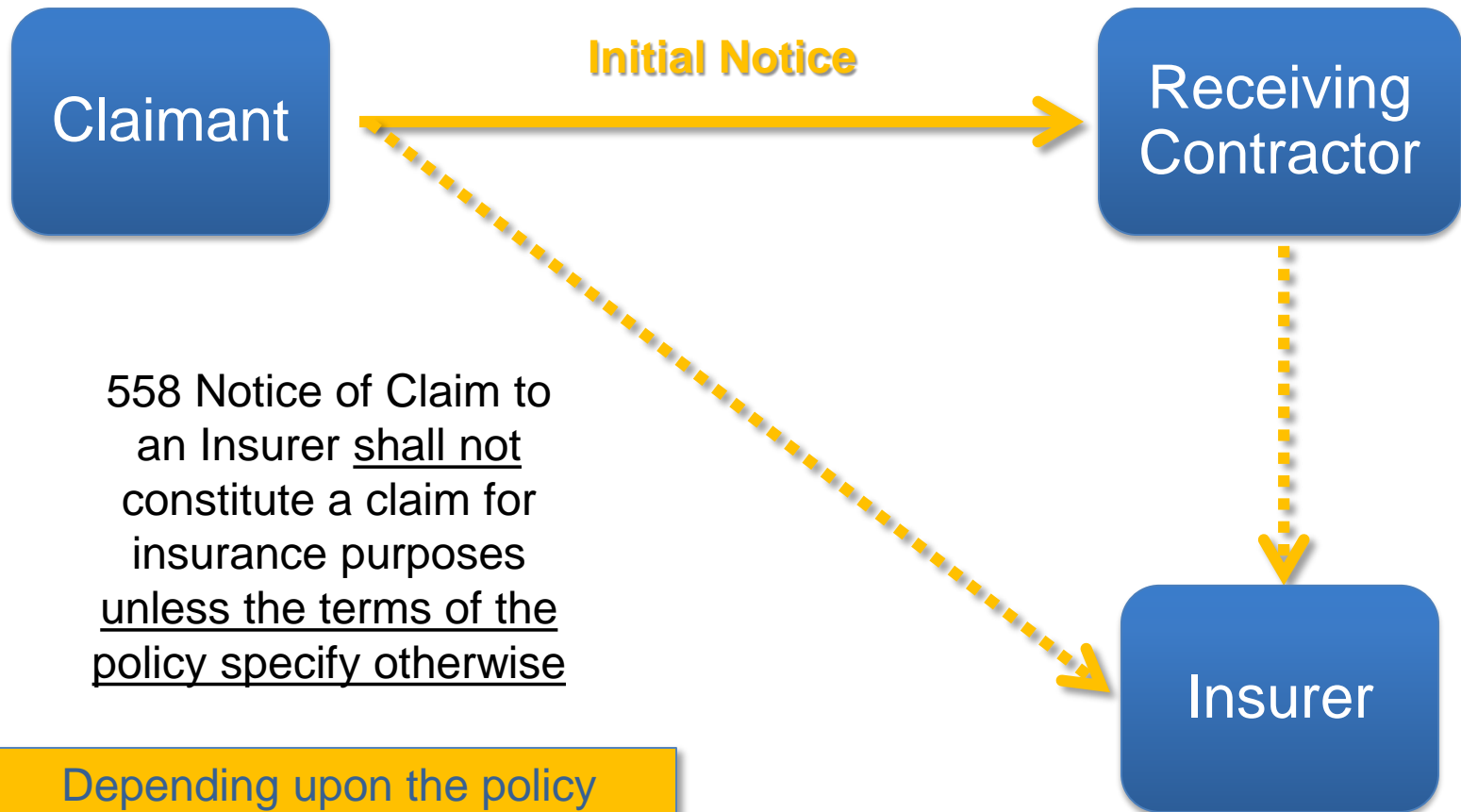
Procedures of 558

558 Notice of Claim



Procedures of 558

558 Notice of Claim



558 Notice of Claim to an Insurer shall not constitute a claim for insurance purposes unless the terms of the policy specify otherwise

Depending upon the policy language, the duty to defend may not arise with a 558 Notice

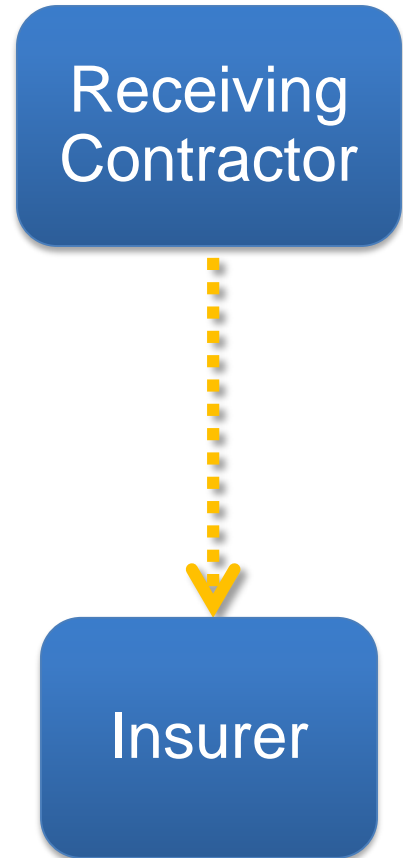
Procedures of 558

558 Notice of Claim

Altman Contractors, Inc. v. Crum & Forster Specialty Ins. Co., No. 15-12816 (11th Cir. Jan. 26, 2018)

