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COMMENTARY



Condo Owners Take Note: Fla. Legal Changes to Impact Recourse for Defective Construction



The Florida Legislature recently passed statutory changes that, among other things, reduce the time condominium and property owners have to file lawsuits over construction defects from ten years to seven years. This means that owners purchasing newly constructed properties years after construction could be left with no recourse if the property was defectively designed or constructed.



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By Frank Soto and Daniel Jovanov | May 16, 2023 at 01:34 PM



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Previous Law

The previous law established the time for filing a lawsuit founded on the design, planning or construction of a property. For defects considered to be patent—meaning, obvious or known—the time to file a lawsuit (i.e., the statute of limitations) is generally four years from the later of: the owner’s actual possession; issuance of a certificate of occupancy; abandonment of construction, if not completed; or completion or termination of the engineers, architects, or contractor’s contract. For latent defects—meaning, not easily discoverable—the four-year statute of limitations does not start running until the date the defect was discovered or should have reasonably been discovered. However, in no case could such a lawsuit be filed more than ten years (i.e., the statute of repose) after the later of any event triggering the statute of limitations for patent defects.

Changes to Previous Law

The new statutory changes significantly shorten the amount of time that an owner must bring a lawsuit for construction defects. For defects considered to be patent, the statute of limitations now starts to run from the earliest of: issuance of a temporary certificate of occupancy; issuance of a certificate of occupancy; issuance of a certificate of completion; or

abandonment of construction, if not completed. For condominium associations, Florida Statute 718 creates an exception where the statute of limitations will not begin to run until the unit owners elect a majority of the members of the board (i.e., turnover).

However, most importantly, the statute of repose has been shortened from 10 years to seven years and will begin to run from the earliest of the same milestones as the statute of limitations for patent defects. The above-mentioned exception found in Florida Statutes 718, does not postpone the running of the statute of repose, and thus, owners will be limited to the seven-year time period for filing these lawsuits.

Proponents of the new law—developers and contractors—argued that the changes were necessary to reduce potential liability for insurance companies, builders, and other construction professionals. They argued that by shortening the recourse time, costs will ultimately go down, which will provide more affordable housing options for residents. Now that the law has passed, it is expected to have a significant impact on the legal landscape and construction industry in the state.

Impact of Changes

Why does this matter? In short, this reduction will affect condo associations' and owners' ability to sue a developer, contractor or design professional for damages caused by defective design and construction. The statutory changes could leave owners bearing the cost associated with repairing latent construction defects that are not, or could not have been, discovered within the shortened statute of repose.

The changes will likely have the biggest impact on owners of new condominium buildings, who often do not take control of their association's board of directors until years after the buildings are completed. Developers generally elect all or a majority of the members of a condominium association's initial board of directors. Nondeveloper unit owners cannot elect a majority of their board of directors until certain statutory conditions are met (i.e., turnover)—a process that can take years.

After turnover, a condominium association will generally retain consultants to conduct an exhaustive property evaluation to determine whether construction defects exist at the condominium property. Thus, if the turnover does not occur for several years, the statutory change will significantly shorten the amount of time an association has to investigate and file a lawsuit for construction defects and can possibly leave associations with no remedy for late discovered defects—other than assessing the new owners to cover the cost of repairs for defective construction that should have been the responsibility of the construction parties.

Business executives in the construction industry will also need to be aware of these changes to ensure their companies are compliant with the new legal requirements. They will also need to develop strategies to minimize exposure to potential legal claims arising from construction defects. Associations and owners would be well advised to act quickly to retain consultants and attorneys to investigate the design and construction defects and bring claims for damages caused by those defects.

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