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FLORIDA ENACTS STATUTE OF REPOSE REFORM BILL FOR DESIGN AND CONSTRUCTION DEFECTS

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On April 13, 2023, Governor Ron DeSantis signed into law SB 360 (Chapter 2023-22, Laws of Florida), which shortens the time period for bringing design and construction defect claims, clarifies the application of these time periods on multi-building projects, and adds a “materiality” required to statutory claims for violation of Florida’s Building Code pursuant to Fla. Stat. § 554.84. Below is a brief summary of how this new law will impact design and construction defect claims in the State of Florida.

1) How are the statutes of limitations and repose calculated under the new law?

Fla. Stat. §95.11(3)(c) establishes the time period for bringing design and construction defect claims. While SB 360 leaves intact the four-year statute of limitations for defect claims, it shortens the statute of repose from 10 years to seven years for latent defects, or those that are “hidden” and not discovered until after expiration of the statute of limitations.

SB 360 further shortens the time for bringing claims by removing certain triggering events, including date of actual possession by the owner and date of completion or termination of the design or construction contract. Fla. Stat. §95.11(3)(c), as amended, now provides that the only triggering events for the limitations or repose periods are: (1) issuance of a temporary certificate of occupancy (TCO), certificate of occupancy (CO), or certificate of completion; or (2) the date of abandonment of construction, if not completed. SB 360 further provides that these periods will begin to run from the **earliest** of these events. Under the former version of Fla. Stat. §95.11(3)(c), the limitations

and repose periods did not begin to run until the **latest** triggering event, meaning that these periods could extend well beyond completion of the project.

Thus, SB 360 establishes discrete dates in which the limitations and repose periods begin to run. Under the old version of Fla. Stat. §95.11(3)(c), there were often factual disputes as to when an owner took possession of the property, or when a contract was completed. As amended, Fla. Stat. §95.11(3)(c) removes the likelihood of dispute over these issues, since the issuance of a TCO, CO, or certificate of completion is established with certainty in the public record. SB 360 also clarifies that if a TCO, CO, or certificate of completion is issued, warranty or service work performed within the scope of the building permit will not delay the triggering of the statutes of limitation or repose.

2) How do the statutes of limitation and repose apply to model homes or multi-building projects?

SB 360 addresses two concerns unique to the home building industry. First, home builders will often obtain a certificate of occupancy for a model home, which is later sold to a homeowner. Because amended Fla. Stat. §95.11(3)(c) provides that the limitations and repose period can begin to run upon issuance of a TCO, CO, or certificate of completion, SB 360 further provides that for model homes, the limitations and repose periods do not begin to run until the date of the deed transferring title to the first purchaser. This addition ensures that the limitations or repose period does not run before the home builder transfers title to the first purchaser.

Second, for multi-building projects such as townhomes, there is some uncertainty in Florida courts regarding whether the limitations and repose period begins to run upon completion of each building, or upon completion of the entire project. SB 360 now provides that on such projects, the limitations and repose periods begin to run on a building-by-building basis, upon each building receiving a TCO, CO, or certificate of completion.

3) What must a claimant now demonstrate to prove a statutory violation of Florida's Building Code?

SB 360 adds a "materiality" requirement to support a claim for statutory violation of Florida's Building Code, pursuant to Fla. Stat. §553.84. An owner must now show not only the existence of a Florida Building Code violation, but also that the violation exists within a completed building, structure, or facility, and also has resulted in physical harm to a person or significant damage to the performance of a building or its systems. This revision arguably eliminates claims for "technical" violations of the Florida Building Code, where there is no resulting damage to the property or personal injury.

4) When do these changes become effective?

SB 360 takes effect as of April 13, 2023 and applies to all design and construction defect actions filed on or after this date. However, because these changes shorten the manner in which the limitations and repose periods are calculated, the law provides until July 1, 2024 to file claims that would not have been time barred under the old version of Fla. Stat. §95.11(3)(c), but would be barred by the amendment.

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