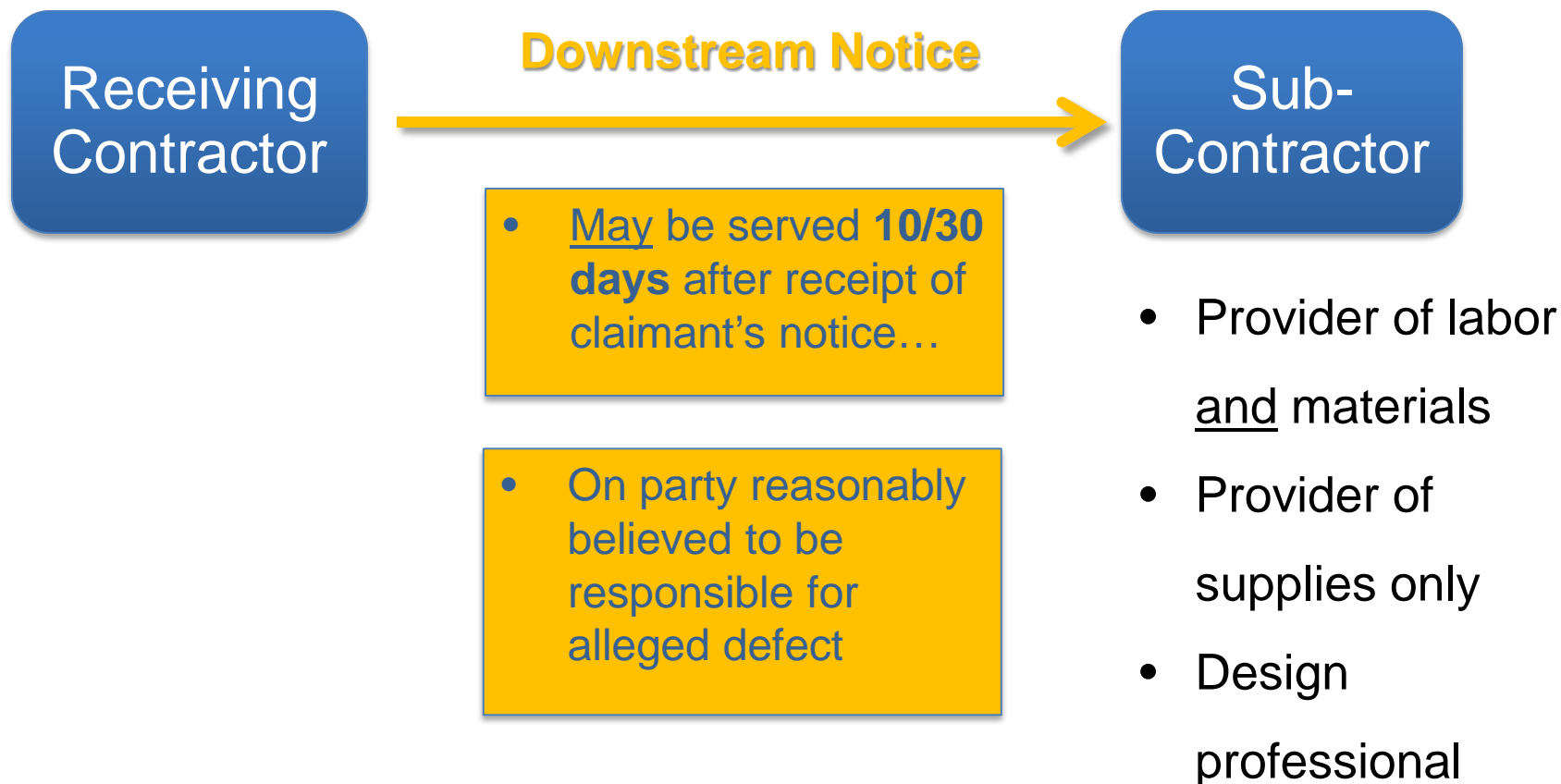
“Is the notice and repair process set forth in Chapter 558 of the Florida Statutes a ‘suit’ within the meaning of the CGL policies issued by C&F to ACI?”

“Although the Chapter 558 process does not constitute a ‘civil proceeding,’ it is included in the policy’s definition of ‘suit’ as an alternative dispute resolution proceeding’ to which the insurer’s consent is required to invoke the insurer’s duty to defend the insured.”



