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WSHB CASE UPDATE: COLORADO CONSTRUCTION DEFECT LEGISLATION

Case Updates

2.11.15

Colorado Construction Defect Legislation: An Early Update on the 2015 Legislative Session

While we are only a month into the Colorado legislative session, we want to give you an update regarding the introduction of two bills and what is shaping up to be a hot button topic during this year's legislative session: construction defect reform.

A BILL TO REDUCE THE CONSTRUCTION DEFECT STATUTE OF REPOSE

A bill introduced by State Senator Ray Scott (R-Grand Junction) — Senate Bill 15-91 (“SB 91”) — would shorten the amount of time a homeowner has to bring a legal action against a construction professional, known as the statute of repose, from eight years to four years. The current statute of repose (i.e., CRS § 13-80-104) generally requires an action against a construction professional to be brought within six years after substantial completion of an improvement to real property. However, the statute provides an additional 2 years from the date of discovery of a defect allegation to bring a lawsuit if the action arises during the fifth or sixth year after substantial completion, thus permitting up to eight years to bring a construction defect action in some circumstances.

SB 91, however, would amend the current statute and would limit the time period to bring a construction defect action to three years after substantial completion of improvement to real property. As with the current statute of repose, SB 91 would allow additional time to bring an action if the action arises during the second or third year after substantial completion. However, this exception would only allow an additional one-year (as opposed to an additional two years in the current statute) to bring an action if the action arises during the second or third year after substantial completion. Thus, SB 91 essentially cuts in half the time limitations contained in the current statute of repose, from six years to three years after substantial completion and, if the claim arises towards the end of the limitations period, from eight years to

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four years. We believe SB 91 would provide better protection to the construction industry and construction professionals by dramatically reducing the time in which a claimant has to bring an action against the construction professional(s). If passed, SB 91 would take effect on August 8, 2015, as long as a referendum petition is not filed against this bill. If a referendum petition is filed, the bill could be prevented from taking effect until November 2016.

A BILL TO CREATE MORE AFFORDABLE HOUSING

A bill introduced by State Senator Jessie Ulibarri (D-Commerce City)— Senate Bill 15-79 — would increase the document-recording fee charged by each county clerk and recorder by \$1 dollar. While this bill is not directly connected to reforming the current construction defect law, the new revenue would be put into a fund to be used for affordable housing. The hope is that this bill could help alleviate the shortage of affordable housing in the Denver metro area that has been argued to be the result of the current state of construction defect law in Colorado. Specifically, the argument is that the construction defect laws have had a chilling effect on the construction of condos and other affordable housing. If passed, SB 79 would take effect on July 1, 2015.

THE MAIN CONSTRUCTION REFORM BILL

Neither of the above-referenced bills is the main construction reform bill. That bill is likely a couple months away from being introduced to the Legislature. That said, based on the bills proposed over the last two years, both of which failed, the major reform bill is likely to contain amendments to the current procedures that must be followed prior to filing a construction defect lawsuit, such as requiring increased participation and approval by members of a homeowners association prior to an association being able to file a lawsuit. The main bill may also include changes that would give builders a right to repair purported defects before legal action could be initiated, along with a provision that would require mediation prior to filing a legal action. The aim of these provisions would be to mitigate the ease of which construction defect lawsuits can be filed, which result in lengthy and expensive lawsuits, that largely benefit plaintiff trial lawyers, over problems that can often be addressed in a much less expensive, time-consuming way.

The attorneys at Wood, Smith, Henning & Berman, LLP will be following the above-referenced bills and other bills that may affect our clients very closely. Future updates will be provided as appropriate and as the current legislative session progresses. In the meantime, please do not hesitate to contact us if you have any questions.