

## Florida Shortens Time to File Construction Claims and Imposes Materiality Requirement for Building Code Violations

On March 24, 2023, and April 13, 2023, Governor Ron DeSantis signed House Bill 837 and Senate Bill 360 into law, respectively. These new legislative amendments change Florida's litigation landscape by shortening the statute of limitations for general negligence claims and the statute of repose for construction claims and altering the potential triggering events for commencement of the statute of limitations and repose periods. Additionally, the legislation amends the statute governing private causes of action alleging a violation of the building code by imposing a materiality threshold.

### Statute of Limitations for Negligence Claims is Shortened from Four to Two Years

As a result of new legislative amendments, Florida's statute of limitations for general negligence claims has been reduced from four to two years.<sup>1</sup> Prior to this change, the statute of limitations period for filing general negligence claims was four years from the date the cause of action for negligence accrued. However, as of March 24, 2023, a plaintiff alleging a general negligence claim in Florida must now file their claim within two years from the date the cause of action accrues, or the claim will be barred as a matter of law.

### Commencement of the Four-Year Statute of Limitations for Construction Defects is Revised

The statute of limitations to file a claim based on the design, planning, or construction of an improvement to real property still remains at four years. However, the triggering event for when that time period commences has changed.<sup>2</sup> Under the new legislation, the four-year statute of limitations begins to run from the earliest date, rather than the latest, of the potential triggering events specified in the statute. In addition, the legislation removed two potential triggering events from that list – the date of the owner's actual possession of the improvement and the date of completion or termination of a contract between certain design professionals and their employers, while adding two new potential triggering events – issuance of the temporary certificate of occupancy, and issuance of the certificate of completion. The statute leaves in place an exception for latent defects, in which case the discovery rule applies, and the four-year statute of limitations period begins to run from the time the defect is discovered or should have been discovered with the exercise of due diligence.

### Statute of Repose for Construction Claims is Shortened from 10 Years to Seven Years, and the Potential Triggering Events for Commencement are Revised

The new legislative amendments also reduced the statute of repose for construction claims from 10 years to seven years. The amendments also changed the start of the repose period by altering its potential triggering events for when the time to file a claim begins to run on claims based on the design, planning, or construction of an improvement to real property. Similar to the amendments pertaining to the statute of limitations, under the new legislation, the repose period begins to run from the earliest date, rather than the latest, of the potential triggering events specified in the statute, with the same changes to the list of potential triggering events carried over for commencement of the limitations period to the statute of repose.

As a result, a claim arising from the design, planning, or construction of an improvement to real property must now be filed no later than seven years from the earliest triggering event specified in



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the statute, even if a claim arises from latent or undiscovered defects. Otherwise, the claim is time-barred. Note that the statute of repose works independently from the statute of limitations, cutting off a right of action after the seven-year period regardless of when the cause of action accrues.

The shortened statutory repose period is anticipated to impact the amount of litigation associated with condominium projects. Specifically, turnover from a developer to a condominium association can occur up to seven years after the date the condominium declaration is recorded.<sup>3</sup> Assuming a condominium declaration is recorded on or after any of the triggering events specified in the statute and assuming turnover occurs in the seventh year, the condominium association's right to assert a construction defect claims may be significantly curtailed if not altogether time-barred.

### **Specific Carve-Outs for Multi-Building Improvements and Model Homes**

Under the new legislation, if the improvements to real property include the design, planning, or construction of multiple buildings, each building is considered its own improvement with respect to calculating the commencement of the statutory periods.

If the improvement to real property is the construction of a single-dwelling residential building used as a model home, the limitations period commences upon the date that a deed is recorded first, transferring title to another party.

### **Effective Date of Amendments to Fla. Stat. § 95.11**

The amendments to the construction defect statute of limitations and statute of repose in Florida apply to all actions that commence on or after April 13, 2023, regardless of when the circumstances giving rise to the cause of action actually occurred or accrued. However, the new legislation provides a grace period for civil actions that have not yet commenced but would have been considered timely prior to the amendment. Those civil actions must be commenced no later than July 1, 2024.

### **Amendments to Fla. Stat. § 553.84 Limit the Right To Recover for Material Violations of the Florida Building Code**

Section 553.84 provides a private right of action to persons who are damaged as a result of violations of the Florida Building Code. This section is amended by the new legislation to limit recovery for material violations of the Florida Building Code. The new legislation also amends the statute to include a definition of material violation, meaning a violation "that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems." This amendment notably eliminates any claims for technical violations that caused no damage to an individual or to the performance of the building or its systems and eliminates claims for code violations associated with an incomplete building, structure, or facility.

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<sup>1</sup> See Fla. Stat. 95.11(4)(a) (2023).

<sup>2</sup> See Fla. Stat. § 95.11 (3)(c) (2023).

<sup>3</sup> See Fla. Stat. § 718.301 (2022).

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