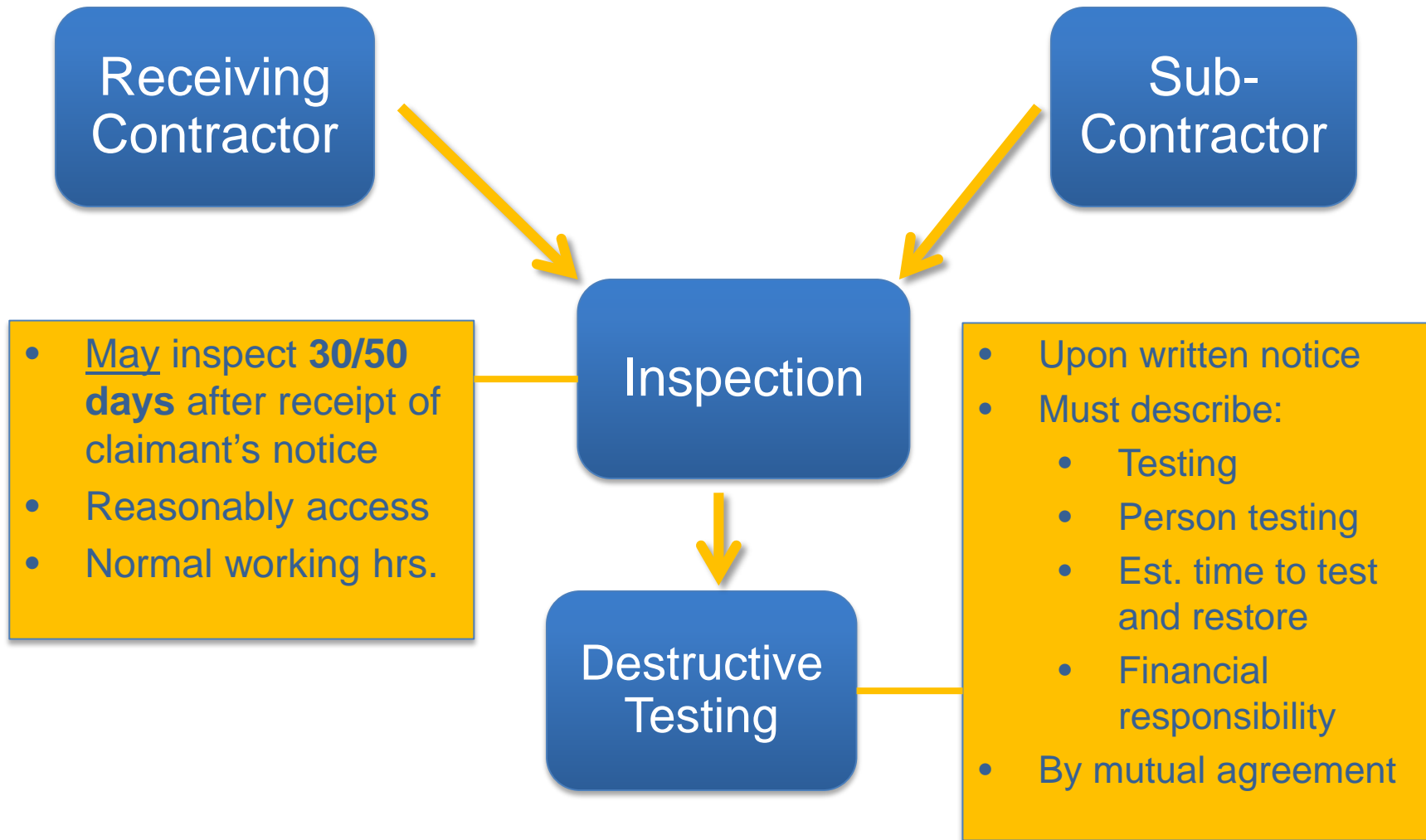
Procedures of 558

Downstream Notice



Procedures of 558

Inspection and Testing



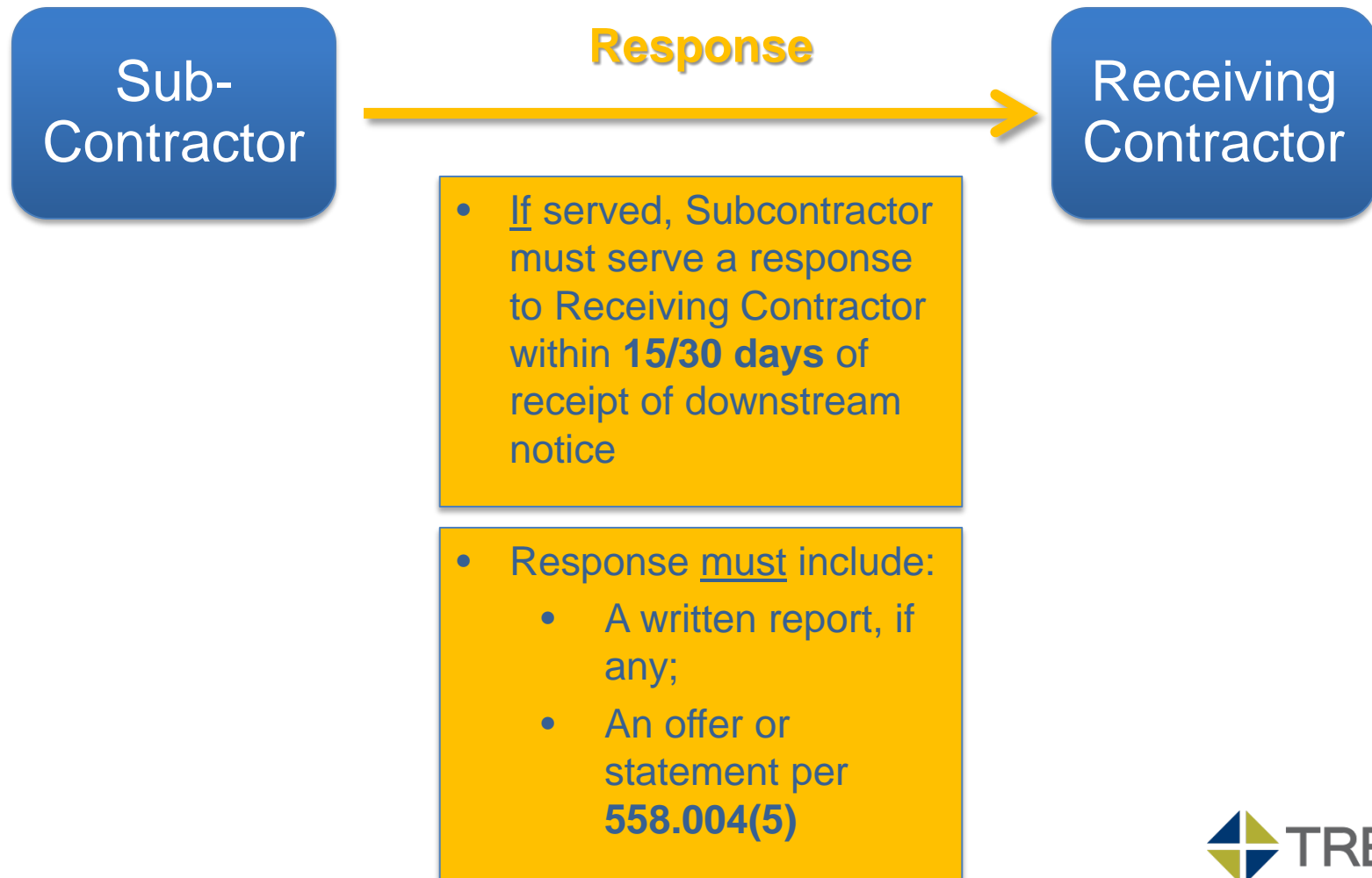
Procedures of 558

Inspection and Testing

- Destructive Testing
 - Shall not render property uninhabitable
 - Not subject to lien rights unless the owner contracts for testing or restoration
 - No damages to the extent destructive testing and remedy could have avoided or mitigated them

