

PUBLICATIONS



Decades of strategic case development and trial experience.

FLORIDA SHORTENS TIMEFRAME FOR CONSTRUCTION DEFECT CLAIMS

Article

5.11.23

Florida is quickly establishing itself as one of the most business-friendly states in the nation. After undertaking massive tort reform, state legislators are now tackling construction defect issues. While much work remains to be done, moving the statute of repose from 10 to 7 years is big news. Three extra years is significant in the wear and tear of property as well as in maintenance-related issues that drive homeowner's associations to seek counsel instead of making necessary repairs that are expected during the lifeblood of a building. This move is likely to make this venue more friendly for insurance carriers and the resulting development of the growing Florida market.

Florida SB 360 was signed into law by Governor Ron DeSantis on April 13, 2023. The main object of this bill is to reduce the time period to file design and construction defect claims in Florida. The law became effective immediately and applies to all design and construction defect actions filed on or after that date. Due to the fact that the law significantly shortens the time previously allowed under the statutes of limitations and repose, the law does allow plaintiffs to file any claims that would not have been time barred under the last version of the statute, to file their claims through July 1, 2024.

How Will the Statute of Repose be Calculated After the Passage of This Law?

SB 360 lays out a new time limit for bringing design and construction defect claims. Fla. Stat. §95.11(3)(c) will now provide claimants seven years to file claims for latent construction defects instead of the prior ten years. The four year statute of limitations for construction defects will remain the same. The bill also deletes certain triggering events such as the date of actual possession as well as the date of completion or termination of the design or construction contract. The only triggering events that remain for the limitations or repose periods under the revised

PROFESSIONALS

Lee H. Jeansonne

Anthony S. Wong

RELATED SERVICES

Construction

PUBLICATIONS

laws are:

- Issuance of a temporary certificate of occupancy (TCO), certificate of occupancy (CO), or certificate of completion, or
- The date of abandonment of construction, if not completed.

The limitations or repose periods will begin to run at the earliest of any of these events. Before the latest revision, the limitations and repose periods began to run at the latest triggering event. This translated to the possibility of a claim being filed a significant period of time after the project was complete, as there are numerous instances when actual possession did not occur until months after the issue of a certificate of occupancy or certificate of completion. This created situations where the clock began to run on a general contractor's claims against their subcontractors long before the clock began to run on any claims the homeowner may raise against the general contractor or their subs, sometimes with a year difference between the two repose periods. The new version takes away the risk and concern of this disparity, and begins the clock at the same triggering occurrence.

The new version of the law takes away most of the gray areas that were often the subject of dispute between parties in the past. For example, the determination of the date an owner took possession, or when the contract was actually completed often resulted in different understandings and interpretations between parties. With the passage of the amended version, however, many of these potential areas of disagreement are eliminated because the TCO, CO or certificate of completion must be filed in the public record. Further, it specifically provides that "warranty or service work performed within the scope of the building permit will not delay the triggering of the statutes of limitation or repose."

Model Homes and Multi Building Projects

Amended Fla. Stat. §95.11(3)(c) also clears up issues that often arise with model homes. With model homes, the builder generally obtains the certificate of occupancy before it is ever sold to a homeowner. Now for model homes the limitations and repose periods don't start to run until the date the title is transferred to the initial purchaser.

For multi-building projects the limitations and repose periods start by the building. The statute will begin to run when each building within the project obtains its individual TCO, CO, or certificate of completion. Prior to this clarification, courts in Florida failed to provide a clear direction as to whether the statutes began to run upon completion of each building, or the entire project. This revised version will provide clarity to potential litigants as well as the courts moving forward.

Proof Required to Show a Violation of the Revised Building Code

Under the revised statute, there are more burdens on the plaintiff to prove a number of things in order to properly bring a suit under this statute. In situations where a permit was obtained and the proper public agency approves the plans, if the project passes the required inspections, the plaintiff cannot bring a claim under this section of the statute unless they can prove that the party responsible for the construction or improvement knew or should have known the violation existed. The amendment now forces a plaintiff to bring proof not only of a building code violation, but also:

- The violation is present in a completed building, structure, or facility and
- The violation caused physical harm to a person or significant damage to the performance of a building or its systems.

PUBLICATIONS

Before this development, plaintiffs would often push the envelope and attempt to bring suit for violations that did not result in damage to the property or injuries to a person. It also prevents plaintiffs from bringing suit without having done the due diligence of having an inspection performed and obtaining proof of the actual existence of a violation and not just theorizing that violations exist. This puts more teeth into the 558 Notice process and is intended to limit the number of suits being filed for punch list level issues, or imagined "defects" and code violations that are not actually causing real damage to property or persons.

The attorneys at WSHB are ready to answer any questions you may have regarding this new Florida legislation. Please do not hesitate to reach out to a member