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Tightening Up Florida's Statute of Limitations/Statute of Repose for Construction Defects

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Two parallel bills have been advancing through the Florida House of Representatives and the Florida Senate. House Bill 85 and Senate Bill 360 (the "Bill") are nearing approval and will change the landscape, alleviate some of the uncertainties surrounding the statute of limitations for claims arising out of construction projects, will reduce claims and litigation, and potentially reduce risks and costs to builders, sureties, and insurers.

In summary, the Bill seeks to (1) revise the date on which the statute of limitations begins to run; (2) modifies the statute of repose; (3) clarifies the time frame for bringing an action for a single-dwelling residential unit and clarifies the application of the limitations period for projects of multiple buildings; and (4) modifies the standard for a statutory cause of action for building code violations.

Currently, actions founded on improvement to real property sets forth a four year statute of limitations for filing suit which runs from the date one of the following trigger events: (1) actual possession by the owner, (2) issuance of a certificate of occupancy, (3) abandonment of the construction if not completed, or (4) date of completion of the contract/termination of the contract between professional engineer, registered architect or licensed contractor, whichever date is *latest*.

Significantly, the Bill modifies the trigger events as follows: (1) the date the authority having jurisdiction issues a temporary certificate of occupancy, a certificate of occupancy, or a certificate of completion or (2) the date of abandonment of construction if not completed, whichever date is *earliest*.

The Bill separately reduces the statute of repose from 10 years to 7 years and matches the triggers for determining the statute of repose to the same triggers for the statute of limitations referenced above.

The Bill's modification of the trigger events is significant because it changes the triggers from the LATEST event to the EARLIEST event, which reduces the time frame for claimants to initiate a claim and also adds temporary certificate of occupancy, certificate of occupancy, or certificate of completion to account for the varying methods utilized by local building departments across the State for determining completion of a project. The change in the triggers and the reduction as to the timing of the triggers will establish greater certainty regarding the running of the statute of limitations and will also reduce stale claims. Likewise, the reduction in the statute of repose will reduce the time to bring claims for latent defects.

The Bill separately provides two somewhat nuanced and specific clarifications. First, if a newly constructed single-dwelling residential building is used as a model home, then the time for bringing



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a claim begins to run from the date that a deed is recorded first transferring title to another party. Second, the Bill provides that if the project consists of multiple buildings, each building must be considered its own improvement for purposes of determining the statute of limitations. These clarifications appear to address prior litigation occurring over the years involving both of the foregoing types of projects.

The second portion of the Bill adds a new standard for statutory claims for building code violations provided by Section 553.84, Florida Statutes. Prior to the Bill, Section 553.84, Florida Statutes titled “statutory civil action” establishes that a cause of action can be brought if a party or person is damaged because of a violation of a Florida Building Code. The Bill adds the word “material” before violation and defines “material violation” to mean Florida Building Code violations which may reasonably result, or have resulted, in physical harm to a person or significant damage to the performance a building or its systems. Prior to the Bill, the statutory civil action had no limitation and no standard by which it was governed, thereby allowing any code violation, whether significant or trivial, to fit within the ambit of the statute. The modification resulting from the Bill will limit claims arising from violations of the Florida Building Code to only that which are material in nature and potentially result in either physical harm or significant damage to building performance or systems. This amendment should result in fewer actions, however, the “significant damage” standard will likely require future judicial interpretation.

Upon the approval of the Bill, it specifies that it will take effect upon becoming law. Although this effective date could have potential harsh treatment due to a reduction of the triggers for the statute of limitation and the reduced time for the statute of repose, the Bill also contains a savings clause that allows actions that may be time barred by the changes to commence an action on or before July 1, 2024.

If you have specific questions about the potential effects that the Bill will have on your construction projects, your rights, or your claims, please contact Friedman Sklar for a confidential discussion.



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