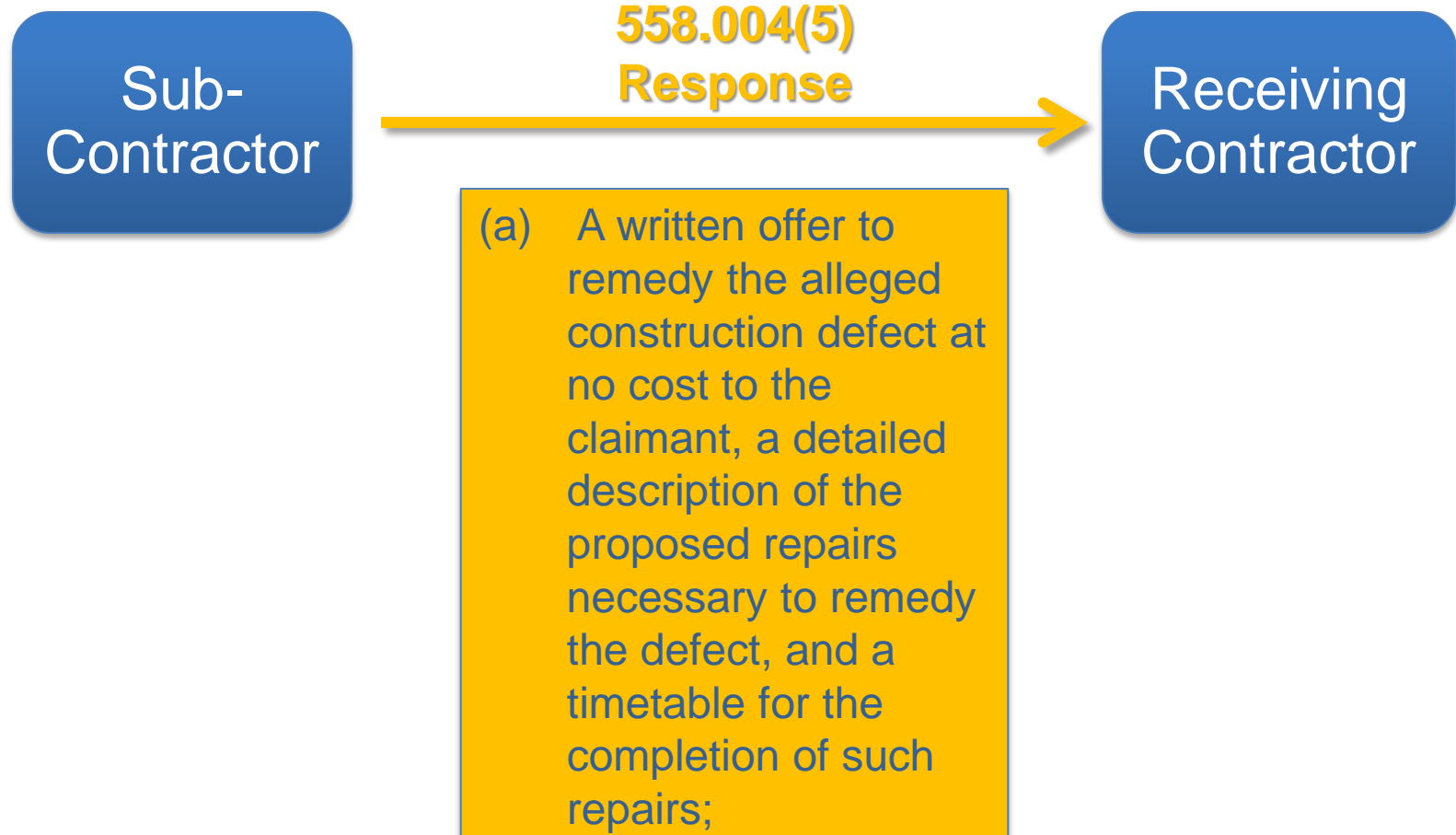
Procedures of 558

Downstream Response



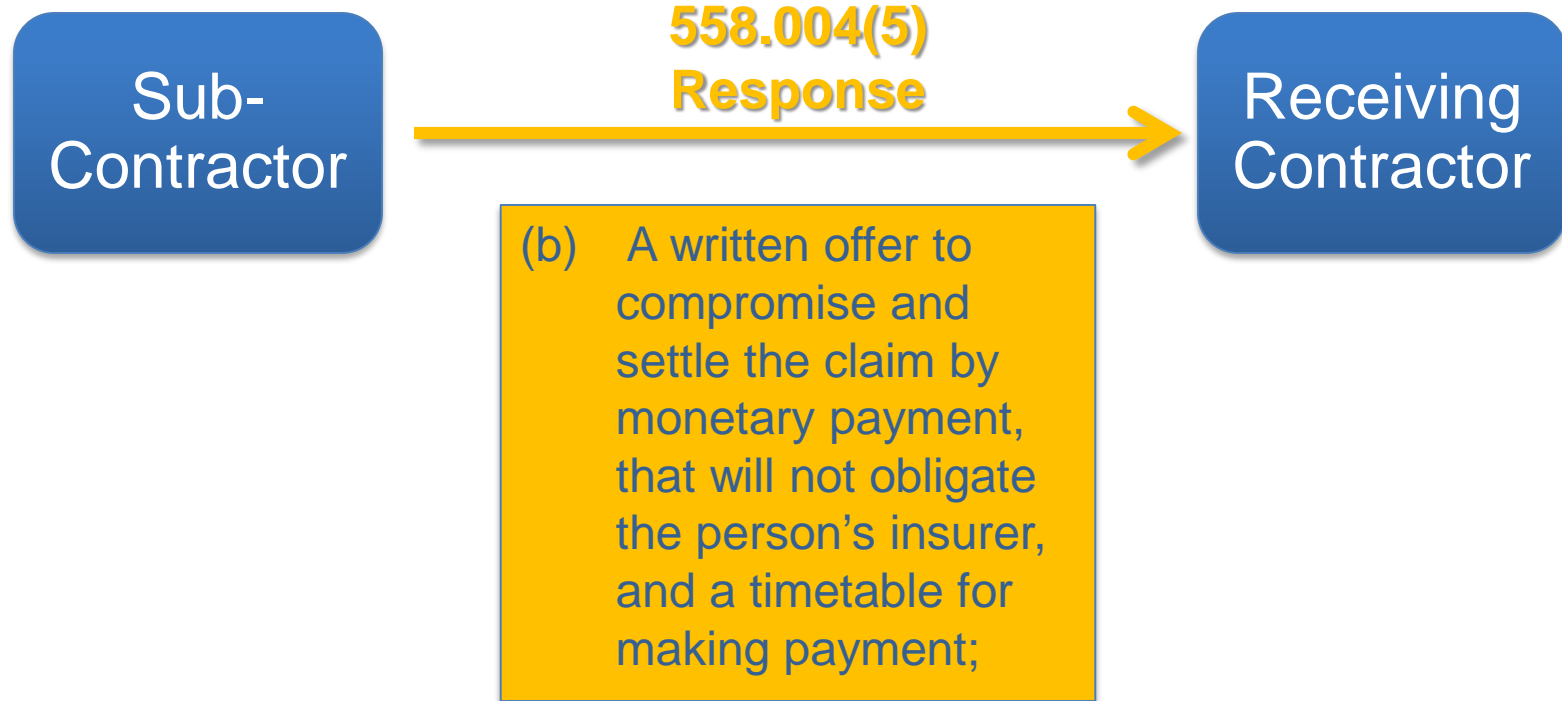
Procedures of 558

Downstream Response



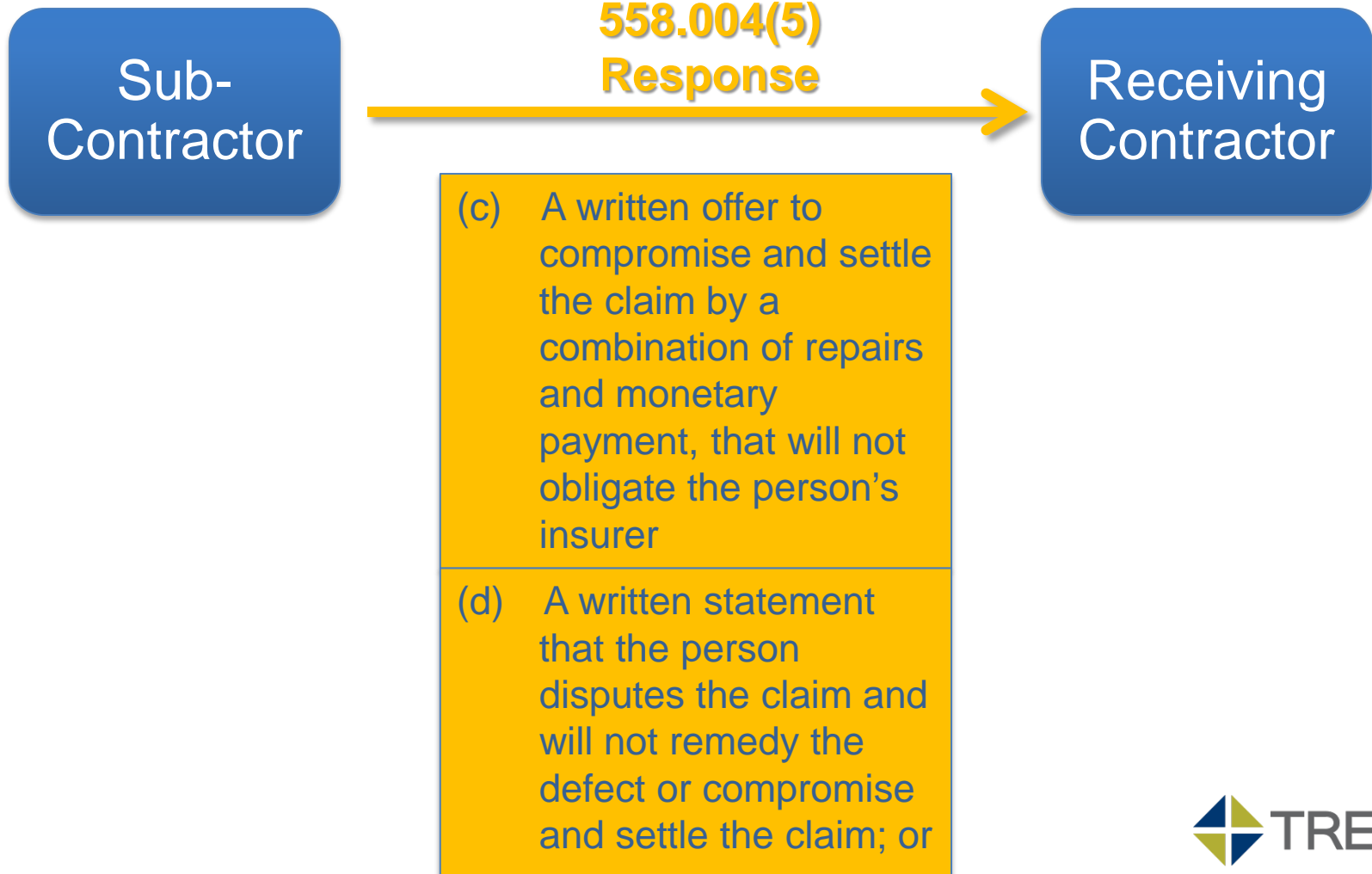
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Downstream Response



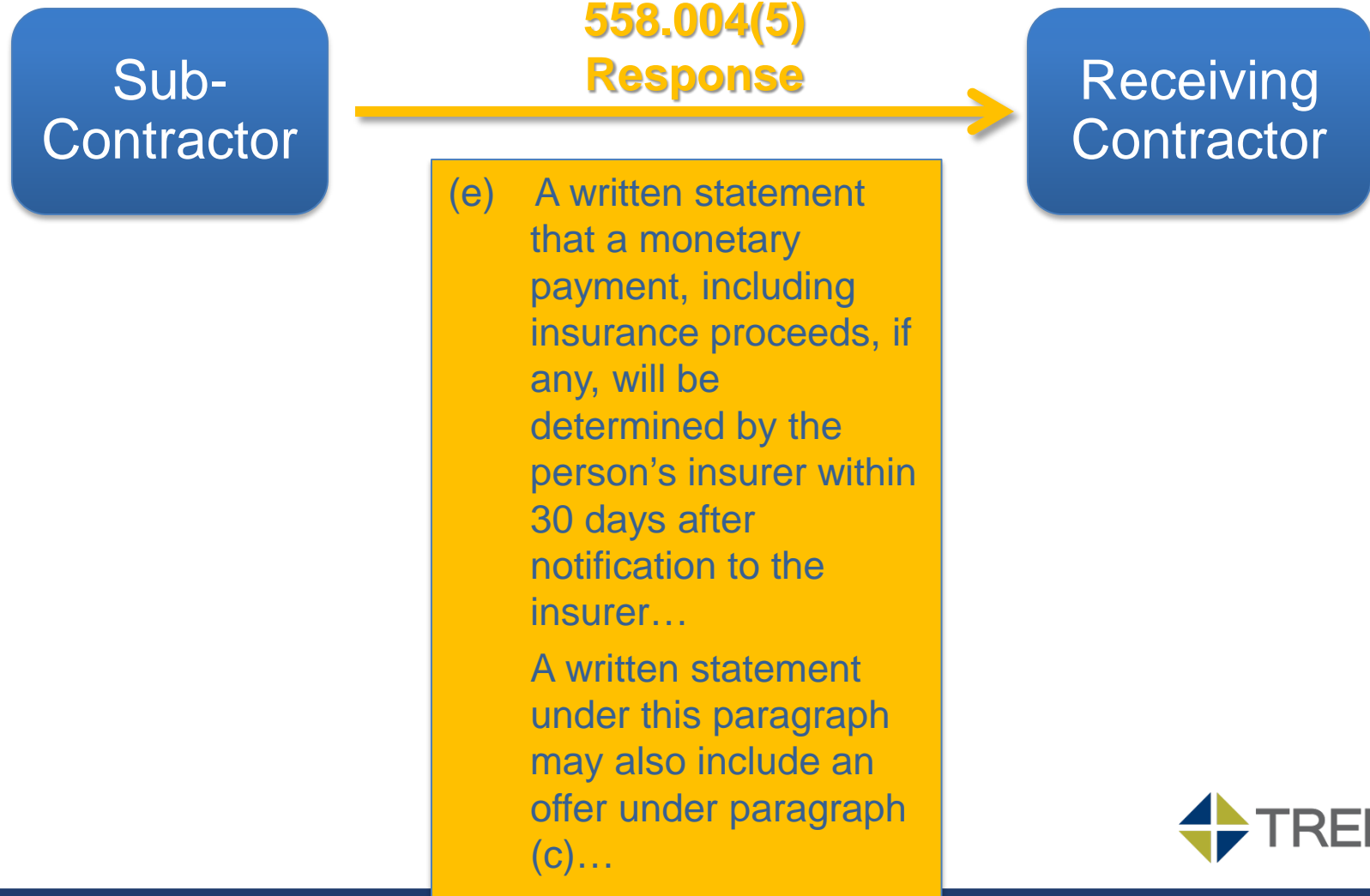
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Downstream Response



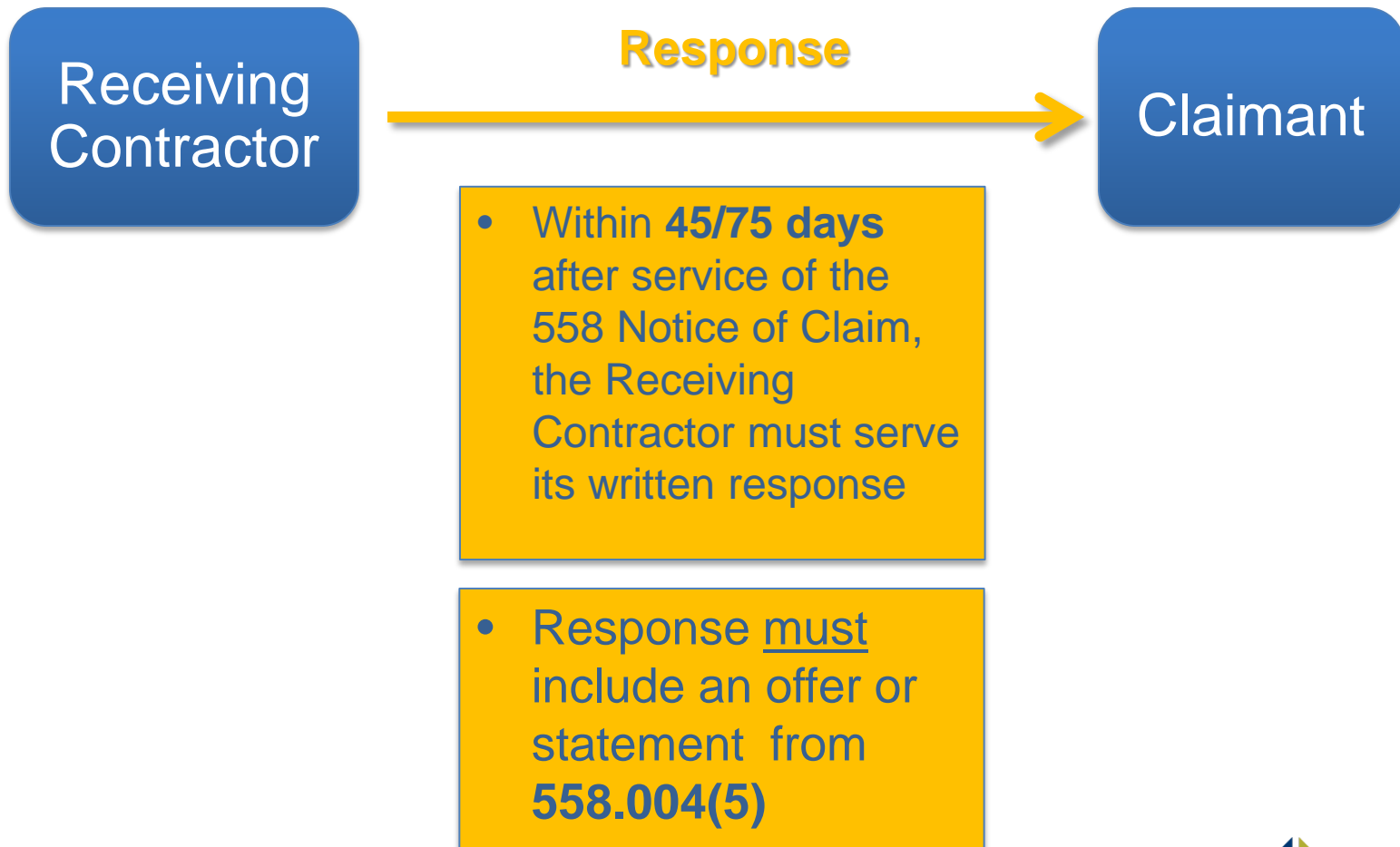
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Downstream Response



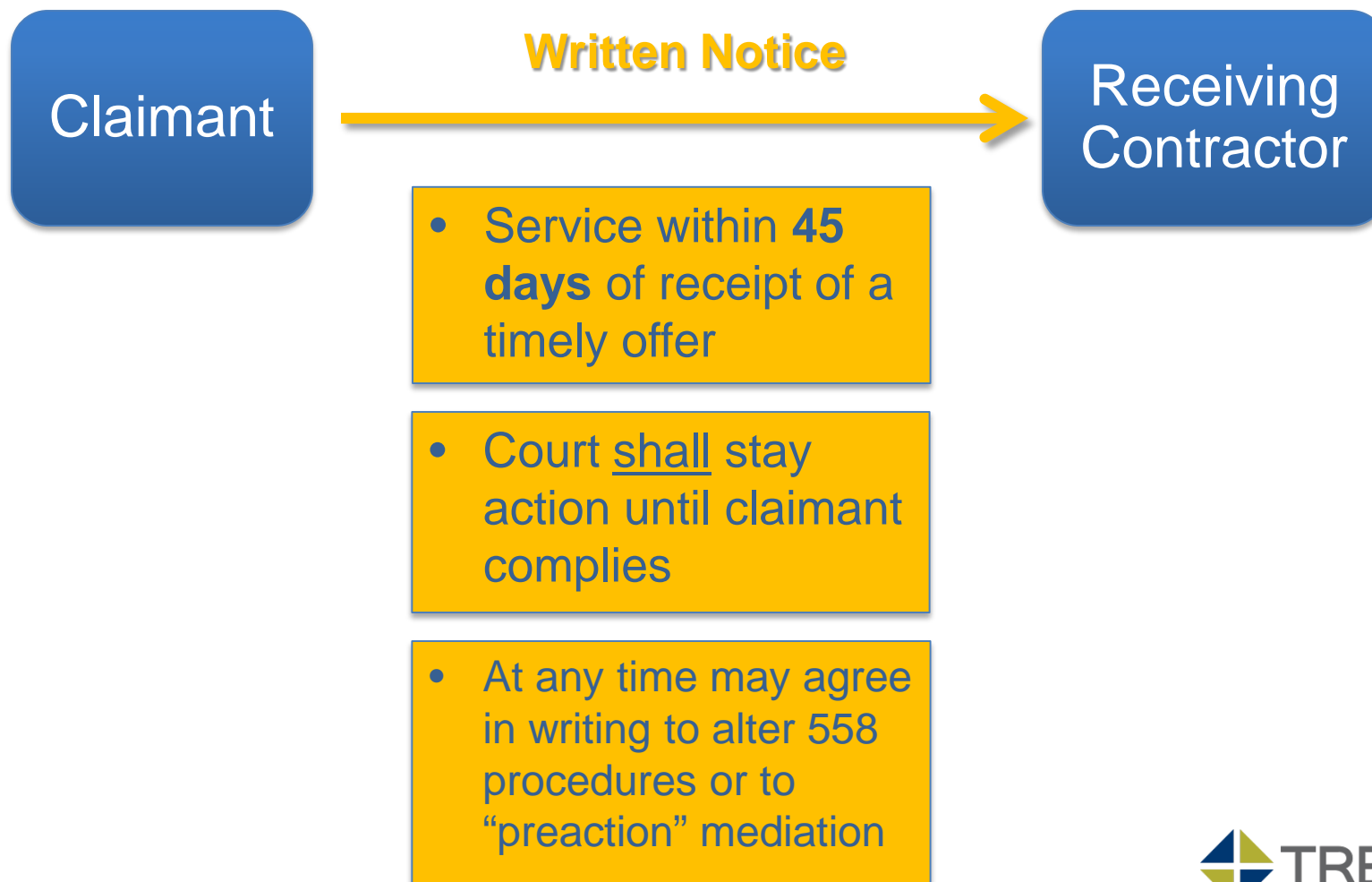
Procedures of 558

558 Response



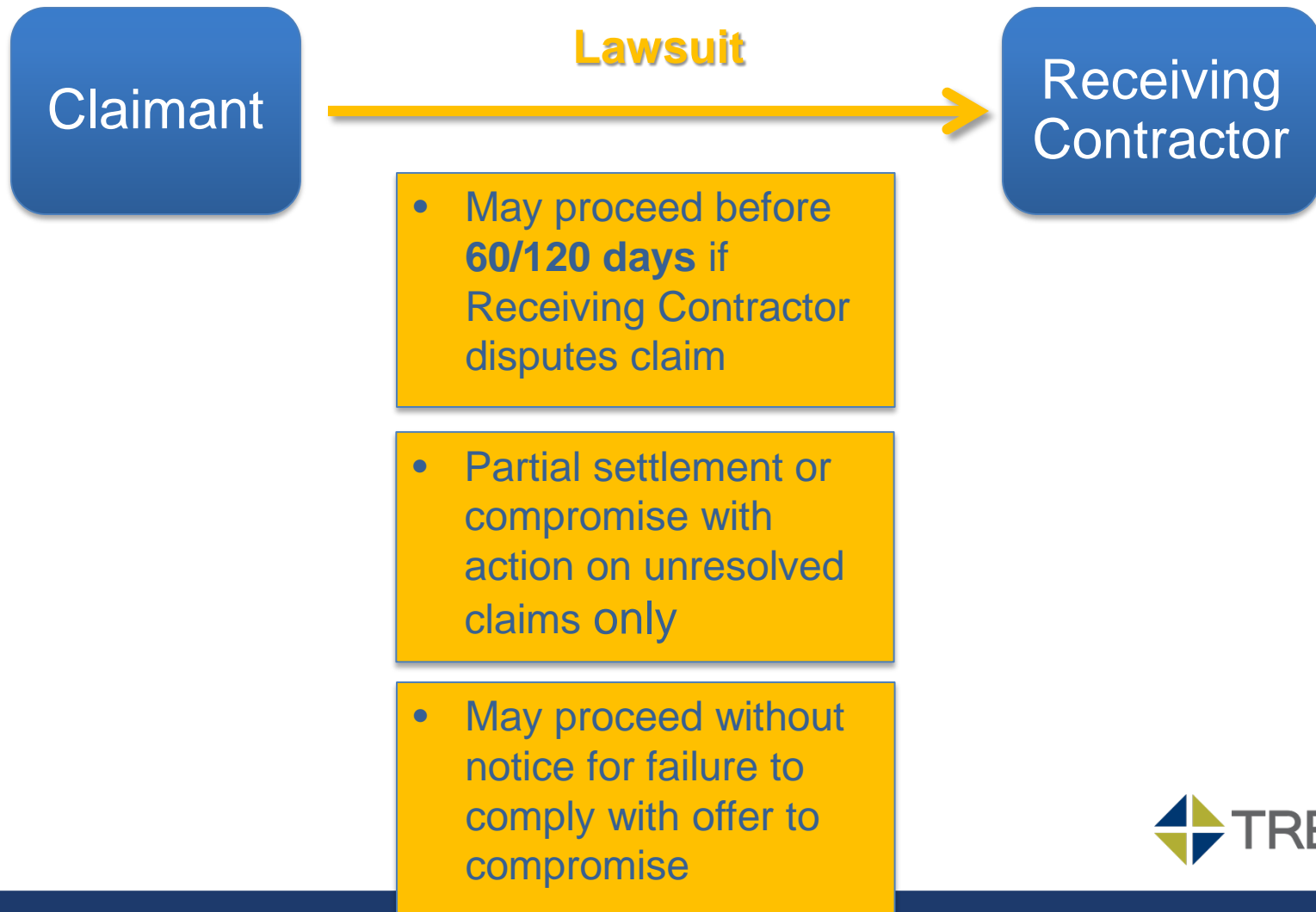
Procedures of 558

Notice of Acceptance or Rejection of Offer



Procedures of 558

Filing Suit



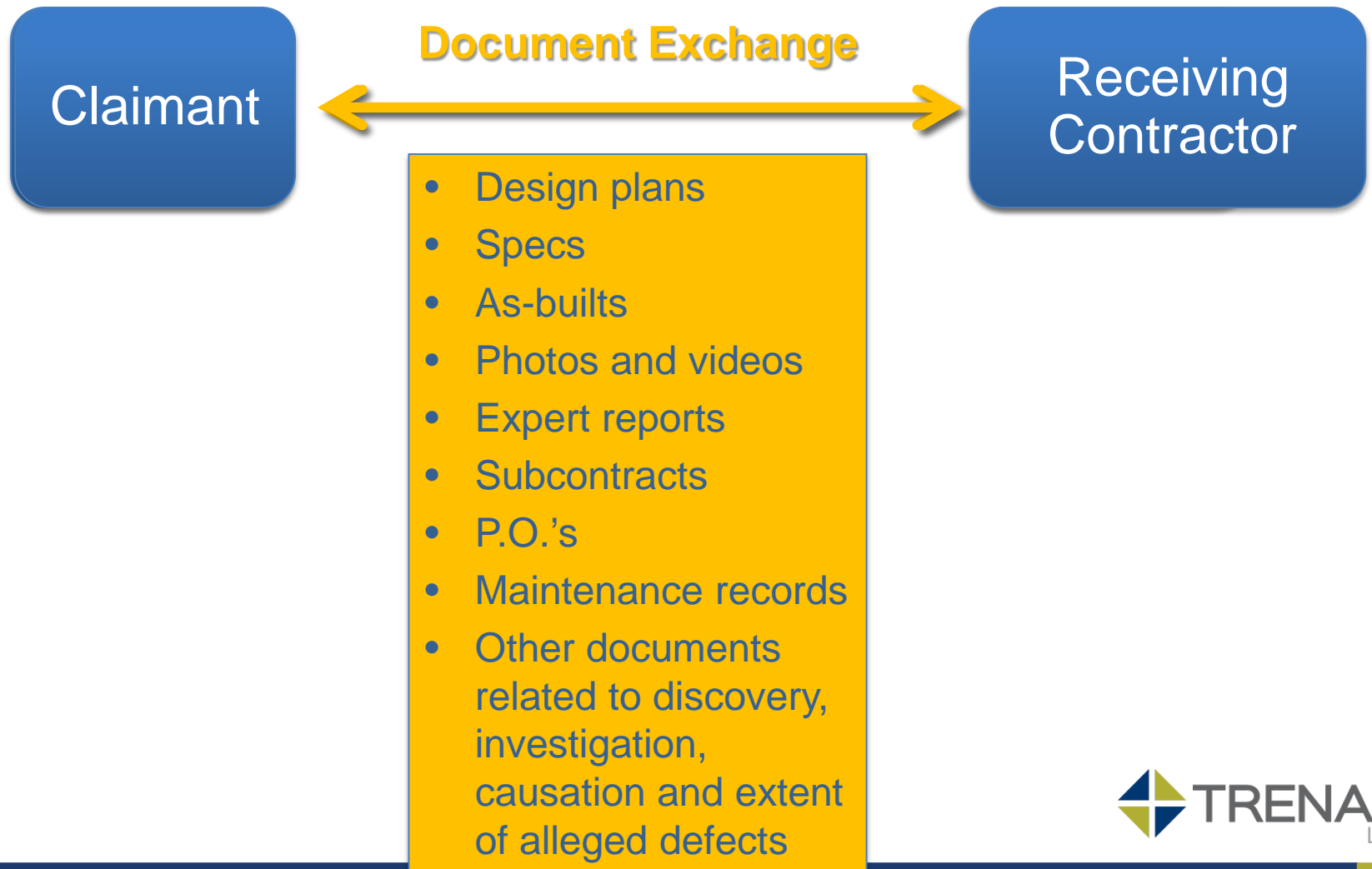
Procedures of 558

“Discovery”



Procedures of 558

“Discovery”



Tolling of Statute of Limitations

- Claimant's service of notice tolls applicable statutes of limitation until the later of:
 - 90 or 120 days from service; or
 - 30 days after end of repair or payment period; or
 - By stipulation of the parties

Limitations of 558

- Admissibility of 558 in Litigation
- Emergency Repairs
- Legal Rights and Defenses

Limitations of 558

Admissibility of 558 in Litigation

- Opportunity to resolve claims through confidential settlement negotiations
(558.001)
- Downstream notices are not admissions of liability
(558.004(3))
- Offers to remedy or pay to settle are not admissions and not admissible in an action brought under this chapter
(558.004(9))

Limitations of 558

Emergency Repairs

- 558 procedures do not prohibit or limit the claimant from making any necessary emergency repairs to the property required to protect the health safety and welfare of the claimant.

Limitations of 558

Legal Rights and Defenses

- 558 does not bar or limit:
 - Rights,
 - Causes of action, or
 - Theories of liability

- 558 does not:
 - Bar or limit defenses; or
 - Create new defenses except as provided in 558

Limitations of 558

Legal Rights and Defenses

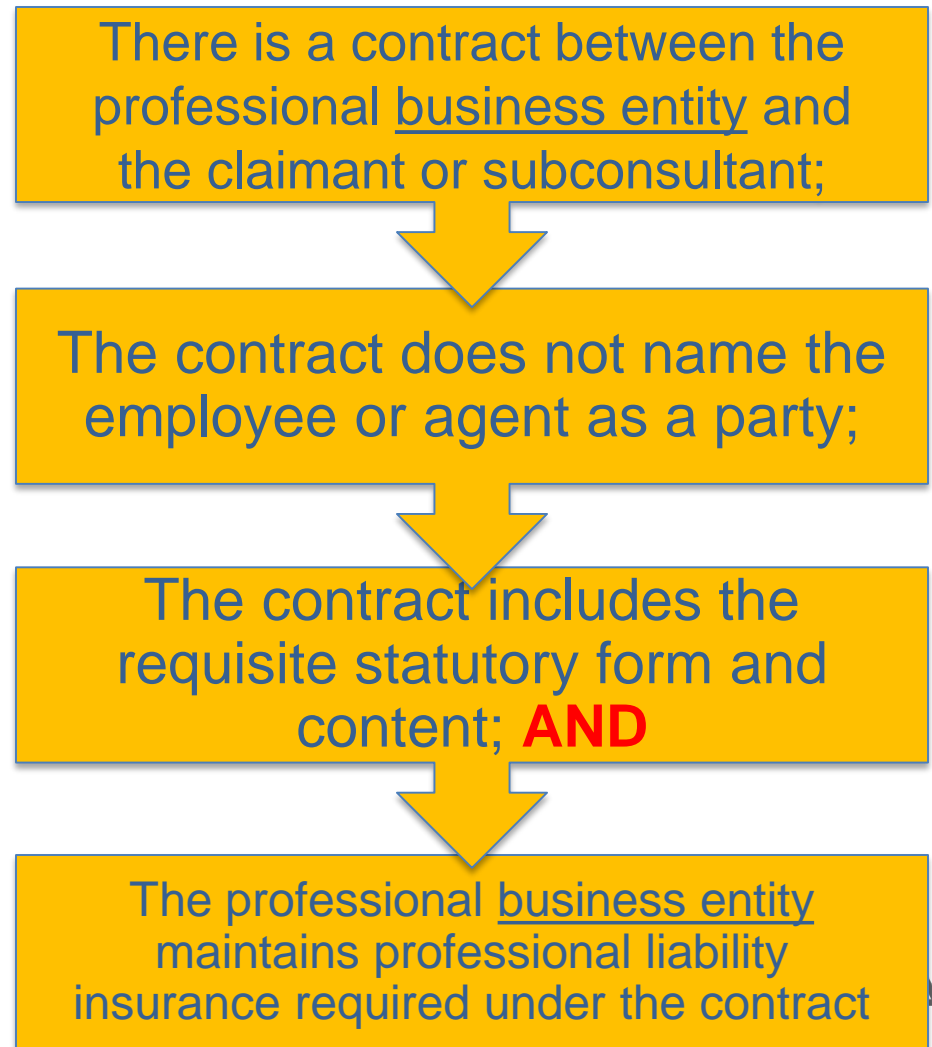
- 558 does not:
 - Create any new rights
 - Causes of action, or
 - Theories on which liability may be based

Remember... Offers to remedy or pay to settle are not admissions and not admissible in an action “brought under this chapter.” 558.004(9)

Limitation of Liability for Design Professionals

- Avoid individual liability for negligence
- Applies to employee or agent of the professional

IF



Limitation of Liability for Design Professionals

- Avoid individual liability for negligence
- Applies to employee or agent of the professional

IF

The damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to the contract.

Limitation of Liability for Design Professionals

- Requisite statutory form and content:
 - A prominent statement
 - All uppercase font
 - 5 pt. sizes larger than other text
 - State that pursuant to 558.035 the employee or agent cannot be held individual liable for negligence

Form is as
important as
substance.

Good Luck!

Chapter 558

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Questions or Comments